

Casenote

Title III of the Americans with Disabilities Act Applies to Foreign Cruise Ships; But What Exactly Is Required?

In *Spector v. Norwegian Cruise Line*,¹ the United States Supreme Court held that Title III of the Americans with Disabilities Act² (the “ADA”) applies to foreign-flag cruise ships in American waters insofar as the requirements of Title III do not interfere with the internal order of the cruise ships.³ Additionally, the Court held that the provision of the ADA requiring barrier removal, which is “readily achievable” does not apply if the removal would bring a ship into noncompliance with international legal obligations.⁴ The dissenting opinion argues that Title III of the ADA does not apply to foreign cruise ships because the

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1. 125 S. Ct. 2169 (2005).
 2. 42 U.S.C. §§ 12181-12189 (2000).
 3. *Spector*, 125 S. Ct. at 2175.
 4. *Id.* at 2180-81.

requirements of Title III unquestionably interfere with the internal affairs of a ship.⁵

I. FACTUAL BACKGROUND

Norwegian Cruise Line Ltd. ("NCL") operates multiple cruise ships that depart from, and arrive at, ports in the United States. NCL's cruises are managed by a company in the United States and serve predominantly United States residents. Despite the fact that these cruises are in most respects United States-centered ventures, NCL's ships are registered in other countries and fly foreign flags of convenience. The Norwegian Star and the Norwegian Sea, the two ships at issue in this case, are both registered in the Bahamas. Douglas Spector is a member of a class of individuals with disabilities and their companions who took round-trip cruises that departed from Houston, Texas on the Norwegian Sea or Star in 1998 or 1999.⁶ Spector filed a class action against NCL in the United States District Court for the Southern District of Texas, seeking declaratory and injunctive relief under Title III of the ADA.⁷

The ADA was enacted to prohibit discrimination on the basis of disability.⁸ Title III of the ADA contains provisions that prohibit discrimination on the basis of disability in areas including places of "public accommodation"⁹ and in "specified public transportation services."¹⁰ Spector argued that both of these provisions apply to NCL's cruise ships.¹¹ Each provision requires that covered entities make "reasonable modifications in policies, practices, or procedures"¹² in order to accommodate individuals with disabilities. In addition, each provision requires removal of "architectural barriers, and communication barriers that are structural in nature" where such removal is "readily achievable."¹³

Spector alleged that NCL violated its duty under these provisions in numerous ways, including: passengers with disabilities were required to pay higher rates and special surcharges; evacuation equipment and programs were placed in locations not accessible to passengers with

5. *Id.* at 2188 (Scalia, Rehnquist, and O'Connor, JJ., dissenting).

6. *Spector*, 125 S. Ct. at 2175.

7. *Id.*; 42 U.S.C. §§ 12181-12189 (2000).

8. 42 U.S.C. § 12181.

9. 42 U.S.C. § 12182(a).

10. 42 U.S.C. § 12184(a).

11. *Spector*, 125 S. Ct. at 2175.

12. 42 U.S.C. § 12182(b)(2)(A)(ii); § 12184(b)(2)(A).

13. 42 U.S.C. § 12182(b)(2)(A)(iv); § 12184(b)(2)(C).

disabilities; passengers with disabilities were required to travel with a companion and to waive any potential medical liability; and finally, NCL reserved the right to remove any passenger with a disability from the ship whose presence endangered the “comfort” of other passengers.¹⁴ Accordingly, Spector also alleged that NCL “failed to make reasonable modifications in policies, practices, and procedures” necessary for individuals with disabilities to have full enjoyment of the services offered.¹⁵ In addition, most of the cabins on the ships were not accessible to individuals with mobility impairments who must use mobility devices.¹⁶

The District Court had held that Title III of the ADA does apply to foreign-flag cruise ships in United States waters.¹⁷ However, the court found that Spector’s claims regarding physical barriers to access must be dismissed.¹⁸ The court reasoned that the agencies that promulgate structural guidelines for ADA compliance had not done so for cruise ships.¹⁹ Thus, the barrier-removal claims had to be dismissed because it was unclear what modifications NCL would be required to make.²⁰ Therefore, the District Court granted NCL’s motion to dismiss the barrier-removal claims, but denied the dismissal of all of the other claims.²¹

