

1 JULIA HARUMI MASS, SBN 189649
WILLIAM S. FREEMAN, SBN 82002
2 ANGÉLICA SALCEDA, SBN 296152
AMERICAN CIVIL LIBERTIES UNION
3 FOUNDATION OF NORTHERN
CALIFORNIA, INC.
4 39 Drumm Street
San Francisco, CA 94111
5 Telephone: (415) 621-2493
Facsimile: (415) 255-8437
6 Email: jmass@aclunc.org
Email: wfreeman@aclunc.org
7 Email: asalceda@aclunc.org

CATHERINE MORENO, SBN 264517
LAUREN GALLO WHITE, SBN 309075
RALITZA DINEVA, SBN 305974
AVA MILLER, SBN 312012
WILSON SONSINI GOODRICH & ROSATI
PROFESSIONAL CORPORATION
650 Page Mill Road
Palo Alto, California 94306
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
Email: cmoreno@wsgr.com
Email: lwhite@wsgr.com
Email: rdineva@wsgr.com
Email: armiller@wsgr.com

8
9 Attorneys for Plaintiff-Intervenor
Young Women’s Christian Association
10 Of Silicon Valley

11 [SEE NEXT PAGE FOR ADDITIONAL COUNSEL]

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

16 COUNTY OF SANTA CLARA,

17 Plaintiff,

18 v.

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

25 Defendants.
26

CASE NO.: 17-cv-00574 WHO

**PLAINTIFF-INTERVENOR YOUNG
WOMEN’S CHRISTIAN ASSOCIATION
OF SILICON VALLEY’S REPLY IN
SUPPORT OF MOTION FOR
PERMISSIVE INTERVENTION**

Date: April 5, 2017
Time: 2:00 p.m.
Dept.: Courtroom 2
Before: Hon. William H. Orrick

1 PETER J. ELIASBERG, SBN 189110
SYLVIA TORRES-GUILLEN, SBN 164835
2 JENNIFER PASQUARELLA, SBN 263241
AMERICAN CIVIL LIBERTIES UNION
3 FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
4 Los Angeles, CA 90017
Telephone: (213) 977-5211
5 Facsimile: (213) 977-5297
Email: peliasberg@aclu-sc.org
6 Email: storres-guillen@aclusocal.org
Email: jpasquarella@aclu-sc.org

7
8 DAVID LOY, SBN 229235
ACLU FOUNDATION OF SAN DIEGO
AND IMPERIAL COUNTIES
9 P.O. Box 87131
San Diego, CA 92138-7131
10 Telephone: (619) 232-2121
Facsimile: (619) 232-0036
11 Email: davidloy@aclusandiego.org

12 OMAR C. JADWAT*
ANDRE I. SEGURA, SBN 247681
13 SPENCER E. AMDUR*
AMERICAN CIVIL LIBERTIES UNION
14 FOUNDATION, IMMIGRANTS' RIGHTS
PROJECT
15 125 Broad Street, 18th Floor
New York, NY 10004
16 Telephone: (212) 549-2600
Facsimile: (212) 549-2654
17 Email: ojadwat@aclu.org
Email: asegura@aclu.org
18 Email: samdur@aclu.org

19 CODY H. WOFSY, SBN 294179
AMERICAN CIVIL LIBERTIES UNION
20 FOUNDATION, IMMIGRANTS' RIGHTS
PROJECT
21 39 Drumm Street
San Francisco, CA 94111
22 Telephone: (415) 343-0770
Facsimile: (212) 395-0950
23 Email: cwofsy@aclu.org

24 *Admitted Pro Hac Vice
25
26
27
28

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 2

 A. YWCA Silicon Valley Has Met the Mandatory Criteria for Permissive Intervention. 2

 B. The Discretionary Factors Under Rule 24(b) Weigh Heavily in Favor of Intervention. 2

 1. YWCA Silicon Valley Need Not Establish Standing to Intervene. 2

 2. YWCA Silicon Valley Has a Compelling Interest That Favors Permissive Intervention. 4

 3. YWCA Silicon Valley’s and Santa Clara’s Legal Positions Are Aligned. 7

 4. YWCA Silicon Valley’s Interests Are Not Adequately Represented by Santa Clara. 8

 5. YWCA Silicon Valley Will “Significantly Contribute” to the Factual Development and the Just Adjudication of the Legal Issues Presented. 10

