UNITED STATES OF AMERICA

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

OFFICE OF HEARINGS AND APPEALS

IN THE MATTER OF: SHEDO, LLC, AND SHEILA DANZEY, Respondents.	23-AF-0017-DB-002 September 29, 2023

RULING ON SUMMARY JUDGMENT AND RECOMMENDED DECISION

This Ruling sets forth findings of fact and recommends a five-year period of debarment for Respondents Sheila M. Danzey and Shedo, LLC ("Shedo"). Ms. Danzey was the Executive/Managing Director ("Executive Director") of the Housing Authority of the City of Slidell ("HACS"), a public housing agency ("PHA") located in Slidell, Louisiana. Shedo is a Louisiana limited liability corporation formed by Ms. Danzey through which she contracted her services to HACS.

This Ruling under 2 C.F.R. Parts 180 and 2424 recommends Respondents' debarment for a five-year period, based upon Respondents' violation of the terms of their public agreements and transactions with the Department of Housing and Urban Development ("HUD" or the "Government") and other causes of such a serious and compelling nature affecting Respondents' present responsibility that cause concern regarding future interactions between Respondents and the Executive Branch of the Federal Government.

PROCEDURAL HISTORY

This matter arises from Respondents' November 22, 2022, *Request for Hearing* filed in response to a *Notice of Proposed Debarment* ("*Notice*") HUD mailed to them on October 25, 2022. The *Notice* proposed a three-year period of debarment. On June 12, 2023, HUD mailed Respondents a *Supplemental Notice of Proposed Debarment* ("*Supplemental Notice*"), including additional allegations and a proposal to increase the

period of debarment to five years. The *Notice* and *Supplemental Notice* serve as the Complaints in this matter. See 24 C.F.R. § 26.13.

On December 2, 2022, the Debarring Official referred this debarment proceeding to the Office of Hearings and Appeals for a de novo hearing in accordance with 2 C.F.R. § 180.845(c) and a recommended decision. The referral was duly docketed and set for hearing in accordance with 2 C.F.R. § 180.840. The administrative law judges of this Office are authorized to serve as hearing officers for the purposes of issuing findings of fact and recommended determinations for consideration by the Debarring Official. See 2 C.F.R. § 2424.842.

On August 21, 2023, HUD timely filed the *Government's Motion for Summary Judgment* ("*Government's Motion*") pursuant to 24 C.F.R. § 26.16(f). Respondents timely filed *Respondents' Cross Motion for Summary Judgment and Response to HUD's Motion for Summary Judgment* ("*Respondents' Cross Motion and Response*"). Respondents also filed *Respondents' Motion to Dismiss HUD's Supplemental Notice of Proposed Debarment* ("*Supplemental Notice*", "*Respondents' Motion to Dismiss*"). HUD timely filed replies to each of Respondents' motions.[1]

ISSUES

HUD requests summary judgment arguing that there are no material facts in dispute and that there is cause to debar Respondents as a matter of law. HUD claims such cause exists because there is no genuine dispute that Respondents violated a public agreement, a U.S. statute, and Federal regulations by failing to, inter alia, provide proof of required banking and insurance protection; access to HACS' documents, records, and offices; and a sufficient response to a subpoena. In its *Supplemental Notice*, HUD further claims there is no genuine dispute that HACS impermissibly used program receipts to pay for a lawsuit HACS filed against HUD and did not distribute housing vouchers since October 2018, despite available funds.

In response to the *Government's Motion*, Respondents claim HUD breached the public agreement when it imposed additional requirements affecting HACS' access to program funds. Respondents also assert that HUD withheld capital funds in violation of a settlement agreement and is seeking Respondents' debarment in retaliation for HACS' lawsuit. Accordingly, *Respondents' Cross Motion and Response* seeks summary judgment in their favor. In addition, Respondents seek dismissal of HUD's *Supplemental Notice* because it was filed one day after the filing deadline.