The Court of Appeals for the Fifth Circuit affirmed in part and reversed in part.²² The court reasoned that it was established precedent that general statutes do not apply to foreign-flag vessels in United States territory if Congress has not clearly stated its intention for the general statute to apply.²³ Because Title III does not contain a provision specifying its application to foreign-flag vessels, the Court of Appeals affirmed the dismissal of the barrier-removal claims on this alternative ground and reversed the other Title III claims, holding that the ADA did not apply to foreign cruise ships.²⁴ This decision created a circuit split with the Eleventh Circuit. In contrast to the Fifth Circuit,

14. *Spector*, 125 S. Ct. at 2179.

15. *Id.*

16. *Id.* at 2179-80.

17. *Id.* at 2175.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 2176.

23. *Id.* (citing *Benz v. Compania Naviera Hidalgo, S.A.* 353 U.S. 138 (1957); *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963)).

24. *Id.*

the Eleventh Circuit had held that the ADA does apply to foreign-flag cruise ships in United States territory.²⁵

The Supreme Court granted certiorari to resolve this conflict.²⁶ In a plurality decision, the Court reversed the Fifth Circuit, concluding that foreign-flag cruise ships in United States waters were covered entities under Title III because the ships were places of public accommodation and specified public transportation.²⁷ However, the Court held that the provision requiring barrier removal that is readily achievable did not apply to the ships if the removal would bring the ships into noncompliance with the International Convention for the Safety of Life at Sea or any other international legal obligation.²⁸

II. LEGAL BACKGROUND

A. Overview of the ADA

“Civil rights laws embody the promise of equal opportunity, which is rooted in the Declaration of Independence’s assertion that ‘all men are created equal,’ and in the Fourteenth Amendment’s guarantee of ‘equal protection of the laws.’”²⁹ The ADA generally prohibits public entities from discriminating against persons with disabilities.³⁰ Advocates for persons with disabilities made multiple attempts in the 1970s and 1980s to amend the Civil Rights Act of 1964³¹ to include the prohibition of discrimination on the basis of disability.³² In the mid-1980s, advocates changed direction and began to endorse a separate statute that would prohibit discrimination against people with disabilities.³³ In 1990, Congress acknowledged this requested prohibition and enacted the Americans with Disabilities Act.³⁴ The ADA was enacted to remedy the obstacles people with disabilities face relating to access to public facilities, employment, and transportation services.³⁵

25. See *Stevens v. Premier Cruises*, 215 F.3d 1237 (11th Cir. 2000).

26. *Spector*, 125 S. Ct. at 2174.

27. *Id.* at 2177.

28. *Id.* at 2180-81.

29. JOHN PARRY, HANDBOOK ON DISABILITY DISCRIMINATION LAW 1, 1 (2003).

30. 42 U.S.C. § 12181(a).

31. 42 U.S.C. §§ 2000(e)-2000(e)-17 (2000).

32. Robert D. Dinerstein, *The Americans With Disabilities Act of 1990 Progeny of the Civil Rights Act of 1964*, 31 HUM. RTS. 10, 10 (2004).

33. *Id.*

34. 42 U.S.C. §§ 12181-12189 (1990).

35. Adam A. Milani, *Wheelchair Users Who Lack “Standing”: Another Procedural Threshold Blocking Enforcement of Title II and III of the ADA*, 39 WAKE FOREST L. REV. 69, 75 (2004).

B. Title III of the ADA in General: Places of Public Accommodation

Title III of the ADA, which this Article will discuss, proscribes discrimination on the basis of disability in places of public accommodation.³⁶ Specifically, Title III prohibits discrimination “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.”³⁷ The most prominent effects of the ADA have been improvements in accessibility.³⁸ Because of the ADA, people with disabilities are now able to travel, find accessible hotel rooms, enter stores and restaurants, and simply move more freely about their own communities.³⁹ Despite these improvements in the quality of life of citizens with disabilities, the ADA has triggered a tremendous amount of litigation.⁴⁰ This litigation, combined with the rather general language of the ADA, has resulted in much disparity among jurisdictions.⁴¹ Therefore, more ADA cases are now being heard by the Supreme Court than ever before.⁴²