 C. The Government Will Not Be Prejudiced by YWCA Silicon Valley’s Intervention. 10

III. CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

CASES

1

2

3

4 *Angeles v. U.S. Airways, Inc.*, No. C 12-05860 CRB, 2013 WL 622032
(N.D. Cal. Feb. 19, 2013).....2

5

6 *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289 (1979).....4

7

8 *Bresgal v. Brock*, 843 F.2d 1163 (9th Cir. 1987).....5

9 *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184
(9th Cir. 1998).....8

10 *Ctr. for Biological Diversity v. United States DOJ*, No. 15-cv-00658-JCS, 2015 U.S.
Dist. LEXIS 82201 (N.D. Cal. June 24, 2015)4

11 *Dave Drilling Envtl. Eng’g, Inc. v. Gamblin*, No. 14-cv-02851-WHO, 2015 WL
4051968 (N.D. Cal. July 2, 2015)2

12 *Doe v. Harris*, No. C12-5713 TEH, 2013 WL 140053 (N.D. Cal. Jan. 10, 2013)3

13 *Donnelly v. Glickman*, 159 F.3d 405 (9th Cir. 1998)2

14 *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836 (9th Cir. 2011)2, 3

15 *In re Grupo Unidos por el Canal S.A.*, No. 14-mc-80277-JST, 2015 U.S. Dist. LEXIS
52358 (N.D. Cal. Apr. 21, 2015)10

16

17 *Industrial Technology Research Institute v. LG Electronics, Inc.*, No. 3:13-CV-2016-
GPC-WVG, 2015 WL 474227 (S.D. Cal. Feb. 5, 2015)3

18 *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956 (9th Cir. 2015) (en banc),
cert. denied, 136 S. Ct. 1509 (2016)4

19

20 *Perry v. Schwarzenegger*, 630 F.3d 898 (9th Cir. 2011)*passim*

21

22 *Price v. City of Stockton*, 390 F.3d 1105 (9th Cir. 2004)5

23

24 *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969)3

25 *Spangler v. Pasadena City Board of Education*, 552 F.2d 1326 (9th Cir. 1977)3

26 *Su v. Siemens Indus., Inc.*, No. 12-cv-03743-JST, 2013 U.S. Dist. LEXIS 96505
(N.D. Cal. July 10, 2013)10

27 *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014)4

28 *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810 (9th Cir. 2001)8

Trbovich v. United Mine Workers, 404 U.S. 528 (1972)8, 9

1 *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017).....5

2 *Yniguez v. State of Ariz.*, 939 F.2d 727 (9th Cir. 1991)3

3 *Zepeda v. INS*, 753 F.2d 719 (9th Cir. 1983).....5

4 **STATUTES & RULES**

5 California Trust Act, Gov’t Code §§ 7282-7282.56

6 Civil L.R. 7-2(a).....10

7 Fed. R. Civ. P. 24.....1, 2, 8

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 This Court should permit the Young Women’s Christian Association of Silicon Valley
3 (“YWCA Silicon Valley”) to intervene as a Plaintiff in this case. Plaintiff Santa Clara County (“Santa
4 Clara”) does not oppose intervention, and Defendants’ Opposition (ECF No. 50, “Opp.”)—far from
5 persuading that intervention should be denied—demonstrates how intervention will promote the full
6 presentation of relevant issues without burdening the Court or the parties.

7 Defendants concede that YWCA Silicon Valley meets each of the three necessary elements for
8 permissive intervention: its motion is timely, it does not assert any new claims, and it shares common
9 questions of law and fact with the main action. *See id.* at 3-4; Fed. R. Civ. P. 24(b). Most of
10 Defendants’ argument is devoted to challenging YWCA Silicon Valley’s standing, even though
11 Defendants concede that Article III standing is *not* required for permissive intervention, and it is well
12 settled that standing should *not* be considered at this time. Defendants’ remaining arguments are
13 replete with contradictions; for example, Defendants argue that YWCA Silicon Valley’s interests will
14 be sufficiently protected by Santa Clara, while insisting that any injunction Santa Clara obtains must
15 exclude YWCA Silicon Valley. Defendants argue that YWCA Silicon Valley’s exposure to harm from
16 a cutoff of funds to the State of California or other jurisdictions would impermissibly broaden the
17 issues to be addressed in this case, while ignoring that Santa Clara already contends that it, too, is
18 threatened by a cutoff of federal funds to California.

