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The Honorable Edward F. Shea

14 MARIA DE LA O; et al.,
15 Plaintiffs,
16 v.
17 ROBIN ARNOLD-WILLIAMS, et al.,
18 Defendant.

19 MARIA FERNANDEZ, et al.,
20 Plaintiffs,
21 v.
22 DEPARTMENT OF SOCIAL AND
23 HEALTH SERVICES, et al.,
Defendants.

No. CV-04-0192-EFS
MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION
FOR PRELIMINARY
INJUNCTION OF RCW §§
74.15.030(7), 74.15.050(2),
74.15.060(1), 74.15.080 AND
WAC §§ 388-296-0250(1), 388-
296-0450(2), 388-296-0520(8)

[NO. CV-05-0280-EFS]

Noted September 14, 2006
Oral argument requested

19 I. INTRODUCTION

20 Plaintiffs jointly move this Court, pursuant to Fed. R. Civ. P. 65(a) for a
21 preliminary injunction necessary to prevent future harm resulting from the State
22 Defendants' unconstitutional warrantless searches and seizures conducted
23

1 ostensibly under RCW §§ 74.15.030(7), 74.15.050(2), 74.15.060(1), 74.15.080 and
2 WAC §§ 388-296-0250(1), 388-296-0450(2) and 388-296-0520(8).¹ This
3 memorandum supports plaintiffs' motion.

4 **II. FACTS**

5 The plaintiffs allege that RCW §§ 74.15.030(7), 74.15.050(2), 74.15.060(1),
6 74.15.080 and WAC §§ 388-296-0250(1), 388-296-0450(2) and 388-296-0520(8)²
7 violate the Fourth and Fourteenth Amendments to the United States Constitution
8 because they authorize entries into homes without restriction as to time, scope,
9 place or manner. See De la O Third Amended Complaint ¶ 6.1 [Dkt. 21] and
10 Fernandez Complaint ¶ 142 .
11

12
13 ¹ Plaintiffs have moved separately for a partial summary judgment pursuant to
14 Fed. R. Civ. P. 56(a), (b) and (d) for an order of partial summary judgment
15 declaring RCW §§ 74.15.030, 74.15.050(2), 74.15.060(1), 74.15.080 and WAC §§
16 388-296-0450 and 388-296-0520 facially violative of the Fourth Amendment as
17 overbroad.
18

19 ² De la O plaintiffs cite the prior WACs in their complaint, WAC §§ 388-155-
20 080 and 388-155-090, both of which were superseded by WAC §§388-296-0450
21 and 388-296-0520 which have been challenged in the Fernandez Complaint.
22 These changes in the WACs have no impact on their constitutionality.
23

1 The State has been on notice since plaintiffs first filed this suit on August 10,
2 2004, that the constitutionality of the statutes was at issue. However, the State was
3 on notice as early as September 2002 that the proposed WACs authorizing
4 warrantless inspections were problematic. The American Civil Liberties Union of
5 Washington (ACLU) commented on the then-proposed rules:
6

7 Proposed WAC 388-71-0203(2)(d) authorizes entry into a private home
8 without a warrant or exigent circumstances, and requires the client to
9 consent to such invasion in order to receive benefits. Consent obtained
10 under such circumstances is not valid consent. The client has a
11 constitutionally protected right of privacy, and the state may not compel him
12 to surrender that right as a condition of receiving benefits to which he is
13 otherwise entitled. See Perry v. Sinderman, 408 U.S. 593, 597 (1972).
14 Therefore, as proposed, the rule is unconstitutional.

15 See Exhibit A to Klunder Decl., p. 5, [Dkt. 148]. Not heeding that warning, the
16 State adopted several controversial provisions that allowed, and even mandated,
17 warrantless inspections of homes.