Congress enacted the ADA with the intention that it would have a broad reach.⁴³ Consequently, the Supreme Court and some circuit courts have held that the ADA should be applied in contexts that Congress may not have envisioned upon enactment of the statute.⁴⁴ For instance, in *Pennsylvania Department of Corrections v. Yeskey*,⁴⁵ the Supreme Court held that the ADA applied to state prison systems.⁴⁶ Also, in *Florida Paraplegic Ass’n v. Miccosukee Tribe of Indians of Florida*,⁴⁷ the Eleventh Circuit emphasized the breadth of Title III and held that Title III applied to Indian Reservations.⁴⁸ Thus, the number and types of entities to which Title III of the ADA applies is expanding.

36. 42 U.S.C. §§ 12181-12189.

37. 42 U.S.C. § 12182(a).

38. Milani, *supra* note 35, at 75.

39. *Id.*

40. Stephen F. Befort, *Reasonable Accommodations and Reassignment Under the Americans With Disabilities Act: Answers, Questions and Suggested Solutions After U.S. v. Airways, Inc. v. Barnett*, 45 ARIZ. L. REV. 931, 931 (2003).

41. *Id.*

42. *Id.* at 932.

43. *Stevens v. Premier Cruises*, 215 F.3d 1237, 1241 (11th Cir. 2000).

44. *Id.*

45. 524 U.S. 206 (1998).

46. *Id.* at 210.

47. 166 F.3d 1126 (11th Cir. 1999).

48. *Id.* at 1128-29.

C. *Title III's Specific Applicability to Cruise Ships*

The Eleventh Circuit was the first court of appeals to address the issue of Title III's applicability to cruise ships.⁴⁹ In contrast to the instant case, the Eleventh circuit held, in *Stevens v. Premier Cruises*,⁵⁰ that Title III is applicable to the parts of a cruise ship which are enumerated in the statute as places of public accommodation.⁵¹ Furthermore, the court held that Title III not only applied to domestic cruise ships, but that it also applied to foreign-flag cruise ships in United States waters.⁵² The court recognized that Title III could not impose a duty on the internal affairs of a foreign ship.⁵³ However, the court held that the ship's internal affairs were not implicated in the plaintiff's allegations.⁵⁴ Rather, the court reasoned that the case was about "whether Title III requires a foreign-flag cruise ship reasonably to accommodate a disabled, fare-paying, American passenger while . . . sailing in American waters."⁵⁵

III. COURT'S RATIONALE

A. *Narrow Exception to the Applicability of United States Statutes to Foreign Cruise Ships*

In *Spector v. Norwegian Cruise Line*,⁵⁶ the Court addressed the issue of whether Title III of the ADA applies to foreign cruise ships that regularly sail into United States waters.⁵⁷ The Court rendered a particularly fractured opinion, in which few of the Justices were able to reach the same conclusion or even concur as to similar lines of reasoning. Relying on *Cunard S.S. Co. v. Mellon*⁵⁸ and *Uravic v. F. Jarka Co.*,⁵⁹ Justice Kennedy, writing for the Plurality and joined by Justices Stevens and Souter, reasoned that, as a general rule, United States statutes apply to foreign cruise ships in United States waters.⁶⁰

49. See *Stevens*, 215 F.3d at 1237.

50. *Id.*

51. *Id.* at 1240-41.

52. *Id.* at 1243.

53. *Id.* at 1242.

54. *Id.*

55. *Id.*

56. 125 S. Ct. 2169 (2005).

57. *Id.* at 2174.

58. 262 U.S. 100 (1923).

59. 282 U.S. 234 (1931).

60. *Spector*, 125 S. Ct. at 2177.