19 YWCA Silicon Valley has interests in this case that are different from those of Santa Clara or
20 any single governmental jurisdiction, since President Trump’s unconstitutional Executive Order
21 simultaneously threatens multiple sources of its funding which pass through a variety of state and local
22 governments. YWCA Silicon Valley has already demonstrated that it is willing and able to undertake
23 the responsibilities of a party to this litigation, and that it will contribute to the factual and legal
24 development in this action without delaying the case or prejudicing the parties.

1 **II. ARGUMENT**

2 **A. YWCA Silicon Valley Has Met the Mandatory Criteria for Permissive Intervention.**

3 Defendants do not dispute that YWCA Silicon Valley has met the three mandatory criteria for
 4 permissive intervention: it “shares a common question of law or fact with the main action”; its motion
 5 is timely; and the Court has “an independent basis for jurisdiction.” *See* Opp. at 3-4 (citing *Donnelly v.*
 6 *Glickman*, 159 F.3d 405, 412 (9th Cir. 1998)).¹ By failing to contest YWCA Silicon Valley’s
 7 argument that it satisfies all three criteria (*see* ECF No. 43 at 6-9), Defendants concede that the criteria
 8 have been met. *See, e.g., Angeles v. U.S. Airways, Inc.*, No. C 12-05860 CRB, 2013 WL 622032, at *4
 9 (N.D. Cal. Feb. 19, 2013), and cases cited therein (failure to respond to an argument on the merits
 10 amounts to a concession). Under Federal Rule of Civil Procedure 24(b)(1)(B), the Court therefore may
 11 grant intervention.

12 **B. The Discretionary Factors Under Rule 24(b) Weigh Heavily in Favor of Intervention.**

13 Defendants contend that the factors discussed in *Perry v. Schwarzenegger*, 630 F.3d 898 (9th
 14 Cir. 2011), weigh against permissive intervention in this case. These factors include: (1) the nature and
 15 extent of the intervenor’s interests; (2) its “standing to raise relevant issues”; (3) the legal position
 16 advanced by the intervenor and its relation to the merits of the case; (4) whether the intervenor’s
 17 interests are adequately represented by other parties; and (5) whether the intervenor will contribute to
 18 the development of factual issues and the just adjudication of legal issues. *Id.* at 905. Defendants’
 19 arguments concerning these factors fail, however, and the Court should permit intervention.

20 **1. YWCA Silicon Valley Need Not Establish Standing to Intervene.**

21 Defendants devote most of their brief to the second *Perry* factor, arguing that YWCA Silicon
 22 Valley does not have Article III standing. Standing is only relevant to permissive intervention in a
 23 small subset of cases, however, and this case is not one of them.

24
 25 ¹ As YWCA Silicon Valley previously explained, the jurisdiction requirement is satisfied where the
 26 proposed intervenor in a federal question case asserts no additional claims. *See* YWCA Motion to
 27 Intervene, ECF No. 43, at 6 (citing *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844
 28 (9th Cir. 2011)); *see also* *Dave Drilling Envtl. Eng’g, Inc. v. Gamblin*, No. 14-cv-02851-WHO, 2015
 WL 4051968, at *5 (N.D. Cal. July 2, 2015) (Orrick, J.) (“[T]he Ninth Circuit has clarified that the
 ‘independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-
 question cases where the proposed intervenor is not raising new claims’”) (citation omitted).

1 Defendants concede, as they must, that “in general, an applicant for intervention *need not*
 2 *establish* Article III standing to intervene.” Opp. at 4 n.2 (emphasis added) (citing *Perry*, 630 F.3d at
 3 906).² Indeed, Ninth Circuit case law is clear that a proposed intervenor is not required to establish
 4 Article III standing in a federal question case where, as here, the party on whose side intervention is
 5 sought remains in the suit, and the proposed intervenor does not seek to raise any additional claims.
 6 *Doe v. Harris*, No. C12-5713 TEH, 2013 WL 140053, at *2 (N.D. Cal. Jan. 10, 2013) (citing *Freedom*
 7 *from Religion Found.*, 644 F.3d at 843 (vacating and remanding district court order denying permissive
 8 intervention based on jurisdictional concerns)).

9 Where the proposed intervenor does not seek to raise any new claims, standing is a relevant
 10 factor only in the unusual case where a party seeks to intervene on appeal after the losing party below
 11 decides not to appeal. This was the case in *Perry*. Certain public officials moved to intervene after the
 12 State of California declined to appeal the district court’s decision that Proposition 8 (prohibiting same-
 13 sex marriage) was unconstitutional. The Ninth Circuit explained:

14 In general, an applicant for intervention need not establish Article III
 15 standing to intervene. Because the specific interest Movants claimed in
 16 the litigation [pursuing an appeal where the losing party below did not]
 17 would require them to have standing, however, the court did not abuse its
 discretion by considering their standing to appeal the merits.

