No. 09-40734

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

_____

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HENRY BILLINGSLEY, *et al*.,

Defendants-Appellants

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

_____

# UNITED STATES' PETITION FOR REHEARING EN BANC

_____

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## STATEMENT OF REASONS FOR THE PETITION

Pursuant to Federal Rule of Appellate Procedure 35(b)(1) and Fifth Circuit Rule 35.2.2, the United States respectfully requests rehearing en banc.

The panel, in its decision issued on August 16, 2010 (attached), held that the Anti-Injunction Act, 28 U.S.C. 2283, applies to election suits under the Fair Housing Act even though the United States is the plaintiff. This holding conflicts with *Leiter Minerals* v. *United States*, 352 U.S. 220 (1957), *N.L.R.B.* v. *Nash-Finch Co.*, 404 U.S. 138 (1971), and every previous decision of this Court interpreting the *Leiter Minerals* exception to the Anti-Injunction Act. See, *e.g.*, *In re B-727 Aircraft Serial No. 21010*, 272 F.3d 264 (5th Cir. 2001); *United States* v. *Lemaire*, 826 F.2d 387 (5th Cir. 1987), cert. denied, 485 U.S. 960 (1988); *United States* v. *Composite State Bd. of Med. Exam'rs, State of Ga.*, 656 F.2d 131 (5th Cir. 1981); *Henry* v. *First Nat'l Bank of Clarksdale*, 595 F.2d 291 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980); *N.L.R.B.* v. *Roywood Corp.*, 429 F.2d 964 (5th Cir. 1970); *United States* v. *Wood*, 295 F.2d 772 (5th Cir. 1961), cert. denied, 369 U.S. 850 (1962). Accordingly, consideration by the full Court is necessary to secure and maintain uniformity of this Court's decisions.

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IN THE UNITED STATES COURT OF APPEALS
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No. 09-40734

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HENRY BILLINGSLEY, *et al.*,

Defendants-Appellants

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

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# UNITED STATES' PETITION FOR REHEARING EN BANC

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## STATEMENT OF THE ISSUE

Whether the Anti-Injunction Act prohibits the United States from obtaining injunctive relief under 42 U.S.C. 3612(o) to redress violations of the Fair Housing Act (FHA) on behalf of an aggrieved person, where that relief may affect the results of specific state court litigation.

## STATEMENT OF THE COURSE OF PROCEEDINGS, DISPOSITION OF THE CASE, AND FACTS NECESSARY TO THE ARGUMENT

Sheryl Pick has a degenerative neurological disorder. She filed an FHA complaint with the Department of Housing and Urban Development (HUD), alleging that the Zoning Committee of the Air Park Estates (the Committee) refused to allow the reasonable accommodation her disability requires – a small footbridge across the drainage ditch between her home and the street. HUD investigated and then issued a charge of discrimination. See 42 U.S.C. 3610(g)(2)(A). The Committee elected to have Ms. Pick's FHA claim adjudicated in federal district court rather than in a HUD administrative proceeding. See 42 U.S.C. 3612(a). In election cases, the Attorney General files suit on behalf of the aggrieved party – here, Ms. Pick. See 42 U.S.C. 3612(o). Accordingly, the United States filed suit in federal district court on behalf of Ms. Pick. Slip Op. 4.

The Committee then sought to enforce in state court a settlement agreement previously executed between the Committee and Ms. Pick's husband that, the Committee argued, required removal of the bridge. The state court ordered the bridge's removal. The United States then sought to preliminarily enjoin the Committee from removing the footbridge. Slip. Op. 5.

The Committee opposed the motion. It argued, among other things, that the Anti-Injunction Act, 28 U.S.C. 2283, prevents the federal court from enjoining the

state court order. The district court rejected this argument and the Committee's other arguments and granted the preliminary injunction. Slip Op. 5.

Reaching only the Anti-Injunction Act issue, a panel of this Court reversed. Slip Op. 2-3. The panel held that under 42 U.S.C. 3612(o), the government could secure only the relief Ms. Pick could secure in a private action. Slip Op. 6-8. The panel acknowledged that the Anti-Injunction Act does not apply to a suit by the United States, Slip Op. 6 (citing *Leiter Minerals* v. *United States*, 352 U.S. 220, 225-226 (1957)), but nonetheless held "that Congress intended to invalidate this exception in the statutory provision at issue in this case." Slip Op. 6-7.

