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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 COUNTY OF SANTA CLARA,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, President of the United
20 States of America, JOHN F. KELLY, in his
official capacity as Secretary of the United States
21 Department of Homeland Security, JEFFERSON
B. SESSIONS, in his official capacity as
22 Attorney General of the United States, JOHN
MICHAEL “MICK” MULVANEY, in his
23 official capacity as Director of the Office of
24 Management and Budget, and DOES 1-50,

25 Defendants.

CASE NO.: 17-cv-00574

**COMPLAINT IN INTERVENTION OF
PLAINTIFF YOUNG WOMEN’S
CHRISTIAN ASSOCIATION
OF SILICON VALLEY**

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*Pro Hac Vice Forthcoming

1 Pursuant to Federal Rule of Civil Procedure 24(b), Plaintiff-Intervenor Young Women’s
2 Christian Association of Silicon Valley (“YWCA Silicon Valley”), for its Complaint in Intervention,
3 alleges as follows:

4 1. YWCA Silicon Valley is a nonprofit organization committed to providing a broad array
5 of critically needed services to women in Santa Clara County, including many of the poorest and most
6 vulnerable women in the County. Among its services, YWCA Silicon Valley offers vital support for
7 victims of domestic violence, sexual assault and human trafficking, and provides advocates for victims
8 of sexual assault as they interact with the criminal justice system.

9 2. The provision of these services by YWCA Silicon Valley has received broad bipartisan
10 support for many years. Yet YWCA Silicon Valley is now faced with severe threats to its
11 fundamental core services, and its ability to continue to carry out its mission, as the result of an
12 unconstitutional Executive Order promulgated by the President of the United States. YWCA Silicon
13 Valley brings this action to preserve its ability to continue to serve the women of Santa Clara County.

14 3. As set forth in its Complaint in this action (“Complaint”), Plaintiff Santa Clara County
15 (“Santa Clara”) has adopted carefully tailored policies and practices regarding interactions with U.S.
16 Immigration and Customs Enforcement (“ICE”) and the separation between County services and the
17 enforcement of federal civil immigration law. Those policies draw clear lines between local criminal
18 law enforcement, as well as other County services, and the enforcement of federal civil immigration
19 law. These policies are designed to promote greater trust between immigrant communities and local
20 authorities, greater willingness of vulnerable members of immigrant communities to report crimes to
21 the police and seek out other city and county services, and a resulting improvement in the safety and
22 well-being of the community.

23 4. But Santa Clara, like other jurisdictions that have adopted similar policies, is now under
24 assault. The President, in violation of the most fundamental structural protections of the Constitution,
25 is attempting to frighten and coerce Santa Clara and other jurisdictions into unwanted participation in
26 federal immigration enforcement.

1 5. On January 25, 2017, President Trump issued Executive Order 13768, entitled
2 “Enhancing Public Safety in the Interior of the United States” (the “Executive Order”). In Section 9 of
3 the Executive Order, President Trump claimed for the Executive Branch unfettered power to declare
4 certain cities, counties, and states to be “sanctuary jurisdictions” and to cut off all federal funding for
5 those jurisdictions.

6 6. The Executive Order represents an unconstitutional assertion of unilateral presidential
7 power. In our constitutional democracy, the President does not have the unilateral power to deny
8 federal funds to those jurisdictions who do not accede to his preferred methods of immigration
9 enforcement. Yet the President has claimed for himself and his subordinates alone the power to deny
10 state, county and municipal governments throughout the country—not to mention the inhabitants of
11 those jurisdictions—the benefit of billions of dollars in federal dollars previously appropriated by
12 Congress, for the improper and unconstitutional purpose of coercing those jurisdictions into becoming
13 enforcement agents of the President’s preferred immigration policies. This threat to terminate all
14 federal funding exerts intolerable pressure on those jurisdictions to bow to the wishes of the Executive
15 Branch and become involuntary partners in federal immigration enforcement.