18 *Perry*, 630 F.3d at 906; *see also Yniguez v. State of Ariz.*, 939 F.2d 727, 731 (9th Cir. 1991).³

19 Defendants have cited no Ninth Circuit cases similar to this one—*i.e.*, a case in which a party seeks
 20 permissive intervention to litigate at the trial court level alongside another party that has standing—in

21 ² Defendants argue that while an intervenor does not need to establish Article III standing to
 22 intervene, it still must have standing to assert a cause of action, citing *Industrial Technology Research*
 23 *Institute v. LG Electronics, Inc.*, No. 3:13-CV-2016-GPC-WVG, 2015 WL 474227, at *3 n.1 (S.D. Cal.
 24 Feb. 5, 2015). Opp. at 4 n.2. In that case, however, the court followed the Ninth Circuit rule by
 granting LG Display Co., Ltd.’s motion to intervene without considering its standing. The court did
 address standing later, when it ruled on a motion to dismiss the complaint in intervention. *Id.* at *3, 11
 (denying motion to dismiss, reasoning that plaintiff-intervenor has standing to assert causes of action).

25 ³ The court in *Perry* took its list of factors directly from an earlier Ninth Circuit opinion, *Spangler v.*
 26 *Pasadena City Board of Education*, 552 F.2d 1326, 1329 (9th Cir. 1977). The *Spangler* court based the
 “standing to raise relevant legal issues” factor on *Smuck v. Hobson*, 408 F.2d 175, 177-78 (D.C. Cir.
 27 1969). *See Spangler*, 552 F.2d at 1329 n.3. Like *Perry*, *Smuck* also involved a situation in which
 parties sought to intervene for the purpose of pursuing an appeal after the losing party below declined
 to appeal.

1 which a court has even discussed the intervenor’s standing as a factor in the decision to permit
 2 intervention; YWCA Silicon Valley is aware of no such cases. Accordingly, under the circumstances
 3 of this case, YWCA Silicon Valley’s standing should not be considered at this stage.⁴

4 **2. YWCA Silicon Valley Has a Compelling Interest That Favors Permissive**
 5 **Intervention.**

6 Defendants question “the nature and extent of [YWCA Silicon Valley’s] interest in this action”
 7 (Opp. at 6:6-7), but misconstrue the standard for evaluating a proposed intervenor’s interest.
 8 Intervention is appropriate where an intervenor can demonstrate a “substantial” interest in the outcome
 9 of the case, even where the intervenor has not provided figures to precisely quantify that interest. *See*
 10 *Ctr. for Biological Diversity v. United States DOJ*, No. 15-cv-00658-JCS, 2015 U.S. Dist. LEXIS
 11 82201, at *13-14 (N.D. Cal. June 24, 2015) (granting permissive intervention where proposed
 12 intervenor’s description of “typical” expenses to register pesticides established that it had a “substantial
 13 interest” in the outcome of case challenging use of pesticides). As explained in detail in the declaration
 14 of YWCA Silicon Valley’s Chief Financial Officer and Chief Operating Officer, Ann Marie Pate (ECF
 15 No. 43-4), and as repeated below, the organization’s interest in the outcome of this action is
 16 unquestionably substantial.

17 Defendants’ initial argument concerning this factor is circular. Defendants appear to contend
 18 that YWCA Silicon Valley does not have a substantial interest because “the only plaintiff in this case is
 19 the County of Santa Clara, and any injunction herein should be limited to the plaintiff.” Opp. at 6:7-8.
 20 In other words, Defendants maintain that YWCA Silicon Valley should not be permitted to *become a*
 21 *plaintiff*, because only *existing plaintiffs* are entitled to relief, and YWCA Silicon Valley is not an

22 _____
 23 ⁴ Even if the Court were inclined to examine the standing issue now, YWCA Silicon Valley has
 24 standing. First, the threatened loss of federal funding is a concrete and non-speculative injury. *See*
 25 *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341-42 (2014) (where a plaintiff alleges injury
 26 stemming from the threatened enforcement of a law, an actual “enforcement action is not a prerequisite
 27 to challenging the law”); *see also Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 965
 28 (9th Cir. 2015) (en banc) (the potential “loss of funds promised under federal law . . . satisfies Article
 III’s standing requirement”), *cert. denied*, 136 S. Ct. 1509 (2016). This is particularly so where, as
 here, Defendants have “not disavowed any intention” of enforcing the Executive Order. *Babbitt v.*
United Farm Workers Nat’l Union, 442 U.S. 289, 302 (1979). Second, YWCA Silicon Valley is
 presently injured by its inability to rationally budget for the expenditure of its limited resources. *See*
 Complaint in Intervention, ECF No. 43-2, ¶¶ 31-32; Pate Declaration, ECF No. 43-4, ¶¶ 10-13.