## ARGUMENT AND AUTHORITIES

It has been the rule since 1957 that the Anti-Injunction Act does not apply to the United States. The Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. 2283. In *Leiter Minerals* v. *United States*, 352 U.S. 220, 225-226 (1957), the Supreme Court held that the Anti-Injunction Act does *not* apply when the United States sues in federal court. Until the panel's decision in this case, this Court uniformly followed that rule. The panel's unprecedented holding that the Anti-Injunction Act bars suits by the federal government under the Fair Housing Act's election provisions conflicts with this

Court's prior Anti-Injunction Act cases and rests on a manifestly erroneous interpretation of the Fair Housing Act. This Court should grant rehearing en banc.

**A.**

**THE PANEL'S DECISION CONFLICTS WITH REPEATED HOLDINGS OF THIS COURT AND THE SUPREME COURT THAT ACTIONS BY THE UNITED STATES ARE EXEMPT FROM THE ANTI-INJUNCTION ACT**

This Court and the Supreme Court have always treated the *Leiter Minerals* exception as certain: if the United States is the plaintiff in federal court, the Anti-Injunction Act does not apply. See, *e.g.*, *Arkansas* v. *Farm Credit Servs. of Cent. Ark.*, 520 U.S. 821, 829 (1997) ("The restrictions of § 2283 are inapplicable in a suit brought by the National Government."); *Mitchum* v. *Foster*, 407 U.S. 225, 235-236 (1972) (The *Leiter Minerals* exception "permits a federal injunction of state court proceedings when the plaintiff in the federal court is the United States itself, or a federal agency asserting 'superior federal interests.'"); *In re B-727 Aircraft Serial No. 21010*, 272 F.3d 264, 274 (5th Cir. 2001) ("The holding of *Leiter* is that the Anti-Injunction Act does not apply to suits brought by the United States."); *United States* v. *Lemaire*, 826 F.2d 387, 388 n.2 (5th Cir. 1987) (The Anti-Injunction Act "does not prevent the United States, or one of its agencies, from acting to protect a federal interest."), cert. denied, 485 U.S. 960 (1988); *United States* v. *Composite State Bd. of Med. Exam'rs, State of Ga.*, 656 F.2d 131, 134 (5th Cir. 1981) ("[T]he Anti-Injunction Act is inapplicable when the United

States is the federal plaintiff."); *Henry* v. *First Nat'l Bank of Clarksdale*, 595 F.2d 291, 308 (5th Cir. 1979) ("[T]he Anti-Injunction Act, 28 U.S.C. s 2283, does not apply when the United States seeks to stay proceedings in a state court."), cert. denied, 444 U.S. 1074 (1980); *N.L.R.B.* v. *Roywood Corp.*, 429 F.2d 964, 970 (5th Cir. 1970) ("[I]t is settled law that the prohibition of the anti-injunction statute does not apply to the Government of the United States.").

In these cases, it was the presence of the United States as a party, not the particular statutory or remedial context in which it sued, that triggered the exception. In *Leiter Minerals*, the Supreme Court concluded that application of the Act to the United States would not further the Act's federalism objective:

> The [Anti-Injunction Act] is designed to prevent conflict between federal and state courts. This policy is much more compelling when it is the litigation of private parties which threatens to draw the two judicial systems into conflict than when it is the United States which seeks a stay to prevent threatened irreparable injury to a national interest.

352 U.S. at 225-226. On the other hand, application of the Act would significantly harm the federal government's interests:

> The frustration of superior federal interests that would ensue from precluding the Federal Government from obtaining a stay of state court proceedings except under the severe restrictions of 28 U.S.C. s 2283 would be so great that we cannot reasonably impute such a purpose to Congress from the general language of 28 U.S.C. s 2283 alone.

*Id.* at 226; see also *N.L.R.B.* v. *Nash-Finch Co.*, 404 U.S. 138, 146 (1971) ("The purpose of § 2283 was to avoid unseemly conflict between the state and the federal courts where the litigants were private persons, not to hamstring the Federal Government and its agencies in the use of federal courts to protect federal rights."). *Leiter Minerals* also relied on the principle that a general statute like the Anti-Injunction Act will not be read to limit the United States' "pre-existing rights or privileges," unless the limitation is express. 352 U.S. at 224-225.