16 7. The damage caused by the Executive Order is not limited to the governmental
17 jurisdictions that are threatened with a cutoff of federal funds. Like many other nonprofit social
18 service agencies, YWCA Silicon Valley receives a substantial portion of its operating budget in the
19 form of federal funds, much of which come in the form of “flow through” funds originally granted to
20 states, counties, and cities, and then re-granted or administered by those jurisdictions. Other federal
21 funds come to YWCA Silicon Valley under direct contracts with federal agencies as a result of grants
22 awarded by the agency based on recommendations from one of these jurisdictions. A cutoff of federal
23 funds to any of these jurisdictions would devastate YWCA Silicon Valley’s ability to provide services
24 to its clients.

25 8. Plaintiff-Intervenor YWCA Silicon Valley here asserts claims that share common
26 questions of law and fact with the claims set forth in the Complaint filed by Santa Clara in the main
27 action herein. Like Santa Clara, Plaintiff-Intervenor submits that an injunction declaring that this
28

1 attempted exercise of power is unconstitutional is the appropriate means of addressing this
2 unwarranted action. Plaintiff-Intervenor fully supports Santa Clara's claims, and joins in Santa Clara's
3 request for preliminary and permanent injunctive relief.

4 9. Plaintiff-Intervenor, however, also has interests that are distinct from those presented by
5 Santa Clara. It is to protect these interests, and because it believes that presentation of these interests
6 will assist the Court and the parties without creating undue burdens in the management of this
7 litigation, that Plaintiff-Intervenor seeks permissive intervention in this case.

8 **JURISDICTION AND VENUE**

9 10. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because this action
10 arises under the Constitution and laws of the United States. Sovereign immunity against the claims
11 pleaded in this action has been waived pursuant to 5 U.S.C. § 702.

12 11. Venue is proper in this District under 28 U.S.C. § 1391(e) because Defendants are
13 officers and employees of the United States or any agency thereof acting in their official capacities,
14 Plaintiff-Intervenor has its principal place of business in this District, and a substantial part of the
15 events or omissions giving rise to this action are occurring in this District.

16 12. The Court is authorized to award the requested declaratory and injunctive relief pursuant
17 to 28 U.S.C. §§ 2201-2202 and Federal Rule of Civil Procedure 65.

18 13. Plaintiff-Intervenor satisfies the requirements for permissive intervention set forth in
19 Federal Rule of Civil Procedure 24(b)(1)(B) because it has claims that share common questions of law
20 or fact with the main action.

21 14. This Complaint in Intervention will not enlarge the jurisdiction of this Court, since
22 Plaintiff-Intervenor is bringing no new claims in addition to the federal question claims that are
23 already presented in the main action.

24 15. This Complaint in Intervention was timely filed. Plaintiff-Intervenor has proceeded
25 diligently in asserting its interests by means of this Complaint in Intervention. The case is in a
26 preliminary stage; no discovery has taken place and no substantive determinations have yet been made
27 in the main action.

1 16. Permitting Plaintiff-Intervenor to intervene in this action will not unduly prejudice or
 2 burden any existing party. Plaintiff-Intervenor does not seek to delay consideration of the motion for
 3 preliminary injunction filed by Santa Clara on February 24, 2017, and currently set for hearing on
 4 April 5, 2017. Plaintiff-Intervenor seeks to participate in proceedings on that motion by joinder to
 5 present its distinct facts, without presentation of repetitive or significantly distinct legal arguments.

6 **INTRADISTRICT ASSIGNMENT**

7 17. Pursuant to Civil L.R. 3-2(c), this case would normally be appropriately assigned to the
 8 San Jose Division of this Court, because the action arises in Santa Clara County. However, by reason
 9 of this Court’s Related Case Order Court dated February 10, 2017 in Case No. 3:17-cv-00485, *City*
 10 *and County of San Francisco v. Donald J. Trump, et al.* (the “San Francisco Case”), this case has been
 11 related to the San Francisco Case, which is currently pending in the San Francisco Division of this
 12 Court.