[1] The parties' pending motions including *Respondents' Motion for Settlement Conference with a Hearing Officer*, filed on September 28, 2023, are hereby denied as moot in light of this Ruling. Regarding Respondents' recent motion for a settlement conference, the parties have been encouraged to seek the assistance of a settlement judge since December 6, 2022, when this matter was docketed. However, no request has been made until now, despite having ample time to do so.

LEGAL FRAMEWORK

Debarment Proceedings. Debarment protects the public interest and the integrity of Federal programs by ensuring the Federal Government is conducting business only with responsible persons. See 2 C.F.R. § 180.125. Debarment is not punishment. Rather, it is an enforcement tool to address serious non-compliance. Id.

Debarment proceedings are fact-finding proceedings conducted pursuant to 24 C.F.R. Part 26 subpart A. See also 2 C.F.R. §§ 2424.842, 2424.952. A Federal agency must establish cause for debarment by a preponderance of the evidence. See 2 C.F.R. § 180.855(a). If the agency establishes a cause for debarment, the respondent must demonstrate their present responsibility such that debarment is unnecessary. See 2 C.F.R. § 180.855(b). As requested by the debarring official, this Court then recommends whether debarment is appropriate and, if so, the sanction. The seriousness of a respondent's acts or omissions and the mitigating or aggravating factors may be considered when recommending the severity of the sanction. See 2 C.F.R. §§ 180.845(a), 180.860.

Summary Judgment. Pursuant to 24 C.F.R. § 26.16(f), this Court is authorized to decide cases, in whole or in part, by summary judgment where there are no disputed issues of material fact. See 24 C.F.R. § 26.32(l). Summary judgment motions and answers thereto shall strictly comply with the provisions of Rule 56 of the Federal Rules of Civil Procedure ("FRCP"). See 2 C.F.R. § 26.40(f)(2).

The FRCP and case law interpreting Rule 56 provide useful guidance in setting forth a standard to grant summary judgment. See, e.g., In re Salvador Alvarez, HUDALJ 04-25-PF, at 4 (June 23, 2005) (Rule 56 states that summary judgment shall be granted if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"). A "genuine" issue exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A "material" fact is a fact that affects the outcome of the suit. Id.

HUD, as the moving party, bears the burden of demonstrating the absence of any material issues of fact. See Anderson, 477 U.S. at 256. To meet this burden, HUD must: (i) cite to materials in the record or (ii) show the cited materials do not establish the presence of a genuine dispute. See Fed. R. Civ. P. 56(c).

In reviewing a motion for summary judgment, this Court's function is not to resolve any questions of material fact, but to ascertain whether any such questions exist. In re Beta Dev. Co., HUDBCA No. 01-D-100-D1, at *12 (February 21, 2002). The evidence is viewed in the light most favorable to the nonmoving party. Tolan v. Cotton, 572 U.S. 650, 657 (2014). Summary judgment is not available where "material facts are . . . are susceptible to divergent inferences." Tao v. Freeh, 27 F.3d 635, 638 (D.C. Cir. 1994). However, summary judgment against a party is appropriate where they have failed to make a sufficient showing on an essential element as to which they have the

burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). If the moving party has carried its burden, the nonmoving party may not rest upon mere allegations or denials but must come forward with "specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (citing Fed. R. Civ. P. 56(e)).

This Court has considered all factual issues raised by the parties and finds the material facts are not genuinely in dispute. Further, for reasons discussed in this Ruling, Respondents' *Cross Motion and Response* fails to identify undisputed material facts to find summary judgment on Respondents' behalf and fails to identify any disputed material facts in the *Government's Motion* that would deny HUD summary judgment.

FACTS

Ms. Danzey has fifty years of experience with affordable housing programs. Her duties when she was Executive Director included, inter alia, overseeing HACS' day-to-day operations, interfacing with HUD, maintaining HACS' records and documents, submitting reports to HUD, and managing the Annual Contributions Contracts ("ACC") made between HUD and HACS under the National Housing Act.[2] Ms. Danzey is the sole stockholder and owner of Shedo. Due to the close ties at all relevant times between Ms. Danzey, Shedo, and HACS, the conduct of each is imputed to the others.

