



Protecting Undocumented Students

Rights and Responsibilities of School Leaders

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Presenters



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Agenda



1. Background

- Fundamental rights – *Plyer v. Doe*, 457 U.S. 202 (1982)
- ICE and immigration enforcement background

2. Campus Security

- ICE and other law enforcement officers on campus

3. Protecting Student Information

- FERPA and student privacy
- Responding to an ICE information request
- Responsible information gathering and record keeping policies

4. What Happened at Honey Grove

- Todd Morrison, Superintendent Honey Grove School District, Texas

5. Federal Immigration Policy Update

- Sasha Pudelski, Advocacy Director, AASA

Ripped from the headlines

Why a Texas school district is helping immigrants facing deportation

- Hechinger Report, January 29, 2019

OKLAHOMA CITY - Growing fears of immigration authorities after a record-setting sweep rounded up hundreds in Mississippi on the first day of school have Oklahoma City Public Schools authorities planning for the possibility here in the Sooner State.

Metro Schools: ICE showed up at Nashville elementary school, sought student records



CIVIC



ICE Raids Send Schools Scrambling

'We have plans that we put in place for school safety and check-out procedures for parents, but there aren't many plans out there for raids,' one administrator says.



Background

Public Education for All Students



Plyler v. Doe, 457 U.S. 202 (1982)

- In 1977, Tyler Independent School District in Texas attempted to implement a policy by which students of undocumented families had to pay \$1,000 a year in tuition to attend otherwise free public schools.
- The Mexican American Legal Defense Fund (MALDEF) challenged the policy and took the case up through the court system to the Supreme Court.
- In 1982, in *Plyler v. Doe*, the United States Supreme Court struck down the District's policy citing that it violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.



What have the courts said since 1982?

- In *League of United Latin American Citizens v. Wilson*, a federal district court in California invalidated a 1992 state ballot initiative that required public school districts not to admit undocumented students.
- In *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, the United States Court of Appeals for the Eleventh Circuit struck down a 2011 Alabama law that required public schools to determine whether enrolling students were undocumented or from undocumented families.
- In *Horton v. Marshall Public Schools*, the United States Court of Appeals for the Eighth Circuit invoked *Plyler* to assert the principle that preservation of school resources was not a valid reason to discriminate against students seeking those resources.

Public Education for All Students



Plyler v. Doe, 457 U.S. 202 (1982)

- Key Takeaways:
 - Public school districts in the United States cannot deny access to free public schools for children in their district on the basis of immigration status.
 - Access to public education includes access to: special education, supplemental education programs, English language learner support, free and reduced price school meals, and extracurricular activities.
 - The government also may not indirectly limit access to public education on the basis of immigration status. This includes restrictions on special fees, reporting of student immigration status to state authorities, and requirements to provide Social Security Numbers prior to enrollment.

Immigration Law and Enforcement



Who enforces the law?

- Immigration law is generally a series of civil laws (e.g. the Immigration and Nationality Act of 1952) that define the statuses related to residency and citizenship within the United States.
- Since **most of immigration law is not criminal law**, it is enforced by administrative agencies of the federal government including:
 - Immigration and Customs Enforcement (ICE): Responsible for immigration related investigations and enforcement within the interior of the country, including detention, deportation, and issues of national security.
 - Customs and Border Patrol (CBP): Responsible for securing the U.S. borders and ports of entry, including responsibilities over trade and travel.
 - U.S. Citizenship and Immigration Services (USCIS): Responsible for providing immigration services such as immigrant benefits, adjudicating petitions for asylum and naturalization, granting work authorization.
- If criminal actions are suspected, immigration law can also be enforced by law enforcement agencies such as state and local police or the Federal Bureau of Investigation (FBI). Some jurisdictions also have partnerships between state and local police departments and federal immigration authorities.



Access to Campus



- 1. What is the constitutional floor that public schools **must** abide by to ensure proper treatment of students?
- 2. What is the extent that public schools **may** provide additional protections to students?

