

Medellin v. Texas (06-984)

Appealed from the Texas Court of Criminal Appeals (Nov. 15, 2006)

Oral argument: Oct. 10, 2007

Are the judgments of the International Court of Justice (ICJ) binding on U.S. state courts pursuant to federal treaty obligations? If not, does the President have constitutional authority to make them binding? The case of José Ernesto Medellín, a convicted murderer and rapist on death row in Texas, brings these questions before the Supreme Court. Pursuant to the ICJ's *Avena* decision and a memorandum issued by the President directing state courts to give effect to it, Medellín argues that Texas courts must review and reconsider his case. Texas, on the other hand, contends that the President lacks the authority to unilaterally transform an international obligation into domestic law. Texas also argues that the President's memorandum infringes on the sovereignty of the states. The Court's ruling will reflect its views on the separation of powers between the three branches of government and clarify the President's authority in foreign affairs. The outcome of the case will determine whether Medellín will receive the benefit of his Vienna Convention rights from a U.S. state and could have an adverse impact on the willingness of foreign nations to enter into future treaties with the United States.

Facts

José Ernesto Medellín, a Mexican citizen, was convicted of capital murder in Texas for his role in the 1993 rape and murder of two teenage girls in Houston. A Texas state court sentenced him to death in 1994, and the Texas Court of Criminal Appeals upheld his conviction on direct appeal in 1997.

Five weeks after Medellín's direct appeal failed, the Mexican consulate first learned of the proceedings against him and began to assist him. Article 36 of the Vienna Convention on Consular Relations, to which the United States and Mexico are parties, requires authorities who accuse foreign nation-

als of crimes to inform them of their right to contact their nation's consulate. Alleging that the United States had violated the Vienna Convention rights of Medellín and 51 other Mexican nationals on death row, Mexico brought a legal action, *Case Concerning Avena and Other Mexican Nationals (Avena)*, against the United States to the International Court of Justice.

Medellín challenged his conviction by filing a habeas corpus petition in Texas state court, claiming for the first time that Texas had violated his Vienna Convention rights. The trial court denied his petition, finding that the Vienna Convention does not grant privately enforceable rights to individuals. The Texas Court of Criminal Appeals adopted the trial court's findings and denied Medellín's petition. Medellín then unsuccessfully sought a writ of habeas corpus in federal court on Vienna Convention (and other) grounds.

Meanwhile, the ICJ decided in *Avena* that the United States had violated the Vienna Convention rights of Medellín and others by failing to notify them of their right to contact the Mexican consulate. The ICJ directed the United States to reconsider the criminal cases of the wronged individuals to determine whether these violations caused actual harm. President Bush declared in a Presidential Memorandum that the United States would implement the *Avena* decision by "having [s]tate courts give effect to the [] decision in accordance with general principles of comity. ..." The Supreme Court initially granted Medellín's case a writ of certiorari but then denied review pending a reaction by Texas courts to *Avena* and the President's declaration.

Medellín again unsuccessfully sought habeas corpus relief in Texas state court. He then appealed this denial to the Supreme Court, which granted a writ of certiorari on April 30, 2007.

Are State Courts Bound to Give Effect to *Avena* and the Vienna Convention?

Medellín claims that, as a matter of both international and U.S. law, the *Avena* judgment is binding on state

courts. Medellín argues that by ratifying the ICJ statute and the Optional Protocol, the United States agreed that the ICJ's decision in a case to which the United States was a party would have "binding force ... between the parties and in respect of that particular case" and be "final and without appeal." Medellín points out that he is a Mexican national, and his case was specifically adjudicated in *Avena*; therefore, the United States is undisputedly bound "in respect of his particular case."

Texas responds that during its last term, in *Sanchez-Llamas v. Oregon*, the Supreme Court concluded that ICJ decisions do not bind U.S. courts, because U.S. courts have final authority over the interpretation of U.S. law. However, that case is arguably inapplicable to Medellín, because *Sanchez-Llamas* was not a named party before the ICJ, whereas Medellín was named in *Avena*. Nevertheless, Texas argues that Medellín is not entitled to a different result merely because *Avena* mentioned him by name. Texas points out that only nations may bring cases in the ICJ, and only nations are bound by its decisions. Moreover, Texas argues, the ICJ's sole purpose is to resolve disputes between nations under international law, as evidenced by the fact that the sole enforcement mechanism is action taken by the United Nations Security Council.