The ACCs permit HACS to receive funds Congressionally appropriated to HUD so that HACS may provide decent, safe, and sanitary housing to eligible Slidell residents. HACS has an ACC that provides HACS funds to maintain its own housing units and an ACC to participate in HUD's Housing Choice Voucher Program ("HCVP"). Through the HCVP, HACS issues housing vouchers to eligible Slidell individuals and families to find affordable housing in the private market. HACS' participation is further dictated by United States statutory and regulatory provisions.

On November 4, 2015, HUD sent Respondents a non-compliance letter for failure to provide documentation after a financial management review found HACS' financial records un-auditable. HUD then designated HACS' status "Troubled" and subsequently placed HACS in Zero-dollar Threshold ("zero-dollar") status.[3] The zero-dollar designation required Respondents to obtain HUD's prior approval for each individual expenditure before drawing down capital and operating funds. Although HACS successfully appealed the "Troubled" designation, it remained in zero-dollar status.

HUD's November 4, 2015, letter further informed Respondents that HACS lacked a valid general depository agreement ("GDA") granting HUD control over HACS'

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[2] Public Law 479, 73d Congress; 48 Stat. 1252; 12 U.S.C. 1716 et seq.

[3] The parties' filings varyingly refer to this status as "Zero-dollar Threshold," "zero-threshold," etc., employing different capitalizations and hyphenation. All variations are interpreted as referring to the same status.

deposit accounts and lacked proof of fidelity bond coverage to prevent employee theft.[4] Pursuant to 24 C.F.R. § 982.156(c) and the ACCs, a PHA must execute a GDA on a HUD form and list the deposit accounts covered on that form. Respondents listed no deposit account numbers on the HUD form. Although Respondents later provided a separate list of deposit accounts, HUD deemed that list insufficient because the accounts were not listed on the HUD form. Regarding fidelity bond coverage, HUD found that Respondents merely provided insurance policy proposals that lacked a countersignature(s) and proof of payment.

In May 2018, an on-site follow-up review revealed continued non-compliance and failure to provide financial records. Respondents claimed the records were lost due to a computer crash. They indicated they would provide HUD reconstructed records but did not do so.

In May 2019, HACS retained a law firm to remove the zero-dollar designation. HACS subsequently filed a lawsuit against HUD, and, on July 23, 2021, the parties settled. HUD agreed to rescind the zero-dollar status, pay HACS $20,000, and not base future zero-dollar designations on HACS' pre-settlement conduct. Afterwards, Respondents paid $470,000 to the law firm for its legal fees. Respondents paid the fees with tenant rental income from HACS' operating account. However, the use of operating funds, which include tenant rental income, to pay for lawsuits against the Federal Government is prohibited. See 2 C.F.R. § 200.435(g) and 24 C.F.R. § 990.280(b)(3).

On May 22, 2020, HUD notified HACS that it was in material breach of the ACCs and referred HACS to HUD's Departmental Enforcement Center ("DEC"). Attempts by the DEC to coordinate an onsite evaluation with Respondents and to obtain HACS' records necessary for the review to occur were unsuccessful. Eventually, HUD gave Respondents advance notice that an evaluation team would arrive on February 7, 2022. The evaluators were unable to gain access to HACS' offices for the two days they were in Slidell. United States statutory and regulatory provisions, as well as the ACCs, require Respondents to provide HUD with "full and free access" to HACS' facilities, offices, and records (paper or electronic). See 42 U.S.C. § 1437c(h)(1) and 24 C.F.R. § 982.158. On August 12, 2021, Respondents similarly failed to respond to a HUD subpoena in another debarment matter. Respondents only responded after this Court ordered them to do so. However, HUD found their responses deficient.[5]

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[4] A GDA is an agreement between a PHA, the PHA's financial institution, and HUD that requires HUD's written authorization for the PHA to withdraw deposited funds from the institution and permits HUD withdraw the PHA's deposited funds. HUD requires fidelity bond coverage that protects PHAs from malfeasance, misfeasance, and nonfeasance. Coverage must include officers, agents, and employees who handle cash, checks, and vouchers.

