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## Brnovich, lagging in the polls, begs Ducey to declare an 'invasion' to militarize the border

BY: **JIM SMALL** - JULY 7, 2022 10:42 AM



 Arizona Attorney General Mark Brnovich, trailing in the polls for his U.S. Senate campaign after former President Donald Trump endorsed his chief rival, is calling on Gov. Doug Ducey to declare an "invasion" on the southern border and send the military to secure it. Constitutional experts say Brnovich's plan is "destructive and radical." U.S. Army photo

Arizona Attorney General Mark Brnovich is asking Gov. Doug Ducey to declare an "invasion" at the state's southern border to invoke war powers and send the state's National Guard troops to fight cartels and human smugglers, an idea that rests on a legal theory constitutional scholars say is "destructive and radical."

Brnovich's letter to Ducey comes nearly five months after he issued a legal opinion declaring that the state had the constitutional authority to effectively [declare war on Mexican cartels and gangs](#). In that opinion, Brnovich wrote that the state is being "actually invaded" by drug cartels, gangs and human-smuggling operations. And even though they aren't an invading foreign power, he said they satisfy the constitutional definition of an invasion and clear the way for Ducey to authorize military action at the border.



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In his July 6 letter to Ducey, Brnovich wrote that "we have every indication that the border crisis will continue to escalate," and that the governor must declare there is an "invasion" along the border to authorize further action. He claimed that his office was "using every tool we have to combat" the cartels and gangs, which largely amounts to filing lawsuits against the Biden administration.

Ducey's office did not immediately respond to a request for comment. But in February, a spokesman for the governor criticized Brnovich for implying that Ducey hadn't taken action on the border.

"Arizona has and will continue to protect our communities with our National Guard, our Border Strike Force and in partnership with local law enforcement," CJ Karamargin, Ducey's communications director, said at the time. "For Attorney General Brnovich to imply the Guard is not on our border does them a serious disservice and shows that he fails to appreciate the commitment these men and women have to protecting Arizona."

Brnovich's letter to Ducey comes at a crucial juncture for his political future. The same day he sent the letter, early ballots were sent to voters who will decide whether

Brnovich will be the GOP nominee for the U.S. Senate this year.

Although Brnovich began the campaign with an advantage among Republican voters, his campaign has struggled in recent weeks. Last month, former President Donald Trump endorsed Blake Masters in the contest, and [recent polling](#) shows Masters has catapulted past Brnovich and into the lead.

After that endorsement, Trump's campaign [sent Brnovich a cease-and-desist letter](#) demanding he stop invoking the former president's name in campaign literature and fundraising solicitations.

Brnovich's legal theory is untested, but [constitutional experts say it is unfounded and dangerous](#). Temple University law professor Craig Green, an expert in constitutional law and American legal history, called it "one of the most dramatic claims for state's rights since the Civil War" and said it "threatens very basic principles of federal constitutional law."

"Ever since the Declaration of Independence, a core idea of the United States is that the United States would handle war and diplomacy, not the individual states. That idea is codified in the Constitution, in the same clause we're talking about," he said. "It simply cannot be that a state can declare war on Britain or the Taliban or a cartel. That will not be in Arizona."

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## JIM SMALL

Jim Small is a native Arizonan and has covered state government, policy and politics since 2004, with a focus on investigative and in-depth policy reporting, first as a reporter for the Arizona Capitol Times, then as editor of the paper and its prestigious sister publications. He has also served as the editor and executive director of the Arizona Center for Investigative Reporting.

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