13 **THE PARTIES**

14 18. Plaintiff-Intervenor YWCA Silicon Valley is a nonprofit corporation organized under
 15 the California Non-profit Public Benefit Corporation Law, having its principal place of business in San
 16 Jose, California. Founded in 1905, it seeks to eliminate racism and empower women through a variety
 17 of programs, including assistance for women who have been victims of sexual assault, domestic
 18 violence, and human trafficking. Its services include rapid rehousing, training and counseling. In the
 19 current fiscal year (ending June 30, 2017), it expects to provide services to at least 18,000 women,
 20 children, and teens throughout Santa Clara County. As set forth more fully below, federal funding,
 21 much of which is received as flow-through funding through the State of California, Santa Clara
 22 County, and/or various cities within Santa Clara County, is critical to its ability to provide these
 23 services.

24 19. Defendant Donald J. Trump is the President of the United States. He is sued in his
 25 official capacity.

26 20. Defendant John F. Kelly is the Secretary of the U.S. Department of Homeland Security.
 27 He is sued in his official capacity.

28

1 21. Defendant Jefferson Sessions is the Attorney General of the United States. He is sued in
2 his official capacity.

3 22. Defendant John Michael “Mick” Mulvaney is the Director of the Office of Management
4 and Budget. He is sued in his official capacity.

5 23. The true names and capacities of Defendants identified as Does 1-50 are unknown to
6 Plaintiff-Intervenor. Plaintiff-Intervenor will amend this Complaint in Intervention to insert the true
7 names and capacities of those fictitiously named defendants when they are ascertained.

8 **FACTUAL ALLEGATIONS**

9 **The Executive Order and Certain of its Constitutional Defects**

10 24. As set forth in more detail in the Complaint filed by Santa Clara in the main action, the
11 Executive Order contains numerous provisions that violate the Constitution or are otherwise unlawful
12 for a variety of reasons. This Complaint in Intervention focuses solely on the manner in which certain
13 of those provisions threaten direct harm to Plaintiff-Intervenor YWCA Silicon Valley.

14 25. Section 9 of the Executive Order purports to empower subordinate executive officers to
15 declare any city, county, or state a “sanctuary jurisdiction,” and to “ensure” that such jurisdictions are
16 “not eligible to receive Federal grants.” That section states that “[t]he Secretary [of Homeland
17 Security] has the authority to designate, in his discretion and to the extent consistent with law, a
18 jurisdiction as a sanctuary jurisdiction.” Whereas one sentence in Section 9 states that “jurisdictions
19 that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive
20 federal grants,” another sentence provides, “The Attorney General shall take appropriate enforcement
21 action against any entity that violates 8 U.S.C. 1373....”¹

22 26. The Executive Order does not establish or contemplate any notice to a party affected by
23 a denial or termination of funding pursuant to its provisions, and does not establish or contemplate that
24 such a party will be given any opportunity to be heard, much less a meaningful opportunity.

25 _____
26 ¹ 8 U.S.C. § 1373 is a statute that provides, *inter alia*, that state or local government entities or
27 officials, as well as any “person or agency,” may not “prohibit, or in any way restrict” the sending to,
28 or receiving from, the federal government “information regarding the citizenship or immigration
status, lawful or unlawful, of any individual.”

1 27. Section 9 of the Executive Order is also constitutionally infirm because in it the
2 President purports to exercise and delegate spending powers that are reserved exclusively to Congress
3 under Article I, § 8 of the Constitution. Article II of the Constitution, which describes the powers of
4 the President, does not vest the President with spending power. Although Section 9 vaguely purports
5 to limit the exercise of this power by directing the Attorney General and the Secretary of Homeland
6 Security to exercise it “to the extent consistent with law,” this supposed limitation is meaningless,
7 since the President’s defunding of sanctuary cities is not “consistent with law.”