Although ICJ rulings are binding on nations, Medellín quotes Article VI, Clause 2 of the Constitution in arguing that, once the United States ratified the Optional Protocol, the United Nations Charter, and the ICJ Statute, "the Judges [of Texas were] bound thereby, any Thing in the Constitution or Laws of that State to the Contrary notwithstanding." According to this argument, the Constitution places the treaty-making power in the hands of the federal government by including it among the Article II powers of the executive branch in order to enable the United States to negotiate treaties with foreign powers as a single nation. Furthermore, Article VI, Clause 2 of the Constitution explicitly stipulates that treaties bind the nation as a whole and are not subject to

policies of the individual states. Otherwise, Medellín urges, foreign nations would hesitate to enter into future treaties with the United States, because they could not be sure that every U.S. state would provide uniform enforcement.

Even if the United States must give effect to the ICJ ruling in *Avena*, Texas argues that Medellín has already received the reconsideration *Avena* calls for. *Avena* requires the United States to determine whether, in violating Medellín's Vienna Convention rights, the United States actually prejudiced Medellín. In denying Medellín's first state petition for habeas corpus, the Texas Court of Criminal Appeals found that any violation of Medellín's Vienna Convention rights was not prejudicial. Hence, Texas maintains that it has already "given effect" to *Avena* in Medellín's case.

The United States maintains that, in general, submitting to the judgments of international tribunals is not in the best interests of the United States, because doing so undermines the Supreme Court's power to interpret U.S. federal law. Nevertheless, the United States argues that states should respect the Vienna Convention in order to help protect U.S. citizens detained abroad. Texas counters that the United States could protect U.S. nationals by seeking the voluntary cooperation of the states or working with Congress to develop targeted federal legislation.

Did the President Exceed His Foreign Affairs Authority?

Medellín argues that the President has the authority to direct Texas to implement the ICJ's ruling against the United States, because the Constitution grants the President independent authority to formulate and execute the nation's foreign policy. According to the argument, the President recognized that the United States had agreed to submit the dispute to the ICJ for resolution, and that the United Nations Charter therefore obligates the United States to comply with the ICJ's decision. Furthermore, the President may enforce the United States' obligations under the Vienna Convention, because doing so will protect the interests of U.S. citizens detained abroad, smooth

foreign relations, and demonstrate the United States' commitment to the rule of law.

Texas argues that the President went beyond his authority to conduct the nation's foreign affairs and that announcing that states would enforce *Avena* was an unconstitutional attempt to create domestic law. Texas contends that a treaty creates domestic law only if its text reflects an agreement between the President and the Senate to do so. The President is bound by conditions that the Senate imposes when it grants its consent to a treaty. Texas claims that the President's authority must be curbed when his unilateral actions infringe upon the states' traditional authority over their own judicial departments and criminal justice systems.

Medellín responds that the President has the constitutional authority to choose the means by which the United States will comply with its treaty obligations. Medellín alternatively argues that the United States agreed to be bound by the ICJ decision when it became a party to the United Nations Charter, the ICJ Statute, and the Optional Protocol. The Constitution expressly authorizes these types of treaties, and all three have been approved by the Senate as well as the President.

Despite congressional approval of these statutes, Texas argues that the Presidential Memorandum contradicts the will of Congress. First, the memorandum contravenes the Senate's express understanding that the treaty created no individual rights. Second, the memorandum contradicts the Senate's express understanding that ICJ decisions can be enforced only through diplomatic or political means. Although there exists, in principle, an obligation under international law to respect the ICJ's judgments, the power to enforce them is vested exclusively in the United Nations Security Council, leaving the U.S. President no enforcement authority. Third, the memorandum conflicts with the Senate's express understanding that the United States' obligations under the Vienna Convention did not include any changes in domestic law. Fourth, the memorandum is incompatible with the deference to state court criminal procedures required by Congress in the Antiterrorism and Effective

Death Penalty Act of 1996.