18 The ACLU again warned the State on January 15, 2004, that the proposed
19 WACs—now the subject of this motion—were unconstitutional:

20 Under the draft regulations, a license application will be denied if the child
21 care operator refuses to allow DSHS access to the “premises.” WAC 388-
22 296-0450(2)(1). This is reiterated in WAC 388 296 0310(1), which provides
23 for an inspection of the “entire premises” prior to licensing and at
relicensing. “Premises” are defined as “the buildings where the home is
located and the adjoining grounds over which the licensee has control.”
WAC 388-296-0020. Nothing in the rules limits searches to the areas of the
premises that will be used for child care. Thus, the draft regulations give
DSHS the right to search the entire property owned by a child care operator,

1 even if it encompasses multiple buildings and hundreds of acres, of which
2 only a tiny portion is used for the provision of child care.

3 The ACLU has received many troublesome reports of inspections that go far
4 beyond the portions of facilities used for child care – including personal
5 bedrooms, garages, and sheds. These searches have been performed even on
6 bedrooms that are kept locked and off limits to the children being cared for.
7 These searches are highly offensive to child care operators. Being told that
8 their bedrooms, underwear drawers, closets, reading materials, and other
9 intimate matters are open to state inspectors is insulting and demeaning. The
10 personal areas of homes are just plain none of the state’s business, and it is
11 not surprising that child care operators expect to keep them private, just as
12 all other state residents expect to keep their bedrooms private. Inspections
13 of areas not being used for child care serve no valid public policy – the only
14 point of inspections is to determine whether the children are being cared for
15 in a safe manner, so there is no purpose in examining areas not used by the
16 children.

17 See Exhibit D to the Klunder Decl., p. 14, [Dkt. 148].

18 The State appeared to have no qualms about the extent of its overly intrusive
19 searches or the effect they have on the child care providers. The State
20 demonstrated its indifference to the privacy interest of the child care providers in a
21 letter written to the ACLU on December 8, 2003:

22 The Department’s purpose in inspecting family homes that provide care to
23 the children of others is to ensure that the homes do not pose a safety risk to
the children. Fire or other safety hazards can exist in rooms that are not
intended for use by children or in buildings, such as garages and sheds, that
are in outside areas where children will be playing.

See Exhibit C to the Klunder Decl., p. 11, [Dkt. 148]. Again, nowhere in the letter
did the State recognize the privacy interest of child care providers or demonstrate

1 any intention of limiting the scope of DSHS' intrusive and unconstitutional
2 inspections.

3 On February 7, 2006, when questioned by plaintiffs' counsel about the scope
4 of the childcare regulations, Rachel Langen, Director of Washington's Department
5 of Childcare and Early Learning, stated that the State has the authority to search
6 family child care homes 24 hours a day. See Exhibit I to Curtis Decl. (Langen
7 Dep) at 9:10-14. Ms. Langen testified in her deposition that childcare providers
8 are instructed that they must allow DSHS staff, including fraud investigators, to
9 enter their homes upon request. Id. at 10:12-20.
10

11 According to Ms. Langen, under the RCWs, an inspector could bring an
12 immigration agent into a childcare provider's home. Id. at 25:18-24. Under the
13 law as it currently stands, inspectors can enter a home when no child is present, can
14 go into the providers' bedrooms, and even search under the bed. Id. at 10:5-11. If
15 a provider refuses the entry and search, the State will move for revocation of the
16 childcare provider's license. Id. at 14:15-25, 15: 1:15.
17

18 **III. EVIDENCE RELIED ON**

19 This motion is based on De La O Plaintiffs' Third Amended Complaint
20 [Dkt. 21], Fernandez Plaintiffs' Complaint ¶ 142 and the declarations of Bertha
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1 Mendoza, James Curtis, submitted herewith, and the Declarations of Vicky Priest
2 [Dkt 153], and Douglas Klunder [Dkt 148], previously submitted.

3 **IV. ANALYSIS**

4 **PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION TO**
5 **PREVENT DEFENDANT FROM CONDUCTING ILLEGAL**
6 **WARRANTLESS SEARCHES OF FAMILY HOME CHILD CARE**
7 **FACILITIES.**

8 **A. Allegations and Relief Requested by the Plaintiffs**

9 On November 15, 2005, this Court signed an order certifying three
10 Fernandez plaintiffs as class representatives pursuant to CR 23(b)(2) as follows:

11 All persons who currently are or in the future are licensed by the Department
12 of Social and Health Services to provide family home child care services.