8 28. Moreover, the Executive Order would be unconstitutional even if enacted by Congress.
9 Congress could not, by legislation, withhold *all* federal funding to a state or local government in an
10 attempt to coerce or commandeer such a government to enact, pursue, or obey federal policies. The
11 Executive Order unlawfully attempts to coerce or commandeer state and local jurisdictions to become
12 *de facto* agents for the enforcement of the President’s view of federal immigration policy by
13 threatening the withholding or withdrawal of *all* federal funds from any jurisdiction that, in the sole
14 opinion of the President or his subordinates, does not sufficiently comply with federal immigration
15 authorities. The Executive Order likewise violates other limitations on the spending power, including
16 requirements of clear notice and germaneness, which would render this action invalid even if enacted
17 by Congress.

18 **Impact of the Executive Order on YWCA Silicon Valley**

19 29. In pursuit of its mission to eliminate racism and empower women, YWCA Silicon
20 Valley administers a broad array of programs and services that directly impact the lives of its clients,
21 primarily women, including the most vulnerable and impoverished women in Santa Clara County.
22 The work of YWCA Silicon Valley supports many community members, both men and women, in
23 ways that are independent of the immigration enforcement issues that are the focus of the Executive
24 Order. Its many programs include:

- 25 ■ A 24-hour support line, counseling, emergency shelter, and legal services provided to victims
26 of sexual assault, domestic violence, and human trafficking, including serving as the
27 designated rape crisis center for approximately 90% of the residents of Santa Clara County;

- 1 ■ Providing advocates to victims of sexual assault during law enforcement interviews, medical
2 exams, and trial proceedings, pursuant to rights granted under California Penal Code
3 § 679.04;
- 4 ■ The Early Intervention Prostitution Program, which works with the Santa Clara County
5 District Attorney's office to offer a diversion program for first-time offenders of soliciting a
6 sex act;
- 7 ■ The YWCA Healing Center Counseling Services, which strives to improve the emotional,
8 mental, and behavioral wellness of the community through short and long term counseling
9 and support services to clients of all ages including individuals, couples, families and groups;
- 10 ■ TechGYRLS®, an after-school empowerment program that provides girls ages 8-18 with
11 opportunities to increase their skills and confidence in the use of technology and engineering;
12 and
- 13 ■ Child care centers and after-school programming at schools and affordable housing sites,
14 that provide free or affordable quality child care to children ranging in age from 6 weeks to
15 12 years.

16 30. For the 2016-2017 fiscal year, which ends on June 30, 2017, YWCA Silicon Valley has
17 a budgeted income of approximately \$7.07 million, not including in-kind contributions. Of this
18 amount, at least \$2.656 million, or 37.5%, consists of federal funds. These funds are received by
19 YWCA Silicon Valley through a variety of distinct channels. While some of these funds constitute
20 direct grants to the organization, most of the funds are received in the form of "flow through" grants
21 that are originally received by either the State of California, the County of Santa Clara, the City of San
22 Jose, or other cities within Santa Clara County, and then re-granted to YWCA Silicon Valley by these
23 jurisdictions, or administered by them.

24 31. The Executive Order threatens the financial stability of YWCA Silicon Valley, and its
25 ability to continue to deliver critical services to its clients, in ways that are similar to the injuries
26 alleged by Santa Clara at ¶¶ 46-49 and ¶¶ 107-117 of its Complaint. Like Santa Clara, YWCA Silicon
27 Valley must create an annual budget and hire staff, pay expenses, and disburse funds pursuant to that
28

1 budget. In many instances, YWCA Silicon Valley receives federal funds in the form of
2 reimbursements for funds that it has already spent in reliance on commitments to pay those
3 reimbursements. The Executive Order creates a clear danger that substantial federal funds already
4 committed to YWCA Silicon Valley would be cut off by reason of an Executive Branch designation of
5 Santa Clara or other jurisdictions as a “sanctuary jurisdiction.”

6 32. That threat also makes it impossible for YWCA Silicon Valley to plan rationally for the
7 provision of services on which so many of its clients, primarily vulnerable women throughout Santa
8 Clara County, rely. YWCA Silicon Valley is currently in the process of preparing its budget for the
9 2017-2018 fiscal year. Without assurance that federal funding will not be terminated for improper
10 reasons, YWCA Silicon Valley cannot create plans for its future service delivery, and cannot hire or
11 retain the personnel necessary to deliver such services. Because of the looming threat of losing federal
12 funds due to the Executive Order, YWCA Silicon Valley plans to institute a hiring freeze for
13 potentially affected programming in the upcoming fiscal year.