Appropriately, this Court has continuously recognized that the presence of the United States as a party means the Anti-Injunction Act does not apply. See *Composite State Bd. of Med. Exam'rs*, 656 F.2d at 136 (explaining that the Anti-Injunction Act's purpose is served when litigants are private individuals but not when "United States seeks relief against a state or its agency, [and thus] the state and federal governments are in direct conflict before they arrive at the federal courthouse"); *Roywood*, 429 F.2d at 970 ("[T]here is not the need for an anti-injunction statute [when the United States is a party] that there is in the case of litigation between private parties."). In *United States* v. *Wood*, 295 F.2d 772 (5th Cir. 1961), cert. denied, 369 U.S. 850 (1962), this Court specifically rejected defendants' argument that the Anti-Injunction Act applies when the United States sues on behalf of private individuals. This Court reasoned that "[i]t is * * *

difficult to see how the nature of the interests the United States asserts can make a difference *so long as the United States asserts them*." *Id.* at 779 (emphasis added).

By making the United States the litigant in FHA election cases, Congress created the possibility of a federal/state conflict where a state court action frustrates the interest the United States seeks to vindicate. The *Leiter Minerals* exception was created for precisely this situation, so that the "superior federal interest" can be vindicated in spite of the Anti-Injunction Act. And indeed, in this case, the panel recognized that the fact that the United States was suing indicated that it was a "superior federal interest" the United States was seeking to enforce.[1] The panel thus should have concluded that the Anti-Injunction Act did not apply to this suit by the United States.

**B.**

**THE PANEL'S DECISION CONFLICTS WITH *LEITER MINERALS'* HOLDING THAT GENERIC STATUTORY LANGUAGE CANNOT BE READ TO LIMIT THE UNITED STATES' PREEXISTING RIGHT TO ENJOIN STATE PROCEEDINGS**

The panel purported to recognize the general principle that the Anti-Injunction Act does not bar suits by the United States. Slip Op. 6. But the panel "perceive[d] that Congress intended to invalidate this exception in the statutory

[1] The panel "agree[ed] with the government that there is a superior federal interest at play in this case." Slip Op. 10; *id.* at 10 n.24. ("[T]he government is acting in the public interest when it directly enforces the FHA.").

provision at issue in this case," (Slip Op. 6-7) and held that the general principle does not apply to cases brought under 42 U.S.C. 3612(o). That holding is based on a fundamental misunderstanding of the FHA's remedial scheme and conflicts with *Leiter Minerals*. As the Supreme Court has explained, "[f]or the Federal Government and its agencies, the federal courts are the forum of choice. For them, as *Leiter* indicates, access to the federal courts is 'preferable in the context of healthy federal-state relations.'" *Nash-Finch Co.*, 404 U.S. at 147 (quoting *Leiter Minerals*, 352 U.S. at 226). Because the United States has a general "right * * * to enjoin state court proceedings whenever the prerequisites for relief by way of injunction be present," the Supreme Court held that "general language" in a statute cannot be read to take that right away in the absence of "inferences clearly to be drawn" from relevant statutory materials. *Leiter Minerals*, 352 U.S. at 225.

The general language of the FHA does not satisfy the *Leiter Minerals* test, because it does not clearly deprive the United States of its right to enjoin state court proceedings. Accordingly, the panel erred in concluding that Congress intended in the FHA to override the general principle that the Anti-Injunction Act does not bar the United States from seeking to enjoin state court proceedings. There is no indication in the statutory text or legislative history that Congress intended that unprecedented result. To the contrary, Congress preserved the full range of remedial options for the United States when it sues under the Act.

A brief exposition of the FHA's remedial structure helps to provide context. The FHA gives victims of housing discrimination several options for seeking relief. A person can file a lawsuit in federal district court under Section 3613(a). The relief available in that type of suit, as stated in Section 3613(c)(1) & (2), includes actual damages, equitable relief, punitive damages, and reasonable attorney's fees and costs for prevailing parties other than the United States. Or, the person can file a complaint with HUD. HUD then investigates and, if it determines that there is "reasonable cause" to believe an FHA violation occurred (42 U.S.C. 3610(g)(1)), the case may proceed down either of two paths. First, the case can be resolved in an administrative hearing (42 U.S.C. 3612(b)) where the aggrieved person may obtain appropriate relief under 42 U.S.C. 3612(g)(3) including actual damages, injunctive or other equitable relief, and civil penalties which accrue to the United States.