13 Plaintiffs allege that RCW §§ 74.15.030(7), 74.15.050(2), 74.15.060(1), 74.15.080
14 and WAC §§ 388-296-0250(1), 388-296-0450(2) and 388-296-0520(8) violate the

15 Fourth and Fourteenth Amendments to the United States Constitution because they
16 authorize entries into homes without restriction as to time, scope, place or manner.

17 See Third Amend. Complaint [Dkt. 21] and Plaintiffs' Memo in Support of Motion
18 for Partial Summary Judgment [Dkt. 117]. Specifically, Plaintiffs contend that the
19 statutes granting the authority and mandating inspections of licensed childcare
20 providers' homes are unconstitutional. Plaintiffs jointly seek preliminary
21

1 injunctive relief in order to stop these unconstitutional and illegal practices, and to
2 protect present and future licensees of the Defendant.

3 **B. This Court Has the Discretion to Issue a Preliminary Injunction**

4 The grant of a preliminary injunction is within the discretion of the district
5 court. Brother Records, Inc. v. Jardine, 432 F.3d 939, 942 (9th Cir. 2005).

6 Traditional equitable criteria for granting preliminary injunctions include “(1) a
7 strong likelihood of success on the merits, (2) the possibility of irreparable injury
8 to plaintiff if the preliminary relief is not granted, (3) a balance of hardships
9 favoring the plaintiff, and (4) advancement of the public interest (in certain
10 cases).” Los Angeles Memorial Coliseum Comm'n v. National Football League,
11 634 F.2d 1197, 1200 (9th Cir.1980).
12

13 **C. Legal Standard for Issuance of a Preliminary Injunction**

14 The Ninth Circuit has articulated numerous tests by which a moving party
15 can meet its burden. Regents of the University of California v. ABC, Inc., 747
16 F.2d 511, 514-15 (1984). Simply stated, the movant must show a combination of
17 either (1) probable success on the merits and irreparable injury or (2) serious
18 questions are raised and the balance of hardships tips sharply in its favor. Id.
19 These are not separate tests, but rather extremes of a continuum. Benda v. Grand
20 Lodge of the International Association of Machinists, 584 F.2d 308, 315 (9th
21
22
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1 Cir.1978), cert. dismissed,441 U.S. 937 (1979). Here, the Plaintiffs will show the
2 combination of probable success on the merits and the possibility of irreparable
3 injury.

4 1. Probable Success on the Merits

5 Plaintiffs are likely to succeed on the merits. To establish probable success
6 on the merits sufficient to pass appellate review of a district court's grant of a
7 preliminary injunction, the plaintiffs are only obligated to show “a fair chance of
8 success.” Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th
9 Cir.1988) (en banc). Since it is well settled in this Circuit that a statutory scheme
10 permitting searches of family home child care facilities without any limitation as to
11 scope is unconstitutional, Plaintiffs have an excellent chance of success.

12
13
14 The Ninth Circuit in Rush v. Obledo, 756 F.2d 713, 722 (9th Cir. 1985),
15 struck down California’s childcare regulatory scheme which allowed warrantless
16 inspections of homes as unconstitutionally overbroad because it “permitted general
17 searches at any time of any place providing supervision and care of children.”
18 Washington’s regulatory scheme mirrors the statutes invalidated in Rush, and
19 should similarly be declared unconstitutional for the same reasons. As in Rush, the
20 State should be enjoined from conducting warrantless inspections of childcare
21 homes.
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23

1 In Rush, 756 F.2d at 722, plaintiffs petitioned a district court to issue a
2 declaratory judgment that California’s statutes and implementing regulations were
3 unconstitutional, as applied to family day care homes, and an injunction against
4 further warrantless inspections under these provisions. The California statute in
5 question authorized unannounced warrantless inspections of family day care homes
6 at anytime. Id. The district court concluded that the California statutory scheme
7 that allowed warrantless searches of family day care homes was not justified either
8 under the “pervasively regulated business” exception to the warrant requirement or
9 on a general “reasonableness” basis. Id. The district court held that the challenged
10 statutes and regulations violated the Fourth Amendment and enjoined further
11 warrantless inspections of family day care homes. Id. at 916-917.

