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BY \_\_\_\_\_  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON DEPUTY



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The Honorable James L. Robart

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

RATTIYA UNTHAKSINKUN, SUSAN  
AHMADI, KHADDOUJ ATIF,  
SERGEYEVNA PONOMAREVA, and  
S.J., individually and on behalf of a class  
of similarly situated persons,

NO. 2:11-cv-00588

~~PROPOSED~~ PRELIMINARY  
INJUNCTION

Plaintiffs,

v.

DOUGLAS PORTER, in his official  
capacity as Administrator of the  
Washington State Health Care Authority,

Defendant.

**I. PROCEDURAL BACKGROUND**

This matter comes before the court on Plaintiffs Rattiya Unthaksinkun, Susan Ahmadi, Khaddouj Atif, S.J., and Anna Sergeyevna Ponomareva's Second Amended Motion for Class Certification (Dkt. #31) and Second Amended Motion for a Preliminary Injunction (Dkt #32). Plaintiffs bring their Second Amended Complaint pursuant to 42 U.S.C. § 1983 and allege Fourteenth Amendment due process and equal protection claims against Defendant Douglas Porter ("Defendant"), in his official capacity, as Director of the

1 Washington State Health Care Authority. On September 28, 2011, the court entered an  
2 Order on Motion for Class Certification and Motion for Preliminary Injunction (Dkt #65), in  
3 which the court Granted in Part and Denied in Part Plaintiffs' Second Amended Motion for  
4 Class Certification (Dkt #31), defined the classes certified therein, appointed Plaintiffs  
5 Ahmadi, Atif, S.J., and Unthaksinkun class representatives, and appointed Blake Marks-Dias,  
6 Michael Pierson, Daniel Gross, and Janet Varon as class counsel. The court also thereby  
7 Granted in Part and Denied in Part Plaintiffs' Second Amended Motion for Class  
8 Certification (Dkt #32), waived the imposition of a bond on Plaintiffs and made the  
9 following prescription of what actions must be taken in support of a remedy:

10  
11 The court, therefore, will enter a preliminary injunction ordering Defendant to  
12 reenroll members of the Equal Protection and Due Process classes in Basic  
13 Health effective the date of this order, provided that each member pays his or  
14 her premium. Defendant may not terminate any Due Process class member's  
15 benefits without providing constitutionally sufficient notice. The court directs  
16 the parties to meet and confer within seven days of this order regarding the  
17 language for the preliminary injunction and to submit proposed preliminary  
18 injunction orders within 14 days.

19 The parties have informed the Court that, in compliance with the Court's Order, the  
20 parties met and conferred on October 3, 5, and 7, 2011. On October 7, 2011, Defendant  
21 submitted a Motion to Continue the October 12th Order presentation date (Dkt. #66). This  
22 motion was noted for October 21, 2011. On October 12, 2011, Plaintiffs submitted to the  
23 court a Proposed Preliminary Injunction (Dkt. #68) and explanatory cover letter (Dkt. #69).  
24 Defendant submitted an agreed Proposed Preliminary Injunction (Dkt. #72) on  
25 October 21, 2011. Plaintiffs agree that this supersedes their previously submitted order  
26 presented on October 12, 2011 (Dkt. #68). The court, having considered the plaintiffs'  
Second Amended Complaint (Dkt. #30), the briefing of the parties in support of and  
opposition to the Plaintiffs' Second Amended Motion for Class Certification and Plaintiffs'  
Second Amended Motion for Preliminary Injunction, the Notice of Unavailability filed by

1 Defendant's counsel on September 15, 2011 (Dkt. # 64), the Declaration of Gail S. Yu  
2 submitted in support of Defendant's Motion for Continuance (Dkt. #67), and Plaintiffs' cover  
3 letter for the proposed Preliminary Injunction, dated October 12, 2011 (Dkt. #69), the Court  
4 hereby adopts and incorporates by reference the reasoning stated in the Court's Order issued  
5 on September 28, 2011 (Dkt. #65), as the basis for the following Order. However, to the  
6 extent that any part of this Order specifically conflicts with the Court's Order of September  
7 28, 2011, the language of this Order shall prevail. It is therefore ADJUDGED, DECREED  
8 AND ORDERED that:

9 **II. ORDER**

10 1. Review of Class Member Information and Class Lists – Defendant, the  
11 Washington State Health Care Authority, their employees and agents (collectively referred to  
12 hereinafter as "HCA") shall compile lists of individuals it believes to be members of the  
13 Equal Protection and Due Process classes. The lists shall include each such individual's  
14 name, last known address, and phone number (if any), whether each such member filed a first  
15 and/or second eligibility appeal of the member's March 1<sup>st</sup> disenrollment from Basic Health,  
16 the reason provided by HCA for denying each such appeal, if known, status code, and the  
17 health plan in which the member was last enrolled in Basic Health. HCA shall provide such  
18 lists to Plaintiffs' counsel by October 21, 2011. Updated revisions to the lists shall be  
19 provided on a monthly basis thereafter for six months or until all class members' next  
20 eligibility reviews are complete, whichever is later.