1 existing plaintiff. To state this argument is to refute it.⁵ If the Court grants intervention, YWCA would
 2 become a plaintiff and thus have a “substantial interest” even under Defendants’ theory.⁶

3 Defendants next contend that YWCA Silicon Valley has an insufficient interest in this action
 4 because “it is unclear whether [YWCA Silicon Valley] receives *any* federal funding through Santa
 5 Clara County.” Opp. at 6:15-16 (emphasis in original). This argument is predicated on the narrow
 6 view that this action is only about an isolated threat to the budget of Santa Clara. Not so: Santa
 7 Clara’s complaint announces in its opening paragraphs that this is a case of nationwide importance,
 8 because it involves an unconstitutional attempt by the President to “direct [] reprisals against state,
 9 local, and municipal governments that he deems to be so-called ‘sanctuary jurisdictions’” by means of
 10 a unilateral decree that, among other things, declares all such governments “ineligible to receive any
 11 federal funds.” ECF No. 1, ¶¶ 1-2, 8-10. Santa Clara seeks relief that is nationwide in scope, including
 12 a declaration that Section 9 of the Executive Order is unconstitutional and a preliminary and permanent
 13 injunction preventing Defendants from “taking any other action in furtherance of *any* withholding or
 14 conditioning of federal funds based on the Executive Order.” *Id.*, Prayer for Relief, ¶¶ 1-3 (emphasis
 15 added).

16 YWCA Silicon Valley’s Complaint in Intervention demonstrates that it has a vital interest in
 17 whether the Executive Order is constitutional: 37.5% of its operating budget is derived from federal
 18 funds that flow through a number of jurisdictions, all of which are threatened with designation as
 19 “sanctuary jurisdictions.” ECF No. 43-2, ¶¶ 24-28, 30-37. YWCA Silicon Valley has specifically
 20

21 ⁵ If this argument could be taken seriously, it would actually *support* intervention. Accepting
 22 Defendants’ argument, YWCA Silicon Valley should be permitted to intervene because, under the third
 23 *Perry* factor, Santa Clara will obviously be unable to adequately represent YWCA Silicon Valley’s
 24 distinct interests if Santa Clara obtains an injunction to protect only its own interests.

25 ⁶ This argument also misstates the scope of the relief that is permissible in this action. While the
 26 first case cited by Defendants, *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004), held that
 27 ordinarily, injunctions should “not . . . determine the rights of persons not before the court,” in doing so
 28 it relied on *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983), and specifically cited the following
 passage from *Zepeda*: “An injunction benefitting nonparties is permissible if such breadth is necessary
 to give prevailing parties the relief to which they are entitled.” *Id.* at 1117 (citing *Zepeda*, 753 F.2d at
 728 n.1). *See also Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987) (affirming nationwide
 injunction where “the district court could hardly require enforcement . . . on anything other than a
 nationwide basis”). *Accord, e.g., Washington v. Trump*, 847 F.3d 1151, 1166-67 (9th Cir. 2017) and
 other cases cited by Santa Clara. *See* ECF No. 52, at 15.

1 alleged that it is threatened by the threat that California will be declared a “sanctuary jurisdiction,”
2 since a substantial portion of its federal dollars flow through California, and President Trump has
3 threatened to defund California because, in his words, the State is “out of control.” *Id.* ¶¶ 33-34.⁷ In
4 her declaration, Ms. Pate states that over \$1.4 million of YWCA Silicon Valley’s \$7.07 million budget
5 (about 20%) comes in the form of “flow-through” federal dollars from California. ECF No. 43-4, ¶ 6.
6 YWCA Silicon Valley also receives funding from the City of San Jose, a self-described “sanctuary
7 city,” and from other municipalities. *Id.* YWCA Silicon Valley has an interest, not shared by Santa
8 Clara County, in ensuring that federal funding to those municipalities is not withheld under the
9 Executive Order.