14 On appeal, the Ninth Circuit court, applying the New York v. Burger, 482
15 U.S. 691 (1987) analysis, concluded that “warrantless inspections of family day
16 care homes do not offend the Fourth Amendment” because they fall within the
17 pervasively regulated business exception to the Fourth Amendment. 756 F.2d at
18 720. Nevertheless, the court held:

20 Even though we have determined that the warrantless inspection of family
21 day care homes does not necessarily violate the Fourth Amendment, we find
22 that the current statutes authorizing such searches are overbroad --
23 permitting general searches of any home providing care and supervision at
any time of the day or night -- and thus invalid unless sufficiently limited by
the current regulations so as to preclude general searches.

1
2 Rush, 756 F.2d at 721. The Court further explained,

3 The general language of these statutes does not properly reflect the peculiar
4 nature of family day care homes. A family day care home is a business only
5 when children cared for from other families for compensation are present
6 and at all other times is a private residence. Furthermore, even when the
7 children cared for are present, the provider retains expectations of privacy in
8 those areas to which the day care children are denied access. The state's
9 warrantless inspection authority should not extend beyond the "closely
10 regulated business" in which the provider engages. Warrantless inspections
11 are permissible in those portions of the provider's home where day care
12 activities take place only when the home is being operated as a family day
13 care business. Such inspections, however, cannot be justified in purely
14 private contexts. See G.M. Leasing Corp. v. United States, 429 U.S. 338,
15 353-54, 50 L. Ed. 2d 530, 97 S. Ct. 619 (1977). See also See v. City of
16 Seattle, 387 U.S. 541, 545, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967).

17 Id.

18 Washington's statutes and regulations for inspections of family home child
19 care facilities contain the same defects that the Ninth Circuit Court of Appeals held
20 to violate Fourth Amendment in Rush, 756 F.2d at 721. Seven separate provisions
21 of Washington law authorize unannounced inspections of childcare homes:

- 22 ● RCW 74.15.030(7) mandates that the State "inspect agencies periodically to
23 determine whether or not there is compliance with chapter 74.15 RCW and
RCW 74.13.031 and the requirements adopted hereunder."
- Under RCW 74.15.050 "[t]he chief of the Washington state patrol, through
the director of fire protection, shall have the power and it shall be his or her
duty:

1 (2) To make or cause to be made such inspections and investigations of
2 agencies, other than foster-family homes or child-placing agencies, as he or
3 she deems necessary

- 4 ● Under RCW 74.15.060 “The secretary of health or the city, county, or
5 district health department designated by the secretary shall have the power
6 and the duty:

7 ***

8 (1) To make or cause to be made such inspections and investigations of
9 agencies as may be deemed necessary

- 10 ● Under RCW 74.15.080 “All agencies subject to chapter 74.15 RCW and RCW
11 74.13.031 shall accord the department of social and health services, the
12 secretary of health, the chief of the Washington state patrol, and the director
13 of fire protection, or their designees, the right of entrance and the privilege
14 of access to RCW 74.15.030 and inspection of records for the purpose of
15 determining whether or not there is compliance with the provisions of
16 chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted
17 thereunder.”

- 18 ● WAC 388-296-0250(1) provides that the childcare provider “must complete
19 the licensing application process including the home inspection and
20 supporting documents, such as training certificates, within ninety days of
21 first applying for your license.”