14 33. The threat to YWCA Silicon Valley is not limited to the possibility that Santa Clara
15 might be designated a “sanctuary jurisdiction.” YWCA Silicon Valley also receives substantial
16 portions of its budget in federal funds that are “flow through” grants from the State of California.

17 34. President Trump has already directly threatened to “defund” California because he
18 disagrees with the state on immigration policy. In response to a direct question about California,
19 President Trump, in a Fox News television interview aired just prior to the Super Bowl on February 5,
20 2017, said, “Well, I think it’s ridiculous, sanctuary cities, as you know. I’m very much opposed to
21 sanctuary cities. They breed crime, there’s a lot of problems. If we have to, we’ll defund. We give
22 tremendous amounts of money to California. California in many ways is out of control.”

23 35. In light of this and similar statements by the President and the promulgation of the
24 Executive Order, YWCA Silicon Valley has reason to fear that the Executive Branch of the federal
25 government will unilaterally declare California to be a “sanctuary jurisdiction,” declare a halt to all
26 federal funding to California, and thereby stop the flow of federal funds through California to YWCA
27 Silicon Valley.

1 36. YWCA Silicon Valley also receives substantial federal funds from the City of San Jose.
2 Media reports indicate that “San Jose has long called itself a ‘sanctuary city’ for immigrant residents –
3 and city leaders reaffirmed that stance weeks after Trump won the election.” YWCA Silicon Valley
4 reasonably fears that San Jose could be designated as a “sanctuary city,” which would cut off federal
5 funds to San Jose, and therefore result in the elimination of those funds that flow through San Jose to
6 YWCA Silicon Valley.

7 37. Thus YWCA Silicon Valley must contend with the possible cutoff of not one but
8 multiple sources of federal funding, each dependent on different sets of circumstances in the different
9 jurisdictions, and different determinations made by the Executive Branch of the federal government.

10 38. In addition, the nature of YWCA Silicon Valley’s injury is different from Santa Clara’s
11 because YWCA Silicon Valley is faced with deprivation of federal funds not because of anything it
12 has allegedly done or failed to do, but because of the Executive Branch’s attempt to punish or coerce
13 governmental jurisdictions. As a result, human service agencies such as YWCA Silicon Valley are
14 nothing more than “collateral damage” in the President’s quest to unconstitutionally reorder the
15 relationships between federal, state, and local governments. Unlike those other governmental
16 jurisdictions, however, the YWCA is without any prospect of an ability to take steps that would induce
17 the federal government to restore its funding in the event it is cut off.

18 39. Finally, if the federal government were to agree not to deny federal funds to Santa Clara
19 under Section 9 of the Executive Order, or to restore funds that had previously been denied, a
20 defunding risk would still exist with respect to California and/or municipal jurisdictions. YWCA
21 Silicon Valley would therefore continue to suffer injury in fact due to the actual or threatened cutoff of
22 funding through those other jurisdictions.

23 40. If it is deprived of up to 37.5% of its operating funds by reason of a funding cutoff by
24 the federal government to Santa Clara, San Jose and/or the State of California, YWCA Silicon Valley
25 and its clients are likely to be damaged in the following ways, among others:

- 26 ■ As many as 1,000 sexual assault victims per year will lose access to the advocates who
27 accompany them to law enforcement interviews, medical examinations and court

1 appearances;

2 ■ The County of Santa Clara will lose a vital crisis hotline for victims of sexual assault,
3 domestic violence, and human trafficking;

4 ■ Victims of sexual assault, domestic violence and human trafficking will lose access to the
5 only domestic violence shelter facility in northern Santa Clara County specifically designated
6 to serve their needs, as well as access to rapid rehousing opportunities and a Family Violence
7 Center advocate embedded within the San Jose Police Department to provide emergency
8 services;

9 ■ Women, children, and teens will lose the benefit of community education programming; and

10 ■ Vulnerable women, individuals and families will not have access to critical counseling
11 services.