10 Defendants’ argument also ignores the fact that Santa Clara has similarly highlighted the
11 potential cutoff of “flow-through” federal dollars that it receives from California. In its complaint,
12 Santa Clara alleges that much of the \$1 billion it receives annually in federal funds “is passed through
13 the State of California.” ECF No. 1, ¶ 27. In its reply brief in support of its motion for preliminary
14 injunction, Santa Clara explains: “[E]ven if the County complied with federal requests, it would
15 nonetheless remain in danger of losing federal funds passed through the State of California, which the
16 President has also threatened to defund.” ECF No. 52, at 10:17-20; *see also id.* at 15:17-19. YWCA
17 Silicon Valley and Santa Clara share an interest in eliminating the threat posed by the Executive Order
18 to the funds that they each receive through California.

19 Defendants’ final argument regarding YWCA Silicon Valley’s interest in the case is that
20 because Section 9 of the Executive Order “does not *expressly* encompass funds provided to
21 subgrantees,” the funds that YWCA Silicon Valley receives from the federal government “*may* not be
22 covered.” *Opp.* at 7:6-9 (emphasis added). But the Executive Order harms YWCA Silicon Valley by
23 its *threat* of de-funding, which makes proper budgeting and planning impossible. ECF No. 43-2, ¶ 32.

24
25
26 ⁷ Under the California Trust Act, Government Code Sections 7282-7282.5, California restricts the
27 circumstances under which state or local law enforcement officials may cooperate with a federal
28 “immigration detainer” after an individual has become eligible for release from custody.

1 That harm is hardly removed by Defendants’ statement that defunding *may* not occur—carefully
2 worded as it is to avoid offering any actual assurances.

3 Moreover, Defendants’ parsing is difficult to square with the actual language of Section 9 of the
4 Executive Order, which declares that Defendants “*shall ensure* that [designated sanctuary jurisdictions]
5 are *not* eligible to receive Federal grants, except as deemed necessary for law enforcement” Exec.
6 Order No. 13,768, § 9 (emphasis added). YWCA Silicon Valley has alleged that most of its federal
7 funds are “received in the form of ‘flow-through’ grants that are originally received by [governmental
8 jurisdictions] and then re-granted to YWCA Silicon Valley by these jurisdictions, or administered by
9 them.” ECF No. 43-2, ¶ 30. If funding to those jurisdictions were to be cut off, they would by
10 definition have no federal dollars available to “re-grant” or “administer” for the benefit of YWCA
11 Silicon Valley. Tellingly, Defendants do not even attempt to provide any assurance on this point. Nor
12 have they stated that they interpret Section 9 to cover anything less than all the federal funds that
13 YWCA Silicon Valley receives.

14 In other words, YWCA Silicon Valley’s interest is closely linked to the issues presented in this
15 case, both legally (because it has an interest in ensuring that its funds are not stripped by an
16 unconstitutional Executive Order) and factually (because it is materially threatened by the President’s
17 explicit threats to California’s, Santa Clara’s, and other municipalities’ funding). Thus, even if YWCA
18 Silicon Valley received *zero* federal dollars through Santa Clara, it still has an interest in this case that
19 strongly favors intervention.

20 **3. YWCA Silicon Valley’s and Santa Clara’s Legal Positions Are Aligned.**

21 Defendants’ only argument regarding YWCA Silicon Valley’s legal position and its relation to
22 the merits of the case is that because YWCA Silicon Valley has several funding streams through which
23 it receives federal dollars, its intervention would involve the Court in “examining those other
24 jurisdictions’ particular policies and practices.” Opp. at 7:15-20. This argument fails. First of all, as
25 explained above, *supra* p.6, Santa Clara has also invoked the threat of funding cutoffs related to
26 another jurisdiction, namely California. ECF No. 1, ¶ 27; ECF No. 52, at 10:17-20. Thus Defendants’
27 premise is simply untrue.

1 At a more fundamental level, however, Defendant’s argument is based on a misperception of
2 the issues presented by Santa Clara and YWCA Silicon Valley. What is at stake here is not any
3 jurisdiction’s “particular policies and practices,” but rather the overarching questions concerning
4 whether the President can, by decree, punish and coerce cities, counties, and states that pursue policies
5 he disfavors by denying them funding that Congress has appropriated. To the extent that YWCA
6 Silicon Valley invokes the threat to its federal funding through one or more additional jurisdictions
7 other than Santa Clara County, this does not alter the focus of this litigation and does not justify a
8 denial of permissive intervention. If anything, a broader understanding of the funding sources
9 threatened by the Order will aid the Court in assessing the Executive Order’s legality.