- 22 ● WAC 388-296-0450(2) states that “We must deny, suspend or revoke your
23 license if you:

(l) Refuse to allow our authorized staff and inspectors requested information
or access to your licensed space and premises, child and program files, or
staff and children in care”

- Under WAC 388-296-0520(8) a provider “...must maintain all records and
reports required by these regulations in an up-to-date manner at the facility.
The records and reports are subject to inspection and you must allow us
access to them at the time we request them.”

1 Washington's statutes and regulations authorizing warrantless inspections of
2 the child care provider's home are unconstitutionally overbroad. As noted above,
3 four statutes authorize warrantless inspections, as do two Washington
4 Administrative Codes. See RCW 74.15.030(7); RCW 74.15.050(2); RCW
5 74.16.060(1); RCW 74.15.080; WAC 388-296-0450; WAC 388-296-0520. On
6 their face, none of the seven separate provisions of Washington law limits where
7 the inspections may take place, when the inspections may take place, who may
8 conduct the inspections, how frequently the inspections may take place, and what
9 may occur during an inspection. Instead, these provisions state broadly that
10 inspections are to occur "periodically" and "as deemed necessary." Id. As
11 explained by Ms. Langen, the State has the authority to bring along immigration
12 agents during the searches. See Exhibit I to Curtis Decl. (Langen Dep) at 25:18-25
13 and 26:18-12. Because of the unbridled discretion, DFI searches can take place
14 anywhere in the home, 24 hours a day, regardless of whether children are present.

17 Thus, the current statutes permit general searches of any home providing
18 licensed child care at any time of the day or night and permit searches to take place
19 anywhere in the home. The statutes are therefore invalid "unless sufficiently
20 limited by the current regulations so as to preclude general searches." Rush, 756
21 F.2d at 721. The Rush court recognized that one of the California statutes at issue
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23

1 was properly limited by a regulation and thus sufficiently precise and restrictive to
2 preclude general searches by state officials. Rush, 756 F.2d at 722. The limiting
3 regulation reads:

4 88030 Inspection Authority

5 (a) In accordance with the provisions of Health and Safety Code Section
6 1597.55:

7 (1) The licensee shall permit the licensing agency to inspect the facility for
8 compliance with or to prevent violations of family day care statute or
9 regulation during the facility's normal business hours or at any time family
10 day care services are being provided at the facility.

(2) The licensee shall permit the licensing agency to inspect any part of the
11 facility in which family day care services are provided or to which the
12 children have access.

13 22 Cal. Admin. Code §88030.

14 In contrast, the current Washington regulations do not preclude general
15 searches and instead allow for unbridled discretion. WAC 388-296-0450(2)
16 requires that a childcare provider's license be denied, suspended or revoked if the
17 provider "Refuse[s] to allow our authorized staff and inspectors requested
18 information or access to [the provider's] licensed space and premises, child and
19 program files, or staff and children in care". The "'Premises' means the buildings
20 where the home is located and the adjoining grounds (at the same address) over
21 which the licensee has control." WAC 388-296-0020.

22 WAC 388-296-0520(8) states, "The records and reports are subject to
23 inspection and you must allow us access to them at the time we request them." No

1 particularity requirement is found in the regulations. The regulations do not state
2 when or where searches may occur, how often they are to occur, or who may make
3 the inspections. The statutes are therefore overbroad.

4
5 Where the Legislature has "authorized inspection but made no rules
6 governing the procedures that inspectors must follow, the Fourth
7 Amendment and its various restrictive rules apply." Donovan v. Dewey,
8 452 U.S. at 599 (quoting Colonnade Catering Corp. v. United States, 397
9 U.S. at 77). In this case, the current statutes, absent limiting regulations, do
10 not provide any standards to guide inspectors or restrict the "unbridled
11 discretion [of] executive and administrative officers," id. (quoting Marshall
12 v. Barlow's Inc., 436 U.S. 307, 323, 56 L. Ed. 2d 305, 98 S. Ct. 1816
13 (1978)), and are far broader than necessary to guarantee the effectiveness of
14 the provisions governing family day care. Such statutes do not provide a
15 constitutionally adequate substitute for a warrant. Id., 452 U.S. at 603. The
16 searches must be directly connected with the environment the Legislature
17 seeks to regulate -- i.e., the areas of the home used by children when the
18 children are present.