Texas concludes that, if the United States were to prevail with its broad theories in support of the "unprecedented" Presidential Memorandum, that precedent could justify constitutional overreaching by future Presidents. In the context of this case, Texas urges, as illustration, that little would prevent a President from ordering federal district courts to "review and reconsider" final federal habeas determinations, from ordering state or federal courts to annul all 51 convictions and sentences addressed in *Avena*, or from ordering the governors of the respective states to grant full pardons to all 51 convicted murderers.

Conclusion

Like *Hamdan v. Rumsfeld*, last term's high-profile decision, in which the Supreme Court denied presidential authority to unilaterally establish military commissions to try military detainees, this case adds fodder to the ongoing controversy over the scope of the President's powers. If the President may unilaterally declare that an ICJ decision is binding on the courts, this could potentially convert the provisions of any non-self-executing treaty into new domestic law. On the other hand, a decision for the state of Texas could maintain state sovereignty and judicial independence at the cost of discouraging foreign nations from entering into treaties with the United States. **TFL**

Prepared by Tiffany Sepulveda and Bryan Hall and edited by Ferve Ozturk.

New York State Board of Elections v. Torres (06-766)

Appealed from the U.S. Court of Appeals for the Second Circuit (Aug. 30, 2006)
Oral argument: Oct. 3, 2007

Margarita López Torres, nine other judicial candidates, and voters sued the New York State Board of Elections in federal court, claiming that

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state election laws regulating judicial elections violated the First Amendment rights of party members and candidates. Torres claimed that the state-mandated system by which parties elect nominees makes it impossible, in practice, for candidates without party backing to gain access to the party's nomination ballot. In particular, Torres argued that the system enables party leaders to exert control over the nomination process, creating an environment ripe for abuse of judicial independence. As an example of such abuses, Torres offered her experiences as a judicial candidate: despite enjoying popular support in civil court elections, in multiple district elections she failed to receive the nomination of her party after refusing to follow the demands of party leaders. At issue in this case are the competing First Amendment rights of party members, candidates, and political parties during a party's candidate selection process. The Supreme Court's decision will better define the scope of these rights in a unique situation: an intraparty nominating convention that is mandated and closely regulated by state law.

Facts

New York statutes establish a mandatory multistage nomination process for candidates for the Supreme Court, New York's state trial court of general jurisdiction. In the first stage, party voters in the voting district of each state assembly elect delegates for their political party. The party delegates from the smaller state assembly districts that make up a judicial district then attend the judicial district's nominating convention, at which they nominate candidates for general elections for the Supreme Court. In order to run for the position of party candidate in the general election for Supreme Court justice, delegates must first vote for these candidates to be party nominees.

Although New York is not unique in its use of an electoral system to elect judges, the state's system is distinguished by the requirement that voters elect delegates, who in turn elect nominees. In other states where voters elect trial court judges, a candidate may be placed directly on the party's primary

election ballot by meeting simpler requirements, such as submitting filings or paying small fees. New York's trial court election system lacks such alternative mechanisms, so that a candidate must win in a party's nominating convention in order to run in the general election as a major party's candidate. Many districts in New York are one-party districts, in which candidates are cross-endorsed by the major parties. Torres argues that this system enables party leaders to control elections. The state legislature established the current convention system in the 1920s in response to judicial elections that used direct elections (the primary system) that were overly dependent on candidates' campaigning and fund-raising abilities, rather than their qualifications.

Torres sued in federal district court in March 2004, alleging that the nomination process violated party voters' and candidates' First Amendment rights to free association by preventing competitive elections. The Eastern District of New York agreed with Torres and ruled that the New York convention system was unconstitutional, because it violated the freedom of association of party voters and candidates seeking party nomination. The district court granted an injunction halting use of the convention system and requiring the use of direct primaries until action could be taken by the state legislature. The New York State Board of Elections appealed the decision, disputing the court's finding that the convention system created an unconstitutional burden and alternatively claiming that, if a remedy was required, the provisions creating burdens should be modified, rather than subverting the legislature by scrapping the system. On appeal, the Second Circuit affirmed the ruling, determining that the lower court had not abused judicial discretion by granting an injunction.