10 **4. YWCA Silicon Valley’s Interests Are Not Adequately Represented by Santa**
11 **Clara.**

12 Defendants argue that YWCA Silicon Valley’s interests are “adequately represented” by Santa
13 Clara because Santa Clara “filed a complaint of 40 pages and four causes of action” and “is represented
14 by a large law firm in addition to its County Counsel.” Opp. at 7-8. This argument misconstrues the
15 nature of the adequacy inquiry.

16 YWCA Silicon Valley does not question the outstanding representation of Santa Clara’s
17 interests in this case by its County Counsel and outside counsel. Adequacy of representation is not,
18 however, a question of “effective assistance of counsel.” Rather, it requires a comparison of the
19 *interests* of the intervenor with those of the existing party to examine whether the existing party will
20 necessarily advance those interests. *See Californians for Safe & Competitive Dump Truck Transp. v.*
21 *Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) (affirming intervention as of right because the interests
22 of intervening defendant labor union’s members were “potentially more narrow and parochial than”
23 than the interests of the public agency defendants); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d
24 810, 822 (9th Cir. 2001) (reversing denial of intervention as of right where original defendant city
25 would not adequately represent the applicant’s divergent interests). In *Berg*, the Court observed that
26 “the burden of showing inadequacy is ‘minimal,’ and the applicant need only show that representation
27 of its interests by existing parties ‘may be’ inadequate.” *Berg*, 268 F.3d at 823 (citing *Trbovich v.*

1 *United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). In *Trbovich*, the Supreme Court found
2 “sufficient doubt about the adequacy of representation to warrant intervention” where the intervenor
3 had a “narrower interest” than the existing party, such that the parties’ interests “may not always dictate
4 precisely the same approach to the conduct of the litigation.” *Trbovich*, 404 U.S. at 538-59.

5 While YWCA Silicon Valley’s interests are largely aligned with Santa Clara’s, they are distinct
6 in four important respects, each of which may dictate a different “approach to the conduct of the
7 litigation.” *Id.* First, Santa Clara is a governmental jurisdiction that may have a greater range of
8 options in seeking to preserve its federal funding, including by direct negotiations with the federal
9 government. YWCA Silicon Valley lacks those additional means to influence whether its federal funds
10 will continue to flow, which puts it in a different position with respect to the abuses of power
11 manifested by the Executive Order. YWCA Silicon Valley and its clients are “collateral damage” in
12 one governmental entity’s attempt to coerce and threaten another.

13 Second, YWCA Silicon Valley is in a position to bring the perspectives and experiences of
14 impacted community members to the Court, showing the individual impacts of both the targeted local
15 policies and threatened federal funding cuts on the people who are among the ultimate intended
16 beneficiaries of each.

17 Third, YWCA Silicon Valley has Due Process concerns that are distinct from those of any
18 governmental jurisdiction. While Santa Clara rightly complains that it is threatened with a loss of
19 funds due to a potentially arbitrary designation that it is a “sanctuary jurisdiction” (ECF No. 1, ¶ 147),
20 YWCA Silicon Valley is threatened with a loss of funds based on *no process at all*, resulting from a
21 designation that has nothing at all to do with its own actions; as to which it has no input; and as to
22 which it has no recourse of any kind. ECF No. 43-2, ¶ 38.

23 Fourth, YWCA Silicon Valley must contend with a possible loss of funds flowing through
24 multiple jurisdictions, any of which could be designated a “sanctuary jurisdiction.” This factor will not
25 require the Court to examine the policies or practices of such jurisdictions, but it does highlight the fact
26 that the Executive Order represents a multi-pronged threat to a social service agency that depends on a
27 variety of funding streams.

1 **5. YWCA Silicon Valley Will “Significantly Contribute” to the Factual**
2 **Development and the Just Adjudication of the Legal Issues Presented.**

3 Defendants do not even attempt to contest that YWCA Silicon Valley “will significantly
4 contribute to the full development of the underlying factual issues in the suit and to the just and
5 equitable adjudication of the legal questions presented”—effectively conceding that this factor weighs
6 in favor of intervention. By its proposed Complaint in Intervention, its joinder in Santa Clara’s motion
7 for preliminary injunction, and the declaration of its Chief Financial Officer and Chief Operating
8 Officer, YWCA Silicon Valley has already demonstrated that it is willing and able to assume the
9 responsibilities for factual and legal development that come with being a party to the litigation.