The Fourth Amendment



“The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and **no Warrants** shall issue, but upon **probable cause**, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”



How does the Fourth Amendment apply in schools?

- The courts have developed a complex body of law related to how school officials conduct searches and seizures on campus.
 - *See e.g., Safford Unified School District v. Redding*, 557 U.S. 364 (2009).
- The courts in these cases often grant more deference to school officials because of the school's interest in maintaining a peaceful environment for learning.
- However, the lowered standards for searches and seizures in these cases does not apply to third party government officials that conduct searches and seizures for matters **unrelated to school discipline**.

Law Enforcement on Campus



What is a seizure?

- Only a few court cases have ever addressed how the Fourth Amendment applies to searches and seizures by law enforcement officers in schools. While the Supreme Court has never directly ruled on this matter, the federal circuits agree that when a student is pulled out of class for questioning or for an arrest, a seizure has occurred.
- *See Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009); *Shuman ex rel. Shertzer v. Penn Manor Sch. Dist.*, 422 F.3d 141, 146–47 (3d Cir. 2005); *Wofford v. Evans*, 390 F.3d 318, 325 (4th Cir. 2004); , 327 F.3d 492, 514 (7th Cir. 2003).





What is a seizure?

- Since pulling a student out of class or arresting them on school grounds would constitute a seizure, a government official would only be able to justifiably conduct such a seizure if they have any of the following:
 - A warrant
 - Probable cause to believe that the student has violated the law or has relevant knowledge regarding a crime committed by another person
 - Showing of exigent circumstances
 - Note: No court has determined that there were exigent circumstances in situations involving non-school-related offenses. *See Griffin v. Wisconsin*, 483 U.S. 876, 873 (1987); *Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655–56 (1995). In contrast, one court has stated that the government would need to show some need beyond the “normal need for law enforcement” in order to bypass the warrant requirement. *Greene v. Camreta*, 588 F.3d 1011, 1030 (9th Cir. 2009), *vacated as moot*, 563 U.S. 692 (2011).



What is a search?

- While the Fourth Amendment clearly requires warrants or showings of probable cause for seizures that take place on campus, the law is less clear as to what is required to conduct a search.
- Generally, searches of areas in which a person has a reasonable expectation of privacy require a warrant or a showing of probable cause.
- However, courts have never definitively ruled as to whether students have a reasonable expectation of privacy while in schools.
- Therefore it is possible that government agents could enter school common spaces without committing a per se unreasonable search.



What must a school do to protect Fourth Amendment rights?

- Prevent government officials from pulling students out of class for questioning or arrests unless the government official has (1) a warrant or (2) probable cause.
- Prevent government officials from entering campus to search common areas unless the government official has a reasonable basis for doing so.
- Schools may be held liable for failing to protect students' constitutional rights.
 - *See Henderson v. City of Simi Valley*, 305 F.3d 1052, 1056 (9th Cir. 2002); *see also Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 375–77 (2009)

What more could schools do to protect students?



What may a school do to protect Fourth Amendment rights?

- Even though schools must provide the previously mentioned protections, schools have a reasonable basis in protecting their students even further.
- Schools across the country have instituted policies including:
 - Requiring that government officials only enter campus if they present a warrant.
 - Specifying that only judicially issued warrants would satisfy the previous requirement.
 - Developing a procedure to govern how campus access by government officials should be treated.



What may a school do to protect Fourth Amendment rights?

- Schools have traditionally held broad authority over campus access. A school could therefore require that government officials present a valid warrant before accessing campus.
- Some states have statutes that explicitly allow schools to limit disruption to the learning environment by denying access to campus during school hours.
 - For example, California Education Code §§ 32212, 35160 grants public schools the ability to deny individuals access to campus if it would help schools maintain disturbance free learning environments.
- While the law states that searches and seizures only require probable cause **or** a warrant, schools could justify a warrant-only access policy by noting that school officials are not equipped to determine whether or not probable cause exists. A clear policy that requires law enforcement officials to present warrants thereby eliminates ambiguities that could lead to unconstitutional actions.