First Amendment Rights of Association

The First Amendment guarantees the freedom of association. Laws that prevent the names of legitimate candidates from appearing on the ballot frustrate the right of association of both the

candidate and his or her supporters. This right applies to a party's nomination processes as well as to the general election. Some circuits, however, have also recognized that political parties themselves have a First Amendment right to organize their nomination process as they see fit. The scope of this right is unclear, as is how it should be weighed against the rights of individual candidates and party members.

The New York State Board of Elections asserts that Supreme Court precedent supports the distinction between general elections and nominations. According to the board, the Supreme Court's decisions in *California Democratic Party v. Jones* and *Eu v. S.F. County Democratic Cent. Comm.* establish that First Amendment protections for political parties are at their maximum during contests for selecting candidates. Therefore, cases limiting state power to restrict access to general ballots do not apply to the intraparty nomination process. Moreover, the New York State Board contends that, under *Storer v. Brown*, an election procedure offends the Constitution only if it creates an "absolute bar" to candidacy. No such "absolute bar" is present in this case, according to the board's interpretation of *Storer*, because (1) there is no constitutional requirement that a candidate be allowed to run as member of his or her party, and (2) it is not an unconstitutional burden for a candidate to run as an independent in order to gain access to the ballot.

Torres also relies on the First Amendment right of free association, but from the opposite perspective. She argues that, under *Eu* and *Jones*, the First Amendment also proves the right of party members to associate with one another and with their candidates of choice. According to Torres, the New York State Board errs in focusing on the intraparty nature of the nominating convention, because the state-mandated nature of the convention systems makes cases limiting states' regulatory power applicable even in an intraparty context. Given the frequency of one-party dominance and cross-endorsements between parties in districts, a nomination is tantamount to winning a victory

in the general election. New York's nominating conventions therefore disenfranchise party voters by translating party members' votes for delegates into blind votes for candidates.

A Controversial Remedy

If the Supreme Court finds that some portion of the New York law violates the First Amendment, the Court will have to consider whether the lower courts overstepped their power when they fashioned a remedy. The District Court ordered, and the Court of Appeals affirmed, that the laws creating nominating conventions for judicial candidates be fully enjoined and judicial nominees be selected by primaries until the legislature crafts an acceptable solution. In doing so, the court relied on § 6-110 of New York's election law, which states that the default nominating process when none is specified is a primary election.

The New York State Board of Elections argues that this remedy was inappropriate, because it violates the principal of judicial restraint and misconstrues legislative intent. In affirming the decision of the District Court, however, the Court of Appeals found that it was appropriate to suspend the whole convention system because it violated the First Amendment of the Constitution. The appellate court also argued that this solution demonstrated judicial restraint, because eliminating only parts of the New York law was "tinkering" that was better left to the state legislature and that might create "patchwork chaos" if done by the judiciary. Finally, the court pointed out that the District Court's remedy is only in force until the legislature crafts an acceptable solution, and thus any problem in this area is only temporary.

Implications for Diversity in the Judiciary

This case also may have important implications for the diversity of the New York state bench. The Mid-Manhattan NAACP argues that the convention system has a better track record of nominating minorities than a direct primary has. The Second Circuit, however, was skeptical of this argument, pointing out the large disparities in representation that still exist. The major difference

between these two assessments seems to be that the NAACP is focusing on New York City's judges, whereas the Second Circuit is looking at the state as a whole. Whatever the scope of the analysis might be, it seems reasonable to suggest, as the NAACP does, that, if minority candidates generally have fewer resources to campaign for office, the convention system that the court struck down might allow more minorities to win nominations than the primary system that the court put in its place allowed. Rather than needing to raise money and compete in an open primary, under the convention system a minority candidate (or any candidate, for that matter) only needs to convince the party leaders to support his or her nomination.

Even if minorities benefit from the convention system, however, the legitimacy of this process as a means to obtain minority representation in the judiciary remains in question. Beyond the First Amendment problems with the process, judges chosen solely by party leaders—whether or not they are members of a minority—face a serious question of impartiality and legitimacy. In addition, if the nominations are de facto appointments, this would mean that whatever minority representation there is only exists at the whim of party leaders, and, in theory, this could be taken away just as easily as it is granted.