10 **C. The Government Will Not Be Prejudiced by YWCA Silicon Valley’s Intervention.**

11 Defendants argue that intervention should be denied because it would require Defendants “to
12 address issues not presented in the existing dispute with the County, and the time and effort needed to
13 argue and resolve those issues would ‘unduly delay the main action.’” Opp. at 7:10-12. This
14 conclusory argument does not show any actual prejudice or delay.

15 As an initial matter, additional motion practice is “alone insufficient to show undue delay.” *In*
16 *re Grupo Unidos por el Canal S.A.*, No. 14-mc-80277-JST (DMR), 2015 U.S. Dist. LEXIS 52358, at
17 *16-17 (N.D. Cal. Apr. 21, 2015) (citing *Su v. Siemens Indus., Inc.*, No. 12-cv-03743-JST, 2013 U.S.
18 Dist. LEXIS 96505, at *3 (N.D. Cal. July 10, 2013)). But even if delay owing to additional motion
19 practice were to be considered, Defendants’ position is unsupported.

20 YWCA Silicon Valley’s motion to intervene has been presented in a manner that *eliminates* any
21 possible delay and *minimizes* any burden to the parties or the Court. YWCA Silicon Valley filed its
22 motion to intervene on March 1, 2017, so that it could be heard in conjunction with Santa Clara’s
23 motion for preliminary injunction on the normal 35-day schedule set forth in Civil Local Rule 7-2(a).
24 Rather than bring a separate motion for injunctive relief, it filed a seven-page memorandum joining in
25 Santa Clara’s motion.

26 Defendants profess concern about “delaying resolution” of Santa Clara’s motion for preliminary
27 injunction in order for Defendants to have 14 days to oppose YWCA Silicon Valley’s joinder *after* the
28

1 intervention motion is granted. Opp. at 7:20-23. Defendants’ solicitude for Santa Clara’s interest in a
2 speedy resolution is curious, as Santa Clara itself has not raised this issue. Defendants’ concern is also
3 insubstantial: Defendants have had ample time to oppose the separate points raised in YWCA Silicon
4 Valley’s joinder, just as they have opposed the intervention motion. Here, YWCA Silicon Valley has
5 conformed to the existing timetable of the Court and the parties.

6 Defendants’ claim of prejudice also reveals the self-contradictory nature of its arguments
7 against intervention. By claiming that they need to address “issues not presented in the existing dispute
8 with the County” (Opp. at 7:10-11), Defendants concede that not all of YWCA Silicon Valley’s
9 interests are being fully represented by Santa Clara.

10 Finally, Defendants assert that permitting YWCA Silicon Valley to intervene would open the
11 proverbial floodgates to allow intervention by “every other organization that receives federal funding
12 through the County of Santa Clara.” Opp. at 8:17-20. This argument proves far too much; if accepted,
13 it would justify a *de facto* ban on permissive intervention. It also ignores the fact that, while many
14 entities are expected to submit *amicus* briefs in this litigation, YWCA Silicon Valley is the only one
15 that has sought to undertake the burdens as well as the benefits of participating in the litigation as a
16 party. Lastly, it underestimates this Court’s ability to manage its own docket by limiting the number of
17 intervenors, should it so choose.

18 **III. CONCLUSION**

19 As a nonprofit social service agency serving some of the most vulnerable populations of Santa
20 Clara County, YWCA Silicon Valley has interests that are aligned with, but in some respects distinct
21 from, those of Santa Clara. Like Santa Clara, it is gravely threatened by the unconstitutional Executive
22 Order at the heart of this litigation. The Government concedes that YWCA Silicon Valley meets all of
23 the required criteria for permissive intervention, and YWCA Silicon Valley has demonstrated that the
24 discretionary considerations enumerated in *Perry* overwhelmingly favor intervention. For these
25 reasons, the Court should permit YWCA Silicon Valley to intervene.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

DATED: March 22, 2017

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.

By: s/ William S. Freeman
WILLIAM S. FREEMAN

DATED: March 22, 2017

WILSON SONSINI GOODRICH & ROSATI,
PROFESSIONAL CORPORATION

By: s/ Catherine Moreno
CATHERINE MORENO

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

1 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

2 I, William S. Freeman, am the ECF User whose identification and password are being used to
3 file this document. In compliance with Civil Local Rule 5-1, I hereby attest that Catherine E. Moreno
4 has concurred in this filing.

5
6 DATED: March 22, 2017

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.

7
8
9 By: s/ William S. Freeman
WILLIAM S. FREEMAN

10
11 *Attorneys for Plaintiff-Intervenor*
Young Women's Christian Association
Of Silicon Valley
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28