However, this general rule is subject to the narrow exception that “[a]bsent a clear statement of congressional intent, general statutes may not apply to foreign-flag [ships] insofar as they regulate matters that involve only the internal order and discipline of the [ship]. . . .”⁶¹ This exception is derived from the policy in support of international comity, because matters solely of internal order, not affecting the peace of the United States, should be left to the local government of the country to which the ship belongs.⁶²

The Justices reasoned that the Fifth Circuit’s interpretation of the clear statement rule in *Benz*⁶³ and *McCulloch*⁶⁴ was too broad and unlikely to reflect congressional intent.⁶⁵ The Court interprets these cases to hold the National Labor Relations Act⁶⁶ (“NLRA”) inapplicable to “labor relations between a foreign vessel and its foreign crew not because foreign ships are . . . exempt from the NLRA, but because the particular application of the NLRA would interfere with matters that concern only the internal operations of the ship.”⁶⁷ Thus, in these cases the internal affairs exception did apply.⁶⁸ In contrast, in *Longshoremen v. Ariadne Shipping Co.*,⁶⁹ the Court held that the NLRA does apply to labor relations between a foreign ship and American longshoremen because this does not implicate solely a ship’s internal order.⁷⁰ Thus, the internal affairs exception did not apply.⁷¹

In *Spector* the Court was persuaded by the fact that foreign-flag cruise ships affect United States citizens by offering “public accommodations” and “transportation services” to more than seven million passengers annually in departing from and docking at ports in the United States, and many individuals with disabilities would like to take advantage of these cruises.⁷² “To hold there is no Title III protection for disabled persons who seek to use the amenities of foreign cruise ships would be a harsh and unexpected interpretation of a statute designed to provide broad protection for the disabled.”⁷³ Therefore, the Court demands a

61. *Id.*

62. *Id.*

63. 353 U.S. 138 (1957).

64. 372 U.S. 10 (1963).

65. *Spector*, 125 S. Ct. at 2177.

66. 29 U.S.C. §§ 151-169 (2000).

67. *Spector*, 125 S. Ct. at 2178.

68. *Id.*

69. 397 U.S. 195 (1970).

70. *Id.* at 200.

71. *Id.*

72. 125 S. Ct. at 2178.

73. *Id.*

clear congressional statement of only those applications of a statute to foreign cruise ships that would interfere with the ship's internal affairs, rather than of all applications of a statute to these ships, as the Fifth Circuit proposes.⁷⁴ In contrast, "[i]f Title III . . . does impose duties that interfere with a foreign-flag cruise ship's internal affairs, the lack of a clear congressional statement can mean that those specific [provisions] . . . are precluded."⁷⁵

B. What are "Internal Affairs"

Because the crux of the Court's analysis rested on a determination of whether a specific application of the ADA to the cruise ship implicated the ship's internal affairs, the Plurality provided guidance to the lower court regarding possible internal affairs to be addressed and considered on remand.⁷⁶ Justices Kennedy, Stevens, and Souter acknowledged that precisely what is encompassed in internal affairs is difficult to define.⁷⁷ As a result, it is sufficient to remember that, in determining whether the clear statement rule is triggered, the guiding principle is the desire for international comity and the United States' lack of interest in matters that do not affect the peace of its ports.⁷⁸ To illustrate, Spector has alleged several Title III violations that do not implicate any interference with the internal affairs of the ship, such as higher rates, inaccessible evacuation equipment, waiver of medical liability, and reservation of the right to remove disabled passengers from the ship. In contrast, the allegations of physical barriers to access on board would implicate requirements that might be construed as relating to the ship's internal affairs.⁷⁹

Even though physical barriers affect passengers and the ship's crew, Title III could mandate a significant alteration of the basic design of the ship, thus likely interfering with the internal affairs of the ship. The clear statement rule would most likely be triggered if the lower court found that Title III required significant structural modifications to the ship.⁸⁰ However, Title III may not inherently require such significant modifications. The barrier removal requirements of Title III are subject to the statute's own specific limitations.⁸¹ Therefore, these inherent

74. *Id.*

75. *Id.* at 2178-79.

76. *Id.* at 2179.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 2179-80.