In the case before it, the Supreme Court will need to carefully balance a number of competing interests. It would be virtually impossible for the Court to craft an opinion that not only fully preserves the First Amendment interests of the nominees, voters, and political parties but also appeases the minority groups looking for greater representation on the bench and respects the will of the New York legislature in writing the laws in question. The Court's decision could be quite important both for First Amendment law and for the determination of the scope of discretion that courts have in correcting laws they find to be unconstitutional. **TFL**

Prepared by Joe Hashmall and Deepa Sarkar and edited by Cecelia Sander.

Board of Education of the City of New York v. Tom F. (06-637)

Appealed from the U.S. Court of Appeals for the Second Circuit (Aug. 9, 2006)

Oral argument: Oct. 1, 2007

The Individuals with Disabilities Education Act (IDEA) gives federal funding to state and local school systems to ensure that children with disabilities receive a free and appropriate public education through individualized educational programs. The 1997 amendments to IDEA provide that parents of disabled children "who previously received special education and related services under the authority of a public agency" are eligible for tuition reimbursement if the school's special education program is deemed inappropriate for the child's educational needs. The New York State Education Department awarded Tom F. a tuition reimbursement for the private school education of his disabled son, Gilbert, and the Board of Education of the City of New York appealed the decision. The board argues that, because Gilbert never attended public school, he does not qualify for a tuition reimbursement. The Supreme Court's interpretation of IDEA will determine whether school boards are required to provide reimbursements to the parents of disabled children who have not previously attended public school. The decision will affect the freedom that public schools have to allocate special education resources as well as the ability of parents to direct special education placement. Full text is available at www.law.cornell.edu/supct/cert/06-637.html. **TFL**

Prepared by William Grimsbaw and Stephen Markus.

Gall v. United States (06-7949)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (May 12, 2006)

Oral Argument: Oct. 2, 2007

In 2000, Brian Michael Gall was involved in a drug ring for approxi-

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mately eight months. Five years later, he pled guilty to conspiracy to distribute a controlled substance. The judge sentencing Gall chose to impose a sentence far below the sentence range recommended by the United States Sentencing Guidelines because of Gall's exemplary and law-abiding behavior after he stopped his participation in the conspiracy. On appeal, this sentence was held unreasonable because of its significant deviation from the sentence range recommended by the guidelines. In two recent cases, the Supreme Court held that requiring a judge to impose a sentence within the range set by the guidelines violates the Sixth Amendment, but that a sentence within the range set by the guidelines can be presumed to be reasonable. Consequently, even though courts are not required to sentence within the range set by the guidelines, it is uncertain how much discretion courts have to depart from the range. The Supreme Court's decision in this case will clarify the role of the Federal Sentencing Guidelines in sentencing decisions as well as what justification is needed for a departure from the sentencing range set by the guidelines. Full text is available at www.law.cornell.edu/supct/cert/06-7949.html. **TFL**

Prepared by Lauren Buechner and Carrie Payne.

Kimbrough v. United States
(06-6330)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (May 9, 2006)

Oral Argument: Oct. 2, 2007

Derrick Kimbrough pled guilty to distributing 50 or more grams of crack cocaine, distributing cocaine, conspiring to distribute 50 grams or more of crack cocaine, and possession of a firearm in connection with a drug-trafficking crime. He was sentenced to 180 months of imprisonment. The prosecution successfully appealed Kimbrough's sentence, because it fell below the minimum prescribed by the Federal Sentencing Guidelines. The U.S. Supreme Court will assess what factors district courts can take into account in establishing criminal

sentences and if, when considering those factors, federal district courts can impose sentences below those set by the guidelines. If the Supreme Court concludes that district courts can rely on reports by the U.S. Sentencing Commission in addition to defendant-specific factors—such as prior criminal records, military participation, and employment status—to impose sentences below the minimums prescribed by the Federal Sentencing Guidelines, sentences for similarly situated defendants will not be consistent and will be determined on an individual defendant, case-by-case basis. Full text is available at www.law.cornell.edu/supct/cert/06-6330.html. **TFL**

Prepared by John Busby and Fritz Ernmann.