The second path, the one at issue here, is election. This allows either the victim or the housing provider against whom claims have been made to decide to have the case adjudicated in federal court rather than in an administrative proceeding. 42 U.S.C. 3612(a). When an election is made, the FHA states that the Attorney General "shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection." 42 U.S.C. 3612(o)(1). Section 3612(o)(3) defines the relief available:

> In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection.

The panel read "may grant as relief any relief which a court could grant * * * in a civil action under section 3613" as limiting the United States, in an election suit, to obtaining only the precise relief that a private plaintiff could obtain in her own FHA suit. The panel's reading misconstrues the FHA. And that reading certainly fails to identify the clear congressional statement necessary, under *Leiter Minerals*, to remove the United States' general right to enjoin state court proceedings.

The FHA's text and structure make clear that the language on which the panel relied does not limit the United States to only the relief that the particular aggrieved party could receive if she filed her own FHA action. First, Section 3612(o)(3) says that the court may grant any relief that "a court could grant" in a Section 3613 action. The provision does not say that the court may grant only the relief "a court could grant to the particular claimant" in a Section 3613 action.

Second, in the *very next sentence* following the "any relief which a court could grant" sentence in Section 3612(o)(3), Congress provided that "[a]ny relief so granted that would accrue to an aggrieved person in a civil action commenced

by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection." If the panel's interpretation were correct, Congress would have had no need to specify that any relief "that would accrue to an aggrieved person" in a Section 3613 action must accrue to that person in an election suit: Under the panel's interpretation of the first sentence of the subsection, the United States could never obtain relief that would *not* accrue to an aggrieved person in a Section 3613 action. The second sentence of Section 3612(o)(3) shows that Congress knew how to specify the relief that would accrue to the aggrieved person. In the first sentence of that subsection, Congress notably authorized "any relief which a court could grant" in a Section 3613 action—not merely the relief that would accrue to an aggrieved person.[2] It is

[2] The FHA specifically contemplates that a court could grant relief in a Section 3613 action that an individual aggrieved person could not obtain. The FHA explicitly authorizes the United States to intervene, and obtain its own relief, in a private Section 3613 suit. See 42 U.S.C. 3613(e). Unfortunately, as one district court has pointed out, Section 3613(e) contains what clearly is a typographical error. *United States* v. *County of Nassau, N.Y.*, 79 F. Supp. 2d 190, 197 (E.D.N.Y. 2000). The Act states that the Attorney General "may obtain such relief as would be available to the Attorney General under section 3614(e) of this title." 42 U.S.C. 3613(e). But the intended reference is to Section 3614(d), which defines the relief that may be granted in a pattern or practice case brought under Section 3614 and lists remedies including "a permanent or temporary injunction." 42 U.S.C. 3614(d). Section 3614(e) does not make any relief "available to the Attorney General." See 42 U.S.C. 3613(e). Because the United States may obtain equitable relief to vindicate the public interest including "a permanent or temporary injunction" when it intervenes in a private Section 3613 suit, it can also obtain that relief under Section 3612(o)(3).

fundamental that courts should "give effect, if possible, to every clause and word of a statute." See *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001) (citation omitted). The panel's reading of the FHA violates this canon.

Third, where Congress limited the relief available to the relief a private plaintiff could obtain, it did so explicitly. Section 3614(e) authorizes an aggrieved individual to intervene in a pattern or practice case brought by the United States, and describes the relief available for such an intervenor. It states "[t]he court may grant such appropriate relief to any such intervening party as is authorized to be granted *to a plaintiff* in a civil action under section 3613 of this title." 42 U.S.C. 3614(e) (emphasis added). Section 3612(o)(3), on the other hand, states "the court may grant as relief any relief which *a court could grant* with respect to such discriminatory housing practice in a civil action under section 3613 of this title" (emphasis added). Both provisions specify the available relief by referring to Section 3613, but only one of them – Section 3614(e) – limits the relief to that which "a plaintiff" could obtain under Section 3613. The mere reference to relief under Section 3613 does not limit the available relief in an election case to relief a private plaintiff could obtain. If it did, Congress would not have specified in Section 3614(e) that it was talking about relief that could be granted "to a plaintiff."