ICE Sensitive Locations Policy



- ICE even recognizes this disruption prevention rationale. ICE has memorialized this sentiment in its “sensitive locations memorandum.”
- The non-binding policy was first published in 2011 and subsequently reaffirmed in 2018.
- The ICE sensitive locations policy generally states that enforcement actions are not to occur at or be focused on sensitive locations such as schools, places of worship, unless: (1) exigent circumstances exist; (2) other law enforcement actions have led officers to a sensitive location; (3) prior approval is obtained from a designated supervisory official.
- Although the policy cannot be directly enforced against ICE, individuals may file complaints through ICE’s Detention Reporting and Information hotline if they think that an enforcement action violates this policy.

Requiring Judicially Authorized Warrants



What may a school do to protect Fourth Amendment rights?

- A school could be justified in only allowing government officials with judicial warrants to access campus.
- Some warrants, including most ICE warrants, are internally issued administrative warrants. These warrants are often issued with less demanding proof requirements than judicially issued warrants.
 - *See Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1218-19 (D.C. Cir. 1981); *Inn Molders' & Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547, 553 (9th Cir. 1986); *United States v. M/V Sanctuary*, 540 F.3d 295, 300 (4th Cir. 2008)
- Administrative warrants therefore often do not meet the standard required by the Fourth Amendment.
 - *See United States v. Castellanos*, 518 F.3d 965, 971-72 (8th Cir. 2008)

Difference between ICE Warrants and Judicial Warrants



U.S. Department of Homeland Security **Warrant for Arrest of Alien**

File No. (b)(6), (b)(7)(C)
Event No. (b)(7)(C)
Date: **October 20, 2010**

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)
(Full name of alien)
an alien who entered the United States at or near EAGLE PASS, TEXAS on
March 1, 2003 is within the country in violation of the immigration laws and is
(b)(6)
therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
(Print name & designate immigration officer)
SDDO
(Title)

Certificate of Service

Served by me at NASHVILLE, TENNESSEE on October 20, 2010 at 12:00 AM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)
(Signature of officer serving warrant)
SENIOR SPECIAL AGENT
(Title of officer serving warrant)

Form I-202 (Rev. 05/01/09)

1. Issued by DHS and not a court.
2. Signed by an immigration officer and not a judge.
3. Does not provide sufficient details regarding time limit for execution of the warrant.

Example Campus Access Policy



The California Charter School Association and Stanford Law School's Youth and Education Law Project created the following sample campus access protocol for schools to use to incorporate all of the above advice:

In the event that a law enforcement officer or government agent comes to a school site and asks to detain or interview a student about a non-school-related offense or matter, the following procedure should be followed:

- [School front office staff] should alert the [director/principal] of the school immediately. The [site director] should then notify the school's counsel that there is a law enforcement agent on campus.
- [School front office staff] should ask the officer/agent what the purpose of the visit is and whether the officer has a warrant to arrest or question a specific student.
- If the officer is not visiting for school safety or school discipline purposes and does not have a warrant, [site director] should request that the officer/agent leave because the officer's presence might be a disruption of the peaceful activities of the school environment. They should ask if the investigation could be completed at another time in another place outside of the school environment.
- [Site director, front office staff] should ask to see the agent's credentials. They should then take down the name, contact information, and badge number of the agent.
- [Site director, front office staff] should ask to see the officer/agent's warrant and scan and forward to counsel to verify that it is a judicially-issued warrant, not just an administrative warrant. NOTE: If the agent cites an "exigent circumstance" or an "emergency" and demands immediate access to the campus, the school official should obey. Document everything that happens in detail. Exigent circumstances may include threats to national security, to the physical safety of an individual, imminent risk of destruction of property or evidence in a criminal investigation.