21 2. Notice of Reenrollment Rights for Known Equal Protection Class Members –  
22 As soon as reasonably possible, and in no event later than November 3, 2011, HCA shall  
23 send a "Notice to Equal Protection Class Members" in the form attached hereto as  
24 Ex. 1, to each individual former Basic Health enrollee disenrolled on March 1, 2011, based  
25 on their non-qualifying immigrant status, who has not since had her or his Basic Health  
26 benefits reinstated, and whom HCA has already determined is lawfully present in the United

1 States. This Notice shall inform its recipients that they may reenroll in Basic Health, upon  
2 payment of the invoiced premium amount for each month of coverage requested, beginning  
3 no earlier than September 1, 2011.

4 3. Notice of Reenrollment Rights for Due Process Class – As soon as reasonably  
5 possible, and in no event later than November 3, 2011, HCA shall send a “Notice to Due  
6 Process Class Members” in the form attached hereto as Ex. 2, to each individual former  
7 Basic Health enrollee disenrolled on March 1, 2011, who has not yet been determined by  
8 HCA to be lawfully present in the United States, informing them that they may reenroll in  
9 Basic Health, upon payment of the invoiced premium amount for each month of coverage  
10 requested, beginning no earlier than September 1, 2011.

11 4. Reinstating Coverage for Class Members Who Pay Premiums – HCA shall  
12 reenroll in Basic Health each class member from whom it receives a payment for at least one  
13 month of coverage in the amount invoiced pursuant to § 5 of this Order. Coverage of each  
14 such member shall begin no later than the first day of the calendar month following HCA’s  
15 receipt of the class member’s first payment, except that coverage for the month in which  
16 payment is received and retroactive coverage shall be available to all class members who  
17 contact Basic Health to request such coverage and who pay the correct premiums no later  
18 than December 31, 2011. Retroactive coverage shall extend to each month for which  
19 payment is received back through September 2011. Reenrollment and retroactive coverage  
20 shall also be available to class members who can demonstrate extenuating circumstances for  
21 not paying a premium by December 31, 2011. Class members who otherwise satisfy this  
22 Order’s requirements for reenrollment in Basic Health shall be reenrolled without being  
23 placed on a waiting list for application to or enrollment in Basic Health.

24 5. Invoice to Class Members for Initial Reenrollment Premiums – HCA shall  
25 enclose with each Notice to Equal Protection Class Members and Notice to Due Process  
26 Class Members an invoice or a notice regarding sponsorship which shall list the premium

1 assigned to that individual for the last month they paid a Basic Health premium, if applicable.  
2 Class members will also be provided the opportunity to reenroll in Basic Health with  
3 coverage beginning no later than January 1, 2012, if they pay the required premiums no later  
4 than December 22, 2011. Reenrollment shall also be available for class members who can  
5 demonstrate extenuating circumstances for not paying a premium by the December 22, 2011  
6 due date.

7       6. Identifying Additional Members of Equal Protection Class – HCA shall  
8 review all documents and other information in its possession and control received by HCA  
9 after February 8, 2011 from each class member assigned a status code of A, U, L, N, or Y  
10 and concerning each such class member’s citizenship and immigration status, and HCA shall  
11 then determine whether that information supports a conclusion that each such individual is  
12 lawfully present in the United States. HCA shall send a letter to each class member whom it  
13 concludes is lawfully present informing them of this determination. HCA shall complete this  
14 review and determination for each applicable class member prior to taking the following  
15 actions: a) for all class members assigned a status code “A,” the review and determination  
16 shall be completed prior to HCA sending the class members a Notice of Reenrollment Rights  
17 detailed in §§ 2 and 3 of this Order; b) for all class members assigned a status code U, L, N,  
18 or Y, the review and determination shall be completed prior to HCA deciding to send such a  
19 class member a Continued Eligibility Determination form, specified in § 7(a) of this Order.  
20 Members of the Equal Protection Class may be required to submit documentation of  
21 continued eligibility, including income verification, according to regularly scheduled  
22 procedures that are applicable to all Basic Health enrollees regardless of whether they are  
23 class members.