[5] HUD has wide latitude to determine whether a response to a request for information is deficient unless HUD's requests or actions have been arbitrary and capricious or HUD has abused its discretion. See, e.g., United States v. Pretty Prod., Inc., 780 F. Supp. 1488, 1507 (S.D. Ohio 1991) (Regulated party and courts cannot decide what is substantial compliance with an agency request unless the request is arbitrary and capricious or an abuse of discretion.).

For at least seven years, HUD repeatedly sent HACS written communications about HACS' continued non-compliance. For example, HUD periodically warned HACS that it was non-compliant with HUD's zero-dollar guidelines and, therefore, could not draw down capital and operating program funds until it came into compliance. By August 2019, the capital and operating funds had accrued to over $1,700,000 due to Respondents' failure to comply. HUD also warned HACS it was in default of its ACCs and continued non-compliance could lead to debarment and penalties against those funds. On November 4, 2022, HUD placed HACS into receivership, removed Respondents, and took over management of HACS. After taking over management of HACS, HUD learned that, since October 2018, Respondents had issued no housing vouchers to 244 individuals and families who were on HACS' HCVP waitlist despite the availability of more than $1,000,000 in funds to do so.

RECOMMENDATION FOR DEBARMENT

Debarment is a serious sanction that should only be utilized for the purposes of protecting the public interest and may not be used as punishment. See 2 C.F.R. § 180.125(c). Federal agencies may debar those who transact with the Government to protect the fiscal integrity of government programs.

Debarment has been found to be warranted when: a participant did nothing to correct a deficiency and admitted to misusing funds to the detriment of HUD, Otis Stewart Jr., No. 98-8054-DB(LDP), 2001 HUD ALJ LEXIS 76 (HUDALJ Nov. 8, 2001); a respondent made a misrepresentation, which, even if it was an "honest mistake, [was], nevertheless, a very serious mistake because HUD must rely upon the truthfulness of the representations made by those who participate in its program and who certify to the accuracy of their representations," William D. Muir, 1997 HUD BCA LEXIS 12, at *19; and, respondents were found to have "failed, repeatedly, to fulfill their contractual and programmatic obligations to HUD," M. Brett Young and Allied Hous. Grp., Ltd., No. 96-0036-DB(LDP), 1996 HUD ALJ LEXIS 49, at *16 (HUDALJ Sept. 13, 1996).

The decision to debar Respondents from future procurement and non-procurement transactions with the Federal Government is within the discretion of the Debarring Official. See 2 C.F.R. § 180.845(a). In determining whether debarment is an appropriate sanction, "[t]he debarring official bases the decision on all information contained in the official record. The record includes . . . [a]ny further information and argument presented in support of, or in opposition to, the proposed debarment . . . ." Id. § 180.845(b). This Court, for the reasons discussed below, finds that HUD has shown by a preponderance of the evidence that debarment is warranted under the circumstances and recommends debarment for a period of five years.

I. Respondents' Violations of the Terms of a Public Agreement Affected the Integrity of HUD's Programs.

Cause for Respondents' debarment is warranted for violating the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

2 C.F.R. § 180.800(b). Willfulness is generally understood to refer to wrongful conduct that goes beyond mere negligence, meaning that the wrongdoer, at minimum, "either knew or showed reckless disregard for the matter of whether [their] conduct was prohibited." McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988). See also Feinerman v. Bernardi, 558 F. Supp. 2d 36 at 48, n.13 (D.D.C. 2008).

Based on facts in the record, Respondents willfully failed to comply with the terms of HACS' ACCs and U.S. statutory and regulatory provisions as applied to the ACCs pursuant to 2 C.F.R. §§ 180.800(b)(1) and 180.800(b)(3). Their violations are willful because HUD's numerous warnings placed Respondents on notice regarding their non-compliance such that they knew or should have known their conduct was prohibited.[6] Those facts also document a history of non-compliance and unsatisfactory performance in regard to the ACCs pursuant to 2 C.F.R. § 180.800(b)(2). Further, Respondents' non-compliance was so serious that it harmed the integrity of HUD's housing voucher program by, inter alia, keeping 244 Slidell individuals and families waiting for four years for vouchers.