Example Campus Access Policy



The California Charter School Association and Stanford Law School's Youth and Education Law Project created the following sample campus access protocol for schools to use to incorporate all of the above advice:

If an officer/agent does present a valid warrant or if the school official chooses to allow a student to be questioned, the following procedure should be followed:

- [Site director] should retrieve the student. Try to keep the student calm. Remind the student that she has the right to remain silent and to request a lawyer. Tell the student that she does not have to answer any questions and that anything she says can be used against them. Tell the student to affirmatively invoke her right to remain silent and to request a lawyer. This can be done by saying “I plead the Fifth Amendment” or “I plead my right to remain silent” or “I do not want to talk until I have seen a lawyer.”
- [Site director] shall immediately inform the parents that the student has been detained.
- [Site director, legal counsel] should call an immigration or criminal defense attorney on behalf of the student. [Site director, legal counsel] should provide the student and the student's parents with information related to community legal resources .

A stack of several books is shown on the right side of the image, with various colored spines (white, red, dark brown, purple, and light blue). The background is a soft, out-of-focus light blue and green. On the left side, there is a green trapezoidal shape that contains the title text.

Protecting Student Information

Introduction



- While schools should utilize the above resources when handling requests by law enforcement officers to physically access campus, what should schools do when ICE or other law enforcement officials request schools to send them information?
- What does an ICE warrant requesting information compel schools to provide?
- How should schools responsibly collect information in order to best protect student privacy and rights established under *Plyler*?

Family Educational Rights and Privacy Act (FERPA)



What is FERPA?

- FERPA is a federal law that prohibits schools from disclosing confidential student information to non-school persons.
- This federal law applies to all educational institutions and agencies that receive federal funding.
- FERPA generally protects students’ “personally identifiable information” from being shared without parental permission. There are however two relevant exceptions:
 - Requests for information that come from court orders (e.g. subpoenas, grand jury requests, and judicially-issued warrants).
 - Directory information which might include information relevant to immigration status including home address and location of birth.

FERPA Exception: Court Orders



How does the FERPA exception for court orders apply to ICE requests?

- FERPA does not prevent schools from disclosing information to government officials that submit court ordered requests for information.
 - *See* 34 C.F.R. § 99.31(a)(9); *see also* D.L. v. Unified Sch. Dist. No. 497, 270 F. Supp. 2d 1217, 1244 (D. Kan. 2002) (holding that confidential information otherwise protected by the Family Educational Rights and Privacy Act may be disclosed pursuant to court order)
- State and federal contempt of court laws generally require compliance with these court orders.
- However, FERPA's exception for court ordered requests for information only allows for disclosures made in compliance with judicially issued warrants. As noted before, ICE's warrants are usually administrative warrants that are not signed by a judge.

FERPA Exception: Court Orders



How does the FERPA exception for court orders apply to ICE requests?

- Schools would therefore violate FERPA if they provided personally identifiable information to ICE on the basis of an administrative warrant, not signed by a judge.
- Schools can therefore affirmatively invoke FERPA in order to deny these information requests from ICE, as long as the information requested by ICE is personally identifiable information from student records.



ICE



What is directory information?

- FERPA also allows for the disclosure of directory information without prior parental consent.
- Directory information is information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed.
- Schools generally have broad authority to determine what is directory information. Schools must notify parents of any categories of information that it considers directory information.
- The Department of Education has provided a non-exhaustive list of examples of directory information including: name, address, telephone number, parents' names, place of birth, honors and awards, participation in activities, grade level, enrollment status, and more.



Why do directory information policies affect ICE requests?

- Some of the categories of information that the Department of Education indicates could be directory information is information that would be requested by ICE.
- Specifically, ICE often requests information related to students' place of birth, home address, and parents' names.
- Schools should therefore think critically as to whether any of these categories of information should be considered directory information. Labeling any of these as directory information would weaken a school's claim that it cannot disclose the information to ICE because of FERPA.

Responsible Information Collection



How should schools ensure that they comply with *Plyler* in information collection?