24       7. Continued Eligibility Determination – HCA shall not seek to disenroll any  
25 class member based on the class member’s immigration status whom HCA has determined is  
26

1 “lawfully present” in the United States. HCA shall do the following before seeking to  
2 disenroll any class member based on the class member’s immigration status:

3 a. If, after conducting the review and determination required under § 6 of  
4 this order, HCA determines it does not have sufficient information to support  
5 a conclusion that the individual is lawfully present, HCA shall send the  
6 member a “Continued Eligibility Determination” form in the form attached  
7 hereto as Ex. 3, requesting documentation to support eligibility for continued  
8 enrollment in Basic Health. The instructions accompanying this notice shall  
9 inform the class member of the definition of lawfully present (adopted in § 13  
of this Order) and shall include a list of immigrant statuses and typical  
documentation that can demonstrate such statuses in the form attached hereto  
as Ex. 4. In addition to information regarding immigration status, HCA may  
also request information to demonstrate compliance with income, age,  
residency, and other Basic Health eligibility criteria.

10 b. Satisfy the requirements of § 8 of this Order for any Notice returned to  
11 HCA.

12 c. If HCA receives any additional information from the class member,  
13 and this information does not establish that the class member is lawfully  
14 present, Basic Health shall review all documents and other information in its  
15 possession or control concerning that class member’s citizenship and  
16 immigration status, and it shall determine whether that information supports a  
17 conclusion that the individual is lawfully present in the United States. HCA  
18 shall send a letter to each class member whom it concludes is lawfully present,  
19 informing her or him of this determination.

20 d. Any deadlines by which enrollees must respond to requests for  
21 information from HCA, deadlines for HCA to make a determination of the  
22 enrollee’s continued eligibility for benefits based on information submitted by  
23 the enrollee in response to such requests, and other procedures that apply to  
24 HCA’s process for unverified Basic Health enrollees shall apply to the  
25 redetermination of eligibility process established in subsections a) and c) of  
26 this section.

8. Returned Notices of Reenrollment – For any Notice mailed to a class member  
by HCA that is returned either as undeliverable, with notification that the addressee is no  
longer at the listed address, or with notification that a forwarding order has expired, HCA  
shall exercise due diligence to determine the correct address for the class member in question  
and mail the Notice to her or him.



1           9.     Translation and Interpretation – All documents that HCA is required by this  
2 Order to provide to a class member (the “Documents”) shall be written in English or, if the  
3 member has requested their materials in Spanish, HCA shall translate the documents into  
4 Spanish free of charge to the class member. Each of the Documents shall include language  
5 stating that an interpreter will be provided, at no cost to the member, if they cannot speak or  
6 read English. Upon request, Basic Health staff shall read the Documents to the member.  
7 Basic Health shall also, with the assistance of an interpreter, offer to read each of the  
8 Documents to each class member who requests interpretation services, and shall read them  
9 upon any indication that the class member wishes Basic Health to do so, if they have not  
10 received the Document translated into their native language. The Notices to the Equal  
11 Protection and Due Process Class Members shall be provided in the following languages:  
12 Spanish, Korean, Vietnamese, Chinese, and Russian. HCA shall make all reasonable efforts  
13 to provide interpretation services to all class members who request that information be  
14 provided to them in a language other than English. These interpretation services shall be  
15 provided to class members free of charge.

16           10.    Termination Notices – HCA shall not terminate the Basic Health benefits of  
17 any class member who has re-enrolled in Basic Health pursuant to this Order, unless HCA  
18 first provides the individual a notice drafted by HCA in consultation with Plaintiffs’ counsel  
19 that includes at least the following information:

20           a.     An explanation of the reasons HCA asserts the class member is no  
21 longer eligible for or should otherwise legally be disenrolled from Basic  
22 Health; this includes, but is not limited to citations to the legal authorities  
23 which HCA asserts provide a basis for its determination that the class member  
24 is ineligible for Basic Health and for the class member’s disenrollment.

25           b.     An explanation of the facts and sources of information on which  
26 HCA’s determination that the class member is ineligible for or should  
otherwise be disenrolled from Basic Health is based.

          c.     If HCA seeks to disenroll a class member due to the class member’s  
purported ineligibility for Basic Health, the notice shall list the eligibility  
criteria for Basic Health which HCA asserts the class member does not satisfy

1 as well as citations to the legal authorities listing and defining those criteria.  
2 For class members whom HCA seeks to disenroll based on a determination  
3 that the class member is not lawfully present in the United States, HCA shall  
4 provide a list of immigration statuses which would qualify an immigrant as  
5 being lawfully present in the United States and types of documents that  
6 provide proof of all or some of these statuses. For these purposes, HCA shall  
7 provide the information in the form attached hereto as Ex. 4. The notice shall  
8 also inform the class member of the definition of lawfully present adopted in §  
9 13 of this Order, as well as the citations to the rule and DSHS webpage URLs  
10 that provide the basis for that definition.