19 Rush, 756 F.2d at 721.

20 Because the statutes allowing warrantless searches of family home child care
21 facilities are not "carefully limited in time, place, and scope" Burger, 482 U.S. at
22 703, they are unconstitutionally overbroad and should be struck down. Based on
23 the Ninth Circuit precedent, as outlined above, the plaintiffs are likely to succeed
on the merits.

Plaintiffs are also likely to succeed on the merits by defending against the
State's Cross Motion for Partial Summary Judgment [Dkt. #126]. In that Motion,
the State argues the plaintiffs have no expectation of privacy in their business

1 records. Along with cases cited in the plaintiffs' Reply Motion [Dkt #160], Brock
2 v. Emerson Electric Company, 834 F.2d 994, 996 (11th Cir. 1987), holds that
3 businesses have a privacy interest in records maintained in response to agency
4 regulations. Moreover, the mere fact that an agency requires records to be
5 maintained does not "automatically make those records subject to a warrantless
6 search." De La Cruz v. Quackenbush 80 Cal.App.4th 775, 784 (Cal. App.2. Dist.,
7 2000) (statutes governing highly regulated insurance industry violated Fourth
8 Amendment). Therefore, plaintiffs will also prevail against the State's motion.

9
10 2. Possibility of Irreparable Injury

11 Plaintiffs will suffer irreparable injury if this Court does not grant a
12 preliminary injunction. Although a party seeking a preliminary injunction is
13 required to demonstrate the possibility of irreparable harm, the United States
14 Supreme Court has ruled that a reasonable apprehension of threatened injury will
15 suffice. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969); see
16 also Flynt Distributing Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir.1984). Here,
17 the plaintiffs will meet both standards.
18

19
20 First, plaintiffs' loss of their constitutional right to be free from unreasonable
21 searches and seizures constitutes an irreparable injury. Romero Feliciano v. Torres
22 Gaztambide, 836 F.2d 1, 4 (1st Cir.1987). In Romero, the First Circuit concluded
23

1 that the district court did not abuse its discretion in finding that a plaintiff who was
2 likely to succeed on the merits of his First Amendment claim suffered irreparable
3 harm by being penalized for exercising his constitutional rights. See also Mariani
4 Giron v. Acevedo Ruiz, 834 F.2d 238, 239 (1st Cir.1987) (finding irreparable harm
5 “due to the nature of the First Amendment rights violated by an impermissible
6 political firing”). Here, the Plaintiffs are moving to protect their Fourth
7 Amendment rights.
8

9 It is difficult to imagine harm more irreparable, save physical harm, than
10 having your home illegally searched and personal effects seized. See Curtis Decl.
11 pp. 2-5. This threat of irreparable injury is made more real by Ms. Langen’s
12 testimony that the State has the authority to search homes 24 hours a day. See
13 Exhibit I to Curtis Decl. (Langen Dep) at 9:7-14. Ms. Langen testified further that
14 childcare providers are instructed that they must allow DSHS staff, including fraud
15 investigators, to enter their homes upon request. Id. at 10:12-20. DSHS is not only
16 permitted to conduct searches 24 hours a day, but these searches are unlimited in
17 scope, leading to the inspection of bedrooms, closets, bathrooms, and other private
18 areas of the home. See Mendoza Decl. at 3:9-16; Priest Decl. at 2:12-18 and 3:14-
19 18; Exhibit E to the Klunder Decl. The actions of DSHS represent a real and
20 imminent threat to the Plaintiffs’ constitutional rights and render child care
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22
23

1 providers “powerless” and fearful of future violations. See Priest Decl. at 5:4-12;
2 Mendoza Decl. at 4:1-4.