Fourth, the panel's ruling needlessly creates anomalies within the FHA's enforcement structure. Even under the panel's ruling, there is no question that the United States can seek to preliminarily enjoin a state court proceeding, notwithstanding the Anti-Injunction Act, before HUD determines whether there is reasonable cause to believe an FHA violation occurred. 42 U.S.C. 3610(e)(1). But the panel read the statute to say that the United States cannot seek, or perhaps even maintain, the same injunction after HUD determines that there is reasonable cause and an election is made. Likewise, the panel recognized that Congress authorized *administrative law judges* to enjoin state court proceedings in Section 3612(g)(3). There is no reason, in the text and structure of the FHA or in the *Leiter Minerals* doctrine itself, to infer that Congress gave Article III judges *less* power to enjoin state court proceedings than it gave to ALJs. Cf. *Federal Mar. Comm'n* v. *South Carolina State Ports Auth.*, 535 U.S. 743, 760 n.11 (2002) (suggesting that it is a greater affront to federalism to require states to submit to the jurisdiction of an administrative tribunal than to "an Article III court presided over by a judge with life tenure nominated by the President of the United States and confirmed by the United States Senate").

Fifth, far from providing "significant legislative history pointing toward" the conclusion that Congress subjected the United States to the Anti-Injunction Act in this context, *Leiter Minerals*, 352 U.S. at 225, the legislative record of the FHA

further confirms that the federal government may obtain relief under Section 3613 that would not be available to an aggrieved individual. Congressman Hamilton Fish, Jr., the principal sponsor of the Fair Housing Amendments Act of 1988, offered an amendment on the floor of the House that was adopted and, in relevant part, enacted as Section 3612(o). See 134 Cong. Rec. 15,848 (1988). He was asked specifically about the effect of Section 3612(o)(3)'s reference to the relief that may be granted under Section 3613: "Does this language mean that compensatory or punitive damages could be awarded that would accrue to the benefit of the U.S. Government?" 134 Cong. Rec. 15,850 (1988) (Statement of Rep. Edwards). Congressman Fish answered no, explaining that any damages "would be paid to the aggrieved person, not the Government." *Ibid.* He went on to say, however, that "[t]he relief that would be awarded to the Government *in its own right* would be the injunctive or equitable relief that is described in Section 813(c) [Section 3613(c) of the Code]." *Ibid.* (emphasis added). So the author of Section 3612(o)(3) clearly understood its language to allow the United States to seek equitable relief that goes beyond the relief an aggrieved person could obtain in a private suit.

In fact, since Section 3612(o)'s enactment in 1988, the United States has interpreted it to allow – and routinely seeks – equitable relief that goes beyond that the particular claimant could seek in a private suit. Equitable remedies such as

compelled reporting, training, and adoption and implementation of reasonable accommodation and nondiscrimination policies are typically the best ways to ensure that housing providers stop discriminating.

* * * * *

The panel's ruling conflicts with consistent rulings of this Court and the Supreme Court going back to 1957, and it takes away a tool that Congress specifically gave to the federal government in the FHA. En banc review is appropriate to secure the uniformity of this Court's decisions and vindicate Congress's grant of authority to the United States.

## CONCLUSION

The Court should grant United States' petition for rehearing en banc.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on September 30, 2010, an electronic copy of the UNITED STATES' PETITION FOR REHEARING EN BANC was transmitted to the Court by means of the appellate CM/ECF system. Twenty hard copies of the same have been prepared and are ready to be sent at the Court's request.

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# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
**FILED**
August 16, 2010

Lyle W. Cayce
Clerk

No. 09-40734

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HENRY BILLINGSLEY, *et al.*,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas

Before SMITH, WIENER, and ELROD, Circuit Judges.

WIENER, Circuit Judge:

This case involves a dispute between, on the one hand, a married couple who own and occupy a home in Air Park subdivision ("the Picks") and, on the other hand, that subdivision's zoning and covenants compliance authority, *viz.*,

the Air Park Dallas Zoning Committee, as well as its four members, Air Park GP, L.L.C., and Crow-Billingsley Air Park, Ltd. (collectively, "the Committee") over a footbridge that the Picks installed on their property in violation of restrictive covenants. The Committee sought to enforce the covenants in state court, and the Picks filed a Fair Housing Act ("FHA") counterclaim. The parties settled the lawsuit, but subsequently disagreed whether the settlement agreement required the Picks to remove the footbridge. The Committee sought to enforce the settlement agreement in the state court proceedings. After interpreting the settlement agreement in favor of the Committee, the state court mandated that the Picks remove the footbridge, which they have continually refused to do.