- In order to avoid issues with *Plyler*, schools should also ensure that only necessary information is collected from students in the first place.
- Enrollment procedures should therefore only require information that is needed to determine eligibility without requesting information that may discourage undocumented students from enrolling in public education.
- Inquiries related to immigration status should therefore never be a part of the enrollment process.
- Additionally, in collecting information related to age and residency eligibility, districts should accept any reasonable evidence that provides satisfactory information. Schools should not require only certain forms such as birth certificates, Social Security Numbers, or proof of parents' citizenship.
 - Note: Some states have statutes that expressly prohibit the collection of some of these documents as part of the enrollment process.

Example Information Collection Policy



The California Charter School Association and Stanford Law School's Youth and Education Law Project created the following sample information collection protocol for schools to use to incorporate all of the above advice:

In order to maintain compliance with the Federal Educational Rights and Privacy Act (FERPA, see 20 U.S.C. § 1232g; 34 C.F.R. Part 99):

- [School administrators, enrollment staff, etc.] should only collect information about students that is necessary for educational purposes.
- [School administrators] should ensure that student records are only accessible by school officials for legitimate educational reasons. i If a non-school official asks for access to a student record, [school personnel] must receive clear consent from the parent of the student.
- [Site director, school administrators] should decide what information will be considered “directory information.” This designation should be applied to as limited a set of information as possible.
- If the school has decided to label any category of information as directory information, [site director, teachers, staff] should publish a bulletin to inform students and parents of these designations and the individuals and groups eligible for receipt of this information. This bulletin should be published in multiple languages and in multiple media.
- [School administrators, teachers] should publish a form that explains the process for families to optout of directory information designations (see 34 C.F.R. 99.37(a)(2)). This form should be published in multiple languages and in multiple media. This form should be distributed directly by teachers to each student.
- Even if a parent has not designated her desire to opt out of directory information disclosure, [school personnel] should never disclose student records to non-school officials without parental consent first


Example Information Request Policy



The California Charter School Association and Stanford Law School's Youth and Education Law Project created the following sample information request protocol for schools to use to incorporate all of the above advice:

If a law enforcement agent comes to ask for student information or sends a request for information, the following procedure should be followed before complying:

- [School personnel] should notify the [site administrator] and [legal counsel] immediately of this request.
- Ask for the officer's name, badge number, and contact information. If the request is in person, the [front office personnel] should scan the officer's ID and keep this on file.
- [School personnel] should state that it is [school]'s policy to not disclose student records to nonschool officials unless there is parental consent or a valid court order for the records. [School personnel] should ask the officer or agent to see the warrant or subpoena that authorizes access to school records and forward this to counsel.
- [School personnel] should notify the officer that records will be sent to them if legal counsel approves the request. [School personnel] should ask the officer to leave, as the records request will be reviewed within the next day.
- [Legal counsel] should verify that the warrant or subpoena is an official court ordered document before allowing access to records [see 34 C.F.R. 99.31(a)(9)].
- If access to the records is granted, immediately contact the student's parents to notify them. This is not allowed if the request for information was a grand jury subpoena.
- NOTE: If an officer cites an "exigent circumstance" in which safety is at risk, [school personnel] may let them proceed to access the information. Document everything.

A close-up photograph of a hand holding a small globe. The globe is white with a grid of latitude and longitude lines and features a colorful map of the world. The word "AMERICA" is printed vertically on one of the globe's segments. The background is a blurred blue and white pattern.

How can school districts support students?

Todd Morrison,
Superintendent,
Honey Grove ISD

Sequence of Events

Day 1

- Employees received texts that raid was in progress- notified administration
- High school students were receiving information about ongoing raid
- Administrators and bilingual employees met to formulate and carry out response plan

Initial Response Plan

Administrator Response Plan

- Immediately contact families to ensure them of the safety of students at school, assess the families immediate needs (changes in transportation, immediate needs for food/services), and set up lines of communication. Families began sharing information about the location of their detained family member(s) and anticipated release dates and times. Families were encouraged to keep their children in school and have them attend daily.
- Immediately meet with high school students so that they will be prepared to help younger children cope with questions and concerns about the events.
- Enlist counselors to make daily contact with affected students to help them deal with questions and concerns about the events.