Stoneridge Investment v. Scientific-Atlanta
(06-43)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (April 11, 2006)

Oral argument: Oct. 9, 2007

Stoneridge Investment Partners LLC brought a securities fraud class action suit against Charter Communications' vendors, Scientific-Atlanta and Motorola, alleging a scheme in which Charter contracted with the vendors to purchase set-top cable boxes at higher-than-normal prices and sell advertising at higher-than-normal rates. These transactions served to artificially inflate Charter's stock price. The District Court held that Stoneridge's claim was foreclosed by the Supreme Court's decision in *Central Bank N.A. v. First Interstate Bank N.A.*, in which the Court determined that mere "aiders and abettors" of fraud cannot be held liable. The Eighth Circuit affirmed. Thus, the issue before the Supreme Court is whether a party may be held liable for fraud when it made no misleading public statements and had no duty to make disclosures, but engaged in transactions with a public corporation designed to artificially enhance that public corporation's financial statements. How the Supreme Court decides this case may set a new standard for de-

termining whether third parties can be held liable for investor-related fraud. Full text is available at www.law.cornell.edu/supct/cert/06-43.html. **TFL**

Prepared by Eric Finkelstein and Michael Zuckerman.

United States v. Santos (06-1005)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (Aug. 25, 2006)

Oral argument: Oct. 3, 2007

Efrain Santos was convicted of running an illegal gambling business and money laundering. A later Seventh Circuit decision held that, to prove money laundering, the government is required to show that profits from the underlying illegal activity were used to further promote or conceal that activity. Santos brought a collateral attack on his conviction based on this decision. The District Court overturned the money laundering conviction, because it was based on evidence that Santos had used gross receipts, not profits, to promote his gambling ring. The Seventh Circuit upheld that decision, and the government appealed. The government argues that statutory interpretation and practical enforcement considerations mandate a reading that "proceeds" means gross receipts. Santos responds that, in light of the fact that "proceeds" is not defined within the statute, the rule of lenity requires that the Court uphold the Seventh Circuit's more restrictive reading of the term. The outcome of this case will affect money laundering prosecutions tied to a wide variety of illegal activities. Full text is available at www.law.cornell.edu/supct/cert/06-1005.html.

TFL

Prepared by Carrie Evans and Katie Kokkelenberg.

Washington State Grange v. Washington State Republican Party (06-713); ***Washington v. Washington State Republican Party*** (06-730)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 22, 2006)

Consolidated oral argument: Oct. 1, 2007

In 2004, the citizens of the state of Washington passed Initiative 872, instituting a “top-two” primary system, which allows primary voters to vote for any candidate, regardless of party affiliation. The top two candidates emerging from the primary election then advance to the general election. The law also permits candidates for some offices to disclose the name of their preferred political party on the ballot. The Republican Party argues that the law violates the right of association protected by the First Amendment. Washington State Grange argues that a candidate’s personal “preference” serves only as information for the voter, whereas the parties retain the right to nominate and endorse their own candidates. The Court must decide whether top-two primary systems that permit candidates to disclose their party preference on the ballot, without having any formal affiliation with the political party, violate political parties’ associational rights. Full text is available at www.lawcornell.edu/supct/cert/06-713.html. **TFL**

Prepared by Debbie Faulkner and Ginger McCall.

Watson v. United States (06-571)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (July 25, 2006)

Oral argument: Oct. 9, 2007

Following a transaction in which he exchanged illegally obtained prescription drugs for a firearm, Watson was prosecuted under a federal law that prohibits “use” of a firearm during and in relation to a drug-trafficking crime. This conviction carried with it a mandatory five-year prison sentence. Watson pled guilty but reserved the right to challenge whether the agreed-upon facts supported his conviction. The Fifth Circuit affirmed the conviction, finding that receiving a firearm constitutes “use” under the statute and under a Supreme Court decision that

defined “use” as “active employment” of the firearm. Watson argues that receiving a firearm is insufficient to constitute use, whereas the United States contends that both receiving and offering a firearm constitute “active employment” and therefore “use” under the statute. The Court’s decision will set uniform standards for prosecution under this statute throughout the country. Full text is available at www.lawcornell.edu/supct/cert/06-571.html. **TFL**

Prepared by Victoria Bourke and Allison Condon.

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