The Department of Justice ("the government") then brought an action in federal court on behalf of the Picks, and against the Committee, for violation of the FHA, and quickly moved for a preliminary injunction to restrain the Committee from removing the footbridge. The Committee raised two defenses: First, the Committee claimed that the allegedly offending conduct was protected by the First Amendment's guarantee of the right to "petition the Government for a redress of grievances,"[1] as defined by the Supreme Court through the *Noerr-Pennington* Doctrine.[2] Second, the Committee claimed that a federal court could not enjoin the Committee or the state court from litigation under the settlement agreement without violating the Anti-Injunction Act ("the Act").[3] The district court declined to rule that either of these defenses was applicable and granted the government's preliminary injunction. As we hold that the Anti-Injunction Act applies, we vacate the district court's grant of the preliminary injunction.

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[1] U.S. Const. amend. I.

[2] *See generally E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965).

[3] 28 U.S.C. § 2283.

Consequently, we need not, and therefore do not, address the Committee's *Noerr-Pennington* argument.

## I. FACTS AND PROCEEDINGS

Alfred and Sheryl Pick reside in the Air Park Estates subdivision in Plano, Texas. Mrs. Pick suffers from adrenomyeloneuropathy, a progressive neurological disorder that affects the spinal cord and causes difficulty in walking and balance. In 2002, the Picks installed a two-foot wide, arched footbridge with handrails in front of their home, so that Mrs. Pick could safely cross the drainage ditch that lies between their home and the street. The footbridge extended beyond the Picks' property line and into the right-of-way of the contiguous roadway, in technical violation of restrictive covenants that required the Committee's permission to make these types of installations.

In 2004, the Committee resolved to require the Picks to remove the footbridge because it extended into the right-of-way. The Committee sent the Picks two letters instructing them either to remove the footbridge or face legal action. The Picks responded, emphasizing that the footbridge was necessary for Mrs. Pick to reach the street safely. The Committee continued its insistence that the Picks remove the footbridge, but they did not comply.

After the passage of close to a year, the Committee renewed its demands, but the Picks continued to refuse to remove the footbridge. The Committee filed suit against Mr. Pick in Collin County, Texas state court. In the state court suit, the Committee alleged that Mr. Pick had violated restrictive covenants to which he was bound by installing the footbridge without authorization and by refusing to remove it following receipt of the Committee's demands to do so. One of the Committee's prayers for relief was for an injunction mandating that Mr. Pick remove the footbridge. Mr. Pick filed a counterclaim in the state court, asserting that the Committee had discriminated against the Picks in violation of the FHA. The FHA requires the Committee to make reasonable accommodations and permit reasonable modifications for qualifying disabilities.

During the state court litigation, Mrs. Pick contacted the Committee and emphasized that she suffered from a disability that required her to retain the footbridge in its current form and location. The Committee refused Mrs. Pick's request, but suggested an alternative, *viz.*, an at-grade footbridge without handrails. Mrs. Pick wrote back to the Committee nearly a month later, indicating that she was willing to accept an alternative footbridge so as to end the lawsuit although she emphasized that the alternative would not be ideal. The Committee accepted Mrs. Pick's alternative design.

The lawsuit then went to mediation, and the parties reached a settlement. Following the settlement, the parties disagreed whether that agreement required the Picks to remove the footbridge. The Committee sought to enforce the settlement agreement in state court. After the Committee filed a motion for summary judgment, the state court ruled in its favor. The judgment of the state court dealt only with the meaning of the settlement agreement, which it interpreted to require that the Picks remove the footbridge after the Committee approved an alternative design. The Committee approved an alternative design, although there is some dispute as to whether the design it approved was the one proposed by Mrs. Pick. The Picks continued to refuse to remove the footbridge.

While the state court lawsuit was pending, the Picks filed a complaint with the Department of Housing and Urban Development ("HUD"), claiming that the Committee was violating the FHA by failing to accommodate their footbridge. After investigating the complaint, HUD issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), asserting that the Committee was violating the FHA. The Committee chose to have the claims heard in federal court, as is permitted in 42 U.S.C. § 3612(a). HUD referred this case to the Department of Justice, which brought the claim by filing the instant action in district court pursuant to 42 U.S.C. § 3612(o). In its complaint, the government asserts that the Committee violated the FHA by failing to make reasonable

accommodations or modifications for Mrs. Pick's disability, and not treating her on equal terms.