81. *Id.*

limitations may make it unnecessary to even resort to the clear statement rule.⁸²

C. Barrier Removal Must Be “Readily Achievable”

In addition to the internal affairs exception, the “readily achievable” requirement creates an alternate reason that Title III may not apply to foreign-flag ships.⁸³ Barrier removal is mandated if it is readily achievable,⁸⁴ which means the removal is “easily accomplishable and able to be carried out without much difficulty or expense.”⁸⁵ Additionally, “the impact . . . upon the operation of the facility”⁸⁶ should be considered and a structural modification will not be readily achievable “if it would pose a direct threat to the health or safety of others.”⁸⁷ Justice Kennedy’s example of a barrier removal requirement that would not be readily achievable is a requirement that caused a foreign ship to violate the International Convention for the Safety of Life at Sea or any other international legal obligation.⁸⁸ A requirement causing a violation would create hardship and significantly impact the ship’s operation, and therefore would not be readily achievable.⁸⁹

D. Using a Case-by-Case Application

Justices Kennedy, Stevens, Souter and Thomas determined that the clear statement rule, with respect to Title III and foreign-flag ships, must be applied on a case-by-case basis.⁹⁰ This interpretation is how the clear statement rule has traditionally been applied with respect to the NLRA and foreign-flag ships.⁹¹ The Justices reasoned, using the Court’s guided analysis of how to determine “readily achievable,” that Title III most likely would not impose duties that interfere with the internal affairs of the ships.⁹² In the event that Title III did require the ships to make significant structural modifications that did not threaten safety or conflict with international law, or if a duty interferes with the ship’s internal affairs, the clear statement rule would be

82. *Id.* at 2180.

83. *Id.* at 2180-81.

84. 42 U.S.C. § 12182(b)(2)(A)(iv).

85. 42 U.S.C. § 12181(9) (emphasis added).

86. 42 U.S.C. § 12181(9)(B).

87. *Spector*, 125 S. Ct. at 2181.

88. *Id.* at 2180.

89. *Id.*

90. *Id.* at 2181.

91. *Id.* at 2181-82.

92. *Id.* at 2182.

used.⁹³ Therefore, when it is necessary to invoke the rule, some applications of Title III to foreign ships, such as some structural modification requirements, would be restricted.⁹⁴ However, the rule would not restrict other applications of Title III to foreign ships, such as the prohibition on discriminatory fare prices.⁹⁵

“The internal affairs clear statement rule is an implied limitation on otherwise unambiguous general terms of the statute.”⁹⁶ This implied limitation under the clear statement rule ensures that general language used by Congress does not lead to legislation on a delicate topic in a way Congress did not intend.⁹⁷ The case-by-case application is preferable to an “all-or-nothing” approach in which a statute would be inapplicable if only one of its provisions invoked the clear statement rule.⁹⁸ Justice Kennedy, joined by Justices Stevens and Souter, emphasized that the internal affairs clear statement rule is not a principle for resolving textual ambiguity, but is merely an implied limitation.⁹⁹ Thus, if one application of Title III interferes with a ship’s internal affairs, this does not mean that Title III is completely inapplicable to the foreign ship.¹⁰⁰

E. Plurality Conclusion

The Plurality concluded that Title III applies to foreign ships in United States waters, except when a provision of Title III imposes a requirement that interferes with the ship’s internal affairs.¹⁰¹ Title III has many innate limitations that prevent requirements from potentially threatening safety, or conflicting with international obligations.¹⁰² If, after applying these limitations, it is found on remand that Title III imposes duties that would interfere with the internal affairs, the clear statement rule would take effect.¹⁰³

F. Concurrence

Justice Ginsburg and Justice Breyer agreed that Title III applies to foreign-flag cruise ships insofar as it does not require modifications that

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 2183.

100. *Id.*

101. *Id.* at 2184.

102. *Id.*

103. *Id.*

violate international legal obligations.¹⁰⁴ However, those Justices stated that the analysis should end there because the internal affairs clear statement rule was not necessary.¹⁰⁵ The policy of noninterference with a ship's internal affairs is served by limiting the modifications to those that are readily achievable.¹⁰⁶ Title III's application to a foreign ship should be determined solely by whether the application would conflict with international legal obligations, not by asserted interference with internal affairs of the ship.¹⁰⁷ The concurring Justices were persuaded by the fact that Congress intended Title III to apply broadly and the United States has a significant interest in ensuring that its citizens enjoy Title III protections on domestic and foreign ships.¹⁰⁸ Therefore, once conflicts with international legal obligations are avoided, Title III's application to foreign cruise ships should not be further restricted by an internal affairs clear statement rule.¹⁰⁹