11 d. A description of the class member's right to make an eligibility appeal  
12 of the proposed disenrollment and the procedures the class member must  
13 follow to obtain eligibility review, as well as citations to the legal authority  
14 setting out those appeal rights and describing the appeal procedures.

15 e. That a class member appealing their disenrollment may remain  
16 enrolled in Basic Health during the period in which they have an eligibility  
17 appeal pending, and how they may request such continued enrollment. HCA  
18 shall also provide citations to the legal authority establishing the class  
19 members' rights to continued enrollment pending appeal.

20 f. Notification that class members who appeal the proposed termination  
21 of their Basic Health benefits and remain enrolled pending appeal will not be  
22 required to repay HCA for continued Basic Health benefits they receive,  
23 whether or not their eligibility appeal is ultimately successful.

24 g. Provided, however, that the above procedures do not apply to members  
25 who are disenrolled for nonpayment of premiums.

26 11. Financial Sponsors – HCA shall identify the organizations that served as  
sponsors for class members during the month of February 2011.<sup>1</sup> HCA shall make a good  
faith effort to identify and contact these sponsors and inform them of the availability of  
coverage for the individual class members they previously sponsored, pursuant to this Order.

12. Posting Information on the Basic Health Website – HCA shall post on the  
Basic Health website detailed information about the implementation of this Order and the  
court's Order of September 28, 2011 (Dkt. #65), including the Documents described above,

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<sup>1</sup> HCA has a program in which individuals or organizations can pay Basic Health enrollees' premiums  
in whole or in part by making payments directly to HCA. The term sponsors, as used here, refers to those  
individuals or organizations.



1 the list of typical documents that provide proof of many immigration statuses that qualify as  
2 lawfully present, attached hereto as Ex. 4, and a set of “Frequently Asked Questions (And  
3 Answers)” written in consultation with Plaintiffs’ counsel.

4 13. Definition of “Lawfully Present” – For the purposes of this Order, the term  
5 “lawfully present” shall be defined to include the definition in WAC 388-424-0001(1), as  
6 well as the categories detailed in the DSHS Eligibility A to Z manual found at  
7 [http://www.dshs.wa.gov/manuals/eaz/sections/CitizenshipAndAlienStatus/CitizenshipImmEl](http://www.dshs.wa.gov/manuals/eaz/sections/CitizenshipAndAlienStatus/CitizenshipImmEligResTanfMed.shtml)  
8 [igResTanfMed.shtml](http://www.dshs.wa.gov/manuals/eaz/sections/CitizenshipAndAlienStatus/CitizenGenElig.shtml) (item 3 in Clarifying Information) and [http://www.dshs.wa.gov/](http://www.dshs.wa.gov/manuals/eaz/sections/CitizenshipAndAlienStatus/CitizenGenElig.shtml)  
9 [manuals/eaz/sections/CitizenshipAndAlienStatus/CitizenGenElig.shtml](http://www.dshs.wa.gov/manuals/eaz/sections/CitizenshipAndAlienStatus/CitizenGenElig.shtml) (items 7 and 8 in  
10 Clarifying Information), in effect as of the date of this order, the text of which are hereby  
11 incorporated into this Order by reference.


12 14. Recoupments – HCA shall not assess a subsidy overpayment or recoup  
13 payment for Basic Health benefits provided to class members pursuant to this Order for the  
14 period beginning with reenrollment until the completion of the enrollee’s next recertification  
15 process.

16 15. Clarification of Class Definitions – For the purposes of determining who is in  
17 one or more of the classes certified by the court in its Order of September 28, 2011  
18 (Dkt. # 65), the Court makes the following clarifications: a) no individual shall be deemed to  
19 have had their Basic Health benefits reinstated only because he or she was reenrolled pending  
20 the resolution of an eligibility appeal of her or his disenrollment; and b) the retroactive  
21 restoration of an individual’s Basic Health benefits to March 1, 2011 pending a resolution of  
22 an eligibility appeal of the individual’s disenrollment from Basic Health shall not alone  
23 exclude that individual from the group of persons who have not had their benefits or Basic  
24 Health benefits reinstated.

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1           16. The requirements of this Order supersede any regulations or statutes that  
2 conflict with this Order and HCA shall not seek to implement any conflicting statutes or  
3 regulations.

4           DATED this 24<sup>th</sup> day of October, 2011.

5  
6   
7 JAMES L. ROBART  
8 United States District Court Judge

9 Presented by:

10 ROBERT M. MCKENNA  
11 Attorney General

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