The government quickly moved for a preliminary injunction to bar the Committee from removing the footbridge while the federal court action was pending. The Committee opposed the preliminary injunction on two theories. First, it claimed that all the actions at issue were protected by the *Noerr-Pennington* Doctrine. The Committee asserted that if the district court could not address these actions, there would be no likelihood of success on the merits at trial, and thus the preliminary injunction could not be issued. Second, the Committee claimed that the Anti-Injunction Act prohibited the district court from issuing an injunction that would conflict with the yet-to-be-enforced mandate of the state court, which requires the Picks to remove the footbridge. The district court rejected both contentions and granted the preliminary injunction after applying the well known four-factor test.[4] The Committee timely filed a notice of appeal.

## II. Analysis

### A. Standard of Review

We review a grant or denial of a preliminary injunction under an abuse-of-discretion standard.[5] We review *de novo* a district court's legal determination of the applicability of the Anti-Injunction Act.[6]

### B. The Anti-Injunction Act

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[4] The test requires the court to determine whether there exist: "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest." *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009).

[5] *See Lakedreams v. Taylor*, 932 F.2d 1103, 1107 (5th Cir. 1991).

[6] *See United Offshore Co. v. S. Deepwater Pipeline Co.*, 899 F.2d 405, 407 (5th Cir. 1994).

The Act states that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."[7] The Act is "designed to prevent conflict between federal and state courts."[8] The Act does not prohibit only injunctions directed at state courts themselves, but also injunctions directed at private parties when the injunction would prohibit using the results of a state court proceeding.[9] As here the federal court is issuing an injunction that would invalidate the enforcement of a state court judgment, the only issue in this case is whether the government can avail itself of one of the limited exceptions to the Act.[10] One of these exceptions the one acutely at issue in this case[11] allows for the United States to bypass the strictures of the Act when it seeks an injunction in a federal suit.[12] We perceive that Congress intended to invalidate this exception in the

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[7] 28 U.S.C. § 2283.

[8] *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 225 (1957).

[9] *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970).

[10] The government argues that the Anti-Injunction Act does not apply because the state court trial has ended. Because the judgment has yet to be enforced, however, the Act clearly applies. Justice Brandeis noted that the "term ['proceedings'] is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process . . . . [It] applies not only to an execution issued on a judgment, but to any proceeding supplemental or ancillary taken with a view to making the suit or judgment effective." *Hill v. Martin*, 296 U.S. 393, 403 (1935) (footnotes omitted).

[11] The government has not briefed or raised the exception for a stranger to the state court proceeding, *see Chezem v. Beverly Enterprises-Texas, Inc.*, 66 F.3d 741, 742 (5th Cir. 1995) (noting that the Anti-Injunction Act does not apply to one who was neither a party nor a privity of a party in a state court action), so this argument is waived. Even if it were not waived, however, the government could not prevail on this argument because it cannot show – as it must – that it was not in privity with the Picks. *See Vines v. Univ. of La. at Monroe*, 398 F.3d 700, 708 (5th Cir. 2005) (noting that the government was in privity with the private individuals because the EEOC sought "private benefits for individuals.").

[12] *See Leiter Minerals*, 352 U.S. at 225-26 (noting that the United States should not be barred by the Anti-Injunction Act when it seeks an injunction because "[t]he frustration of superior federal interests that would ensue from precluding the Federal government from

statutory provision at issue in this case, so we conclude that the United States cannot bypass the Act. Our conclusion is strengthened by the Supreme Court's advice regarding the Act: "Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed . . . the fundamental principle of a dual system of courts leads inevitably to that conclusion."[13]

Here, the government sued the Defendants-Appellants under 42 U.S.C. § 3612, the statute that allows the Attorney General to commence "a civil action on behalf of the aggrieved person."[14]

> In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief[15] any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title.[16]

Section 3613 of the relevant title is the one that allows private parties to enforce the FHA on their own behalf. An individual suing under § 3613 would not enjoy the exception to the Act that the United States claims here; he would thereby not be entitled to the relief sought in this case, i.e., a preliminary injunction to prevent the enforcement of the state court's ruling. A plain reading of § 3612 convinces us that the government cannot obtain a preliminary injunction in this case because a private plaintiff could not have done so under § 3613.