II. The Harm Caused by Respondents Affects Their Present Responsibility.

Cause for Respondents' debarment is also warranted for "[a]ny other cause of so serious or compelling a nature that it affects [Respondents'] present responsibility." 2 C.F.R. § 180.800(d).

The term "responsible," as used in the context of administrative sanctions such as debarment, is a term of art that encompasses not only the ability to perform a contract satisfactorily, but the honesty and integrity of the participant as well. See William D. Muir and Metro Cmtv. Dev. Corp., 00-2 BCA Tl 31.140, HUDBCA No. 97-A-121-D15 (Nov. 6, 1997) (citing 48 Comp. Gen. 769 (1969)). "Present responsibility" applies to a respondent's conduct with respect to "covered transactions" involving HUD programs.

[6] For example, not long after HACS retained the law firm, HUD, having learned of the same, informed HACS' Chairman that the retainer contract was not approved. In addition, an independent auditor informed HACS that use of operating funds to pay the legal fees questionable.

See, e.g., 2 C.F.R. §§ 180.200(a)-(b), 180.985. Determining "responsibility" requires assessing the risk that the Government will be injured in the future by doing business with a respondent. See Benjamin J. Roscoe and Geraldine M. Roscoe, HUDALJ 93-2007-DB (June 26, 1995). The determination may be inferred from past acts. See Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Stanko Packing Co. v. Bergland, 489 F. Supp. 947, 949 (D.D.C. 1980).

When viewed along with Respondents' history of unsatisfactory performance, non-compliance, and violations U.S. statutory and regulatory provisions, Respondents' conduct is so serious and compelling as to affect their present responsibility and cause concern about the risk of any potential involvement in future transactions with the Federal Government. Therefore, it is warranted under the circumstances to find that Respondents lack present responsibility. Thus, cause for Respondents' debarment is warranted pursuant to 2 C.F.R. § 180.800(d).

III. Respondents' Arguments Against Debarment are Unpersuasive.

Respondents argue no cause for debarment exists because they have not committed any "serious HUD program violations, such as bribery, embezzlement, theft, or forgery." While such offenses are cause for debarment (see 2 C.F.R. § 180.800(a)), they are not raised in this matter. Rather, the circumstances warrant cause for Respondents debarment pursuant to 2 C.F.R. §§ 180.800(b) and 180.800(d).

Additional arguments Respondents put forward against debarment include: HACS' had no duties to HUD because placing HACS in zero-dollar status was a breach of the ACCs; factors beyond their control (e.g., the COVID-19 pandemic, Hurricane Ida, and computer failures) prevented them from complying with HUD's requests; and that HUD deliberately created cause to debar Respondents and put HACS in receivership in retaliation for Respondents' lawsuit. These arguments are immaterial, unsubstantiated, and/or contrary to the evidence in the record.[7] For example, Respondents fail to show how the zero-tolerance designation constituted a breach of the ACCs. Similarly, Respondents' attempt to blame HUD for their non-compliance lacks support, and the record shows HUD attempted to offer HACS assistance. HUD also attempted to accommodate Respondents' concerns about COVID-19 and other issues. Lastly, Respondents assert that some of HACS violations are merely clerical and should not be cause for disbarment.[8] However, this argument is also immaterial because HUD has great latitude to determine whether Respondents' submissions are sufficient as long as

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[7] Respondents make other contentions so lacking in materiality and/or support in the record or are contrary to the record that they do not warrant further discussion. Those contentions include: retaliation by HUD against HACS by withholding capital funds; a lack of available housing in Slidell prevented vouchers from being issued; and the legal fee payments were proper because HUD knew about the legal fees but did not intervene.

[8] For example, Respondents contend it was unnecessary to include a lists of HACS deposit accounts on HUD's GDA form because all of HACS' accounts were with one bank and that bank was a signatory on the HUD GDA form.

HUD's actions are not arbitrary and capricious or an abuse of discretion. See n.5, supra. Accordingly, Respondents' arguments fail to identify circumstances that show debarment is unwarranted.