G. *Concurrence in Part*

Justice Thomas believes that Congress must have clearly expressed the intent for a law to apply to foreign cruise ships if the law, at any time, regulates the internal order of the ship.¹¹⁰ Thus, the clear statement rule would apply to any structural modification that Title III requires because any change to a ship's structure would relate to its internal affairs.¹¹¹ However, the clear statement rule does not make Title III completely inapplicable to foreign cruise ships, and therefore, Title III applies to foreign cruise ships insofar as the application does not relate to internal affairs.¹¹²

H. *Dissent*

Chief Justice Rehnquist, joined by Justices O'Connor and Scalia, dissented and would affirm the Fifth Circuit's decision that Title III does not apply to foreign-flag cruise ships in United States waters.¹¹³ These Justices agreed with the Plurality that Congress must make a clear

104. *Id.* (Ginsburg and Breyer, JJ., concurring).

105. *Id.* (Ginsburg and Breyer, JJ., concurring).

106. *Id.* at 2185 (Ginsburg and Breyer, JJ., concurring).

107. *Id.* (Ginsburg and Breyer, JJ., concurring).

108. *Id.* (Ginsburg and Breyer, JJ., concurring).

109. *Id.* at 2186 (Ginsburg and Breyer, JJ., concurring).

110. *Id.* (Thomas, J., concurring).

111. *Id.* (Thomas, J., concurring).

112. *Id.* at 2188 (Thomas, J., concurring).

113. *Id.* (Rehnquist, O'Connor, and Scalia, JJ., dissenting).

statement of its intent for a law to apply to foreign ships if the law would interfere with the internal orders of the ship.¹¹⁴ However, the dissenters believe that Title III, in particular the structural modifications required under the barrier removal provision, unquestionably affects the internal order of foreign ships.¹¹⁵

Indeed, even the “possibility of international discord” with regard to a statute’s applicability to a ship’s internal affairs, creates the presumption that the statute will not apply unless there is a clear statement to the contrary.¹¹⁶ The clear statement rule is triggered by the possibility (as opposed to the certainty) that a statute would cause conflict with international obligations.¹¹⁷ The structure of a ship pertains to its internal order and requiring structural modifications invites conflict.¹¹⁸ Consequently, the absence of a clear statement from Congress illustrates that Title III should not apply to foreign cruise ships.¹¹⁹

IV. IMPLICATIONS

As a consequence of the plurality decision being fractured and consisting of multiple lines of reasoning, *Spector v. Norwegian Cruise Line*¹²⁰ is likely subject to multiple interpretations. While the Court did determine that Title III of the ADA applies to foreign cruise ships, the Court has also left a great deal to be interpreted by the lower court on remand regarding what exactly is required.

The plurality acknowledged that what is encompassed in the notion of a foreign ship’s internal affairs is not clear.¹²¹ However, the Court was satisfied that a precise definition was not necessary and could be determined by reference to the policy goals of international comity.¹²² On remand, and more importantly for future cases, internal affairs will need to be defined. If a statute of the United States is going to be interpreted to impose even minor requirements on ships of another nation, the clarity of these requirements is imperative. Cruise lines will need to know how and to what extent they must modify existing practices on board the cruise ships. In addition, the plurality’s “case-by-

114. *Id.* (Rehnquist, O’Connor, and Scalia, JJ., dissenting).

115. *Id.* at 2188, 2189 (Rehnquist, O’Connor, and Scalia, JJ., dissenting).

116. *Id.* at 2190 (Rehnquist, O’Connor, and Scalia, JJ., dissenting) (citing *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963)) (emphasis in original).

117. *Id.* at 2190 (Rehnquist, O’Connor, and Scalia, JJ., dissenting).

118. *Id.* at 2191 (Rehnquist, O’Connor, and Scalia, JJ., dissenting).

119. *Id.* (Rehnquist, O’Connor, and Scalia, JJ., dissenting).

120. 125 S. Ct. 2169 (2005).

121. *Id.* at 2179.

122. *Id.*

case application” will likely lead to a plethora of litigation until a more definite standard is set.

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