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obtaining a stay of state court proceedings . . . would be so great that we cannot reasonably impute such a purpose to Congress from the general language of [the Act].").

[13] *Atl. Coast Line*, 398 U.S. at 297.

[14] 42 U.S.C. § 3612(o)(1).

[15] In the absence of any limiting phrases, we interpret "relief" to include any type of relief a district court could grant – such as the preliminary injunction here – not just final-judgment relief.

[16] 42 U.S.C. § 3612(o)(2).

After analyzing the rest of the FHA, we are satisfied that Congress firmly intended to limit the remedies available to the government when it sues on behalf of an individual under § 3612. In juxtaposition is § 3614, which allows the Attorney General to bring a case in federal court to remedy a "pattern or practice of resistance to the full enjoyment of any rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance."[17] Section 3614 itself does not limit the remedies available to the government; in fact, § 3614 lists the specific types of relief available to the government, "including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter."[18] Congress could not have been unaware of this difference between §§ 3612 and 3614. We conclude that Congress intended only limited remedies under § 3612, *viz.*, those that a private plaintiff would receive under § 3613.

The government's counterarguments are unavailing. Even though the Uniformed Services Employment and Reemployment Rights Act of 1994 is similar to § 3612 in allowing the Attorney General to "appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted,"[19] that statute does not limit its remedies. Rather, it specifically outlines a number of remedies that are available to the government, including both monetary damages and injunctions.[20] Further, this statute provides that these remedies are not to diminish the other rights and benefits provided under the chapter.[21]

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[17] 42 U.S.C. § 3614(a).

[18] 42 U.S.C. § 3614(d)(1)(A).

[19] 38 U.S.C. § 4323(a)(1).

[20] 38 U.S.C. § 4323(d)(1), (e).

[21] 38 U.S.C. § 4323(d)(2)(A).

This statute strengthens our interpretation of § 3612 by showing that Congress affirmatively granted remedial powers in 38 U.S.C. § 4323, but expressly limited the remedial powers available under § 3612. The government also cites to Title VII,[22] but its argument thereunder fails for the same reasons.

Neither does the government persuade us of the correctness of its interpretation of § 3612 when it points to § 3612's statement that "[a]ny relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection."[23] The government contends that this language would be meaningless unless the United States could secure relief that is not available to the private party. We disagree. A more reasonable interpretation of this language is the one which accepts that whatever relief the United States receives which would be limited to the relief that a private plaintiff could receive if he sued successfully under § 3613 would accrue to the private party.

The government also asserts that it would be illogical for § 3612 to allow for the issuance of injunctions when an administrative law judge finds there is imminent discriminatory housing practice as the statute allows in § 3612(g)(3) but to disallow injunctive relief when the government brings the action in federal court. This argument only bolsters our holding: Congress explicitly granted remedial powers to the administrative law judge, demonstrating that it knows how to do so, but did not grant such powers to the federal courts. This may appear to be anomalous on the part of Congress, but we do not inquire into the reasons for its decisions.

Lastly, the government insists that the exception should apply here because there is a superior federal interest in the enforcement of the FHA.

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[22] 42 U.S.C. § 2000e-5(f).

[23] 42 U.S.C. § 3612(o)(3).

Although we agree with the government that there is a superior federal interest at play in this case,[24] we disagree with the government's argument that this interest should overcome the limitations in § 3612. Perhaps the absence of a superior federal interest may preclude the application of the exception, but the presence of such an interest is not enough to overcome the specific limitations in § 3612.

## III. CONCLUSION

We hold that the Anti-Injunction Act is applicable in this case and that the government cannot avail itself of the exception for the United States when it seeks an injunction because of § 3612's explicit limitations on the remedial powers of the federal courts. As we decide this appeal under the Anti-Injunction Act, we need not, and therefore do not, address the Committee's alternative contention that the ever-expanding *Noerr-Pennington* Doctrine protects their behavior. Accordingly, we VACATE the district court's grant of a preliminary injunction and REMAND this case to that court for further proceedings consistent with this opinion.

[24] While the government has not identified a pattern or practice, the government is acting in the public interest when it directly enforces the FHA. The Supreme Court has said as much in the Title VII context, *see General Tel. Co. of the Northwest v. E.E.O.C.*, 446 U.S. 318, 326 (1980), and we conclude that this rationale applies equally here.