Initial Response Plan

School and Community Response

- Raicestexas.org set up response and consultation services at Church Filadelfia in Paris, Texas. Legal advice was provided.
- Community members provided transportation services as well as financial aid for affected families.
- Faculty members provided testimonials about student and family participation in school community. Letters also included information about student academic accomplishments and academic supports the school provides to those in need.
- Counselors provided daily, ongoing support for affected students.
- Community services such as the local food pantry, diaper ministry, church meals, and clothes closet were actively supporting affected families.
- News services interviewed school administrators and affected families.

Concluding Thoughts

- Key Takeaways:
 - We learned that as long as our students are at school or church, they are safe.
 - We learned to encourage families not to listen to rumors.
 - We learned to encourage families to communicate with the school.
- What would we do again?
 - We would set up lines of communication with affected families, within the school, and with community members as quickly and inclusively as possible.

An aerial photograph of a dense forest with a road winding through it. The trees are lush green, and the road is a light gray color. The text is overlaid on a dark green, semi-transparent rectangular area in the upper left corner.

Federal Immigration
Policy Update
Sasha Pudelski,
Advocacy Director, AASA

DACA Rescission

- In September 2017 President Trump decided to end the DACA program and give Congress six months to come up with a legislative proposal to extend protection to the DACA beneficiaries. Within days after that announcement, Congressional Democrats and the President appeared to have reached a deal on the issue, but that deal fell apart quickly thereafter due to a lack of support among Congressional Republicans and the fact that the President changed his mind.
- The issue became front and center in Washington again in January 2018 when Democrats forced a brief government shutdown over the issue.
- With the possibility of legislative fixes largely off the table, DACA beneficiaries turned their attention to the Courts, where they have largely been successful.
- As things stand now, the majority of DACA beneficiaries remain protected thanks to the injunctions issued by various Federal courts. That could change in an instant, though, if the Supreme Court eventually rules in favor of the Administration.
- That's why a legislative fix is the only viable way to ensure that this group will not face the fear of deportation again.

Dream and Promise Act

- In June the House passed the Dream and Promise Act, by a vote of 237 to 187, which would place millions of young undocumented immigrants and immigrants with temporary status on a pathway to U.S. citizenship.
- Seven Republicans in the House joined 230 Democrats in voting for the bill. No Democrats voted against the measure.
- The proposal would grant young undocumented immigrants who came to the U.S. as children, including those shielded from deportation by the DACA program, an opportunity to acquire permanent lawful status if they meet certain requirements. The bill would also allow hundreds of thousands of Temporary Protected Status (TPS) recipients — as well as Liberian immigrants covered by Deferred Enforced Departure (DED) — to gain permanent residency.
- To be eligible, immigrants must have been younger than 18 when they came to the U.S., and must have lived in the U.S. continuously over the previous four years. They must also have an American high school diploma or GED and pass a background check. Those who have committed serious crimes would be ineligible.

What Now?

- McConnell said that he would want to see a broader approach on immigration before the Senate would take it up the DREAM and Promise Act.
- Since passing a comprehensive bill in 2013 that the House ignored, the Senate has sputtered in its immigration debates despite broad agreement that Congress has failed to address the problem.
- All of this suggests that DACA beneficiaries will continue to find themselves vulnerable to deportation at any moment should the current court protections come to an end.

New Wrinkle: Public Charge Regulation

- The public charge rule would penalize students- one of four of whom have an immigrant parent - who use public benefits that are critical to students' health and well being, ensuring educational success and their contributions to our community. The effects of this rule would negatively and dramatically impact immigrant families and their children, as well as all students, schools and communities.
- Why does the proposed public charge rule matter to K-12 education?
 - Access to Medicaid, SNAP and housing all positively contribute to students' educational outcomes - and to their lifetime success.
 - As families turn away from using public benefits, the costs of providing services in schools will fall on school districts and local taxpayers.
- The regulation was supposed to go into effect October 15, 2019 but due to federal injunctions it has been put on hold.

Questions?



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