3 Second, a preliminary injunction is necessary to prevent DSHS from
4 continuing to cause irreparable harm to the Plaintiffs’ person and business
5 reputations. This Circuit has ruled that even the threat of being driven out of
6 business is sufficient to establish irreparable harm. Los Angeles Memorial
7 Coliseum Comm’n, 634 F.2d at 1203. In this case, the fact that DSHS’ regulations
8 allow for license revocation if providers’ fail to allow these broad searches meets
9 the standard of irreparable harm.
10

11 DSHS’ illegal inspections of family home child care facilities and the
12 associated negative media attention has damaged the plaintiffs’ personal and
13 professional reputations. See Curtis Decl. at 3:1-9 and 4:1-13. The community
14 has now turned against the plaintiffs and labeled them as criminals and thieves.
15 Id.; see also Curtis Decl at 2:10-11. These allegations are false. The suffering and
16 public embarrassment that these women are experiencing is senseless and a
17 preliminary injunction must be issued to prevent this from happening again.
18

19 Lastly, Washington’s statutory and regulatory schemes allow DSHS
20 investigators to bring along whomever they want during its investigations. See
21 Curtis Decl. at 2:18-21. A warrantless entry into a residence is presumptively
22

1 unreasonable and therefore unlawful. Welsh v. Wisconsin, 466 U.S. 740, 749-750
2 (1984). Government officials “bear a heavy burden when attempting to
3 demonstrate an urgent need that might justify warrantless searches or arrests.” Id.
4 DSHS has decided to relieve the government of this heavy burden, by allowing
5 Federal immigration agents to join in on their illegal searches of family home child
6 care facilities. See Curtis Decl. at 2:18-21.

8 According to Ms. Langen, under the RCWs, an inspector could bring an
9 immigration agent into a childcare provider’s home. See Exhibit I to Curtis Decl.
10 (Langen Dep) at 25:18-24. DSHS has decided to use its unbounded discretion in
11 conducting its investigations, to allow other law enforcement agencies to bypass
12 constitutional safeguards. Disguised as language interpreters, DSHS brought along
13 INS agents to scare the plaintiffs by questioning them about immigration status and
14 demanding documentation. See Curtis Decl. at 2:18-21 and 4:4-6. Although it is
15 clear that a federal agent cannot enter a family home child care facility without a
16 valid warrant or permission, DSHS used its unbridled discretion to allow INS
17 agents to violate the Plaintiffs’ Fourth Amendment rights. Welsh, 466 U.S. at 749-
18 750.
19

20
21 Without a preliminary injunction from this Court, women who choose to
22 care for children in their homes will be forced to explain to their own children,
23

1 why there are strangers in their home requesting identification and going through
2 their personal belongings. See Curtis Decl. at 2:12. A statutory scheme that
3 allows a mother to be interrogated in her home and her personal documents to be
4 seized in the presence of her children without any probable cause, as a rule, inflicts
5 irreparable injury on both the mother and all persons in the home.
6

7 Plaintiffs are aware that the motion for partial summary judgment requires
8 this Court to undertake a complex statutory and constitutional analysis and will
9 require a significant amount of time for this Court to draft its Order. Plaintiffs,
10 because of the reasons articulated in this memorandum, have moved this Court to
11 issue a preliminary injunction that enjoins the State from conducting warrantless
12 searches during the time this Court considers the motion for partial summary
13 judgment and issues its final Order.
14

15 V. CONCLUSION

16 For the foregoing reasons, this Court should grant Plaintiffs' motion for
17 preliminary injunction of the following Washington statutes and regulations: RCW
18 §§ 74.15.030(7), 74.15.050(2), 74.15.060(1), 74.15.080 and WAC §§ 388-296-
19 0250(1), 388-296-0450(2) and 388-296-0520(8).
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1 DATED this 28th day of July, 2006.

2 MACDONALD, HOAGUE
3 & BAYLESS

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9 CERTIFICATE OF SERVICE

10 I hereby certify that on 28 July, 2006 I caused to be electronically filed the
11 foregoing document with the Clerk of the Court using the CM/ECF system, which
12 will send notification of such filing to the following:

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