12 41. YWCA Silicon Valley has therefore suffered an injury in fact by reason of the loss of
13 funds promised under federal law.

14 42. YWCA Silicon Valley has also suffered further injury by reason of the threatened
15 retroactive confiscation of previously approved funds.

16 43. These injuries are fairly traceable to the Executive Order, in that, but for the Executive
17 Order, YWCA Silicon Valley would be able to receive federal funds previously promised, and to make
18 budgeting and programming decisions without the threat that federal funding will disappear.

19 44. This Court can redress YWCA Silicon Valley's injuries by declaring Section 9 of the
20 Executive Order unconstitutional and enjoining its implementation and enforcement.

21 45. The issues in this case are ripe for judicial decision. The Executive Order is final and
22 further factual development is unnecessary to resolve the legal issues presented by this challenge.

23 46. Postponing judicial review would impose a significant hardship on YWCA Silicon
24 Valley. Requiring YWCA Silicon Valley to proceed without a judicial determination of whether the
25 Executive Order is valid would impose a palpable and considerable hardship by forcing YWCA
26 Silicon Valley to decide now whether to continue to provide vital services without knowing whether it
27 will continue to receive promised funding.

CLAIMS FOR RELIEF

COUNT 1

Violation of the Separation of Powers, U.S. Constitution, Articles I and II

47. YWCA Silicon Valley incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

48. Article I, § 8 of the Constitution vests the federal government’s spending power exclusively in Congress. Article II of the Constitution, which describes the powers of the President, does not vest the President with spending power. The President lacks authority to issue the Executive Order.

49. Accordingly, Defendant Trump’s attempt, through Section 9 of the Executive Order, to withdraw, suspend, or prohibit the future payment of funds authorized or appropriated by Congress is unconstitutional.

COUNT II

Violation of the Spending Power, U.S. Constitution, Article I

50. YWCA Silicon Valley incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

51. Defendant Trump’s attempted usurpation of the Congressional spending power is made even more outrageous by the fact that President Trump is attempting to exercise spending power that even Congress does not have, thereby seeking to fundamentally reorder the relationships between the state and federal governments under the Constitution.

52. It is well settled that even the Congress could not, by legislation, exercise the spending power in the manner that Defendant Trump purports to exercise such power through the Executive Order, that is, to use the spending or withholding of federal funds in an attempt to coerce or commandeer state and local governments to enact, pursue, or obey policies that the federal government may favor. The Executive Order likewise violates other limitations on the spending power, including requirements of clear notice and germaneness, which would render this action invalid even if enacted by Congress. For this additional reason, Section 9 of the Executive Order is unconstitutional.

COUNT III
Violation of Procedural Due Process, U.S. Constitution, Amendment 5

53. YWCA Silicon Valley incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

54. Under the Fifth Amendment to the Constitution, the federal government may not deprive any person of money or property without due process of law.

55. YWCA Silicon Valley is damaged by this violation because it is threatened with the loss of substantial funding due to decisions made without due process of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor YWCA Silicon Valley respectfully requests that this Court enter judgment in its favor against all Defendants, and grant the following relief:

1. A declaration that Section 9 of the Executive Order is unconstitutional and invalid on its face;

2. A declaration that Section 9 of the Executive Order is unconstitutional and invalid as applied to Plaintiff-Intervenor;

3. A preliminary and permanent injunction enjoining Defendants from enforcing Section 9 of the Executive Order or taking any other action in furtherance of any withholding or conditioning of federal funds based on the Executive Order;

4. An award to Plaintiff-Intervenor of reasonable costs and attorney's fees; and

5. Such other and further relief that this Court may deem just and proper.

1 DATED: March 1 , 2017

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.

2
3
4 By: s/ William S. Freeman

5 WILLIAM S. FREEMAN

6 Attorneys for Plaintiff-Intervenor
7 Young Women's Christian Association
Of Silicon Valley

8
9 DATED: March 1, 2017

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10
11
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