IV. Five Years is an Appropriate Period of Debarment.

The length of debarment is based on the seriousness of the cause(s). It should generally not exceed three years unless circumstances warrant a longer period. See 2 C.F.R. § 180.860. In deciding the length, the Debarring Official may consider mitigating or aggravating factors, and the existence or nonexistence of any single factor is not determinative. Id.

Less onerous sanctions have been imposed in cases where good-faith efforts have been made to come into compliance with HUD regulations, In re Jackson, No. 05-K-112-D7, 2005 HUD BCA LEXIS 21 (HUDBCA Oct. 13, 2005); and, a lender's remedial measures demonstrated that they were acting as responsible contractors and in good faith as they attempted to correct the deficiencies caused by their subcontractors, First Capital Home Improvements, HUDBCA No. 99-D-108-D7 (Nov. 24, 1999).

In this matter, Respondents offer no evidence of good faith efforts or remedial measures to remedy HACS' non-compliance despite HUD's warnings of the same, including the warnings of default and potential debarment. Rather, the record shows the harms caused by Respondents' history of non-compliance were so serious as to compromise the integrity of HUD's mission to provide safe, decent, and sanitary housing to the Slidell community. Although Respondents were positioned to remediate the harms and had time and notice to do so, it became necessary to place HACS into receivership and remove Respondents from their position. Accordingly, no mitigating factors pursuant to § 180.860 are warranted. Rather, aggravating factors exist to warrant a five-year debarment period, as, under the circumstances, the risk to the public is significant if Respondents are permitted to enter into future transactions with the Federal Government.

RESPONDENTS' MOTIONS TO DISMISS

Respondents' Motion to Dismiss HUD's *Supplemental Notice* is denied. Respondents seek dismissal because HUD filed its *Supplemental Notice* on June 13, 2023, rather than the due date of June 12, 2023. Respondents' concern is duly noted. HUD's counsel failed to request leave of this Court to file the *Supplemental Notice*. However, in HUD's Response to *Respondent's Motion to Dismiss*, HUD's counsel explained that the Debarring Official was unable to sign the *Supplemental Notice* on June 12, 2023. Rather, it was signed early on June 13, 2023, and served on Respondents well before Noon that day. Accordingly, *Respondents' Motion to Dismiss* is denied because HUD's delay did not prejudice Respondents' response. Respondents received the *Supplemental Notice* the morning of June 13, 2023, and had the allotted thirty (30) days to file their response with the Debarring Official. Further, on June 12, 2023, HUD contacted Respondents' counsel to inform her of the delay. No evidence in the record indicates that she was concerned about HUD filing the *Supplemental Notice* one day late.

CONCLUSION AND ORDER

The Court finds that HUD has met its burden to demonstrate that no genuine issues of material fact exist in this matter. The material facts support the following findings: 1) Respondents are Subject to Debarment Regulations; 2) HACS' and Respondents' Conduct is Imputed to Each Other; 3) Respondents did not provide a valid general depository agreement; 4) Respondents did not provide proof of fidelity bond coverage; 5) Respondents did not provide HUD free and full access to HACS' documents, records, and offices; 6) Respondents' response to HUD's subpoena was deficient; 7) Respondents used program receipts to pay legal fees; and 8) Respondents issued no housing vouchers since October 2018.

Based on the foregoing, the Court recommends to the Debarring Official that HUD's *Motion for Summary Judgment* be **GRANTED**, and *Respondents' Cross Motion and Response* and *Respondents' Motion to Dismiss* be **DENIED**. The Court recommends Respondents' debarment because their actions were so serious as to negatively affect the integrity of HUD's housing assistance and HCVP programs such that their lack of present responsibility creates a risk should they participate in future transactions with Government agencies. Due to the severity of Respondents' violations, a five-year period of debarment is recommended.

This matter is returned to the Debarring Official for further action.

So **ORDERED**,

ALEXANDER FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of the Secretary
Date: 2023.09.29 15:27:28 -04'00'

Alexander Fernández-Pons
Administrative Law Judge