

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 24-60098

SECRETARY OF UNITED STATES DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT,

Petitioner

v.

QUANG DANGTRAN; HA NGUYEN; HQD ENTERPRISE, L.L.C.,

Respondents

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THE SECRETARY'S MOTION FOR  
SUMMARY ENFORCEMENT OF THE FINAL AGENCY ORDER

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Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, the Secretary of the United States Department of Housing and Urban Development (HUD) moves this Court for summary enforcement of the final agency order issued on December 9, 2022.<sup>1</sup> Because respondents have failed to petition this Court for review of the final agency order, and because they are entitled to no other relief, this Court should summarily enforce the final agency order without the additional briefing that it ordered on April 4, 2024.

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<sup>1</sup> On April 18, 2024, the United States attempted to contact respondents via email regarding this motion, as required by Fifth Circuit Rule 27.4. The United States has received no response.

1. On December 9, 2022, an administrative law judge (ALJ) issued an initial decision and order finding respondents liable for several violations of the Fair Housing Act (FHA), 42 U.S.C. 3601 *et seq.* Initial Decision and Order 42 (Dec. 9, 2022) (Initial Decision). The order also required respondents to pay damages, assessed civil penalties against them, and ordered additional relief. *Id.* at 42-43.

2. Respondents had until December 24, 2022, to administratively appeal the ALJ's initial decision. *See* 24 C.F.R. 180.675(d) (requiring petitions for review to be filed within 15 days after the issuance of an initial decision). Respondents did not submit a petition for review until January 2, 2023. The Secretary's designee therefore denied respondents' appeal as untimely. Order on Resp'ts' Pet. for Review of the ALJ's Initial Decision and Order 2 (Jan. 6, 2023) (Order on Resp'ts' Pet. for Review). As a result, the ALJ's initial decision became a final agency order on January 8, 2023. *See* 24 C.F.R. 180.680(b)(2) (stating that, in the absence of a final decision by the Secretary, an initial decision becomes final 30 days after it is issued).

3. The FHA provides that "any party aggrieved by a final order for relief" may obtain judicial review of that order in the federal court of appeals by filing a petition for review that "shall be not later than 30 days after the order is entered."

42 U.S.C. 3612(i). Respondents never petitioned this Court for review of the HUD final order.<sup>2</sup>

4. Respondents' pro se status did not excuse them from complying with the FHA's statutory deadline. *Cf. Archer v. Lynaugh*, 821 F.2d 1094, 1095 (5th Cir. 1987) ("The strict provisions of Federal Rule of Appellate Procedure 4(a)(1), which requires that a notice of appeal in a civil action be filed within thirty days of judgment and has been interpreted as jurisdictional . . . preclude our forgiveness on equitable grounds of a belated appeal by a pro se habeas corpus petitioner who failed to act timely because he did not understand these complicated procedural rules."). In any event, respondents received notice of the deadline. The ALJ's order, mailed to all respondents, notified them that "[a]ny party adversely affected by a final decision" may petition the court of appeals for review of the decision, and that "[t]he petition must be filed within 30 days after the date of issuance of the final decision." Initial Decision 43.

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<sup>2</sup> Respondents Dangtran and Nguyen attempted to obtain judicial review of the final order from the U.S. District Court for the Eastern District of Texas, but the court dismissed their complaint for lack of subject-matter jurisdiction. *See Dangtran v. Secretary, HUD*, No. 4:23-cv-20, 2023 WL 6065081, at \*2 (E.D. Tex. Aug. 29, 2023) ("This court . . . does not have subject matter jurisdiction over Plaintiffs' appeal of the ALJ's decision. Judicial review of the ALJ's decision is conferred upon the Fifth Circuit."), *report and recommendation adopted*, 2023 WL 6162744 (E.D. Tex. Sept. 21, 2023). Respondents did not appeal the court's decision or refile their pleading in this Court.

5. On February 15, 2023, HUD mailed letters to respondents notifying them of their failure to pay the ordered damages and civil penalties. Respondents did not pay or respond.

6. On February 29, 2024, the Secretary submitted an application for enforcement of the final agency order. The ALJ's factual findings are conclusive in connection with the Secretary's application for enforcement because respondents failed to petition this Court for review of the order within 45 days of its issuance. *See* 42 U.S.C. 3612(l); 24 C.F.R. 180.710(b). The rule precludes respondents from making any arguments in their answer or in any subsequent briefs challenging the ALJ's finding of FHA liability, the award of damages, or the assessment of civil penalties.

7. On March 14, 2024, respondents, proceeding pro se, filed a timely answer to the Secretary's application for enforcement. The only relief that respondents request is a stay of this Court's consideration of the Secretary's application until respondents Dangtran's and Nguyen's most recent lawsuit in the Eastern District of Texas against HUD and complainant Nicole Williams is resolved. Answer 3, 8; *see also* *Dangtran v. Williams*, No. 4:23-cv-938 (E.D. Tex.). Respondents invoke Rule 18(a)(2) of the Federal Rules of Appellate Procedure, but that rule allows a court of appeals to stay *agency* proceedings; it does not allow a court of appeals to stay *its own* consideration of an application to

enforce because of collateral litigation before a district court. In any event, respondents have filed at least two other lawsuits against Williams or HUD based on this administrative enforcement action. *See Dangtran v. Secretary, HUD*, No. 4:23-cv-20 (E.D. Tex.); Initial Decision 13 (noting that respondents filed a lawsuit against Williams in Texas state court, which the court dismissed with prejudice and ordered respondents to pay attorneys' fees and sanctions based on the "frivolous" nature of the lawsuit). This Court should not permit respondents to indefinitely delay enforcement of a final HUD order through serial litigation.

### CONCLUSION

For the foregoing reasons, this Court should summarily enforce the December 9, 2022, final agency order without delay or additional briefing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

On April 25, 2024, I filed this motion with the Clerk of the Court by using the CM/ECF system. Pursuant to Federal Rule of Appellate Procedure 25(c), respondents will be served with the foregoing motion by Federal Express overnight mail:

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s/ Jonathan L. Backer  
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## **CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 970 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f). This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Times New Roman 14-point font using Microsoft Word for Microsoft 365.

s/ Jonathan L. Backer  
JONATHAN L. BACKER  
Attorney

Date: April 25, 2024