Mukhammadjon Makhmudov
Cimarron Correctional Facility
3200 S Kings Hwy
Cushing, OK 74023

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Mukhammadjon Makhmudov,

Petitioner,

v.

Pamela Bondi, Attorney General of the United States; Russell Holt, Chicago Field Office Director Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); Joshua Johnson, Dallas Field Office Director ICE/ERO; Todd Lyons, Acting Director of Immigration Customs Enforcement ("ICE") U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security ("DHS"); U.S. Department of Homeland Security; Scarlet Grant, Warden of Cimarron Correctional Facility,

Respondents.

Case No.: CIV-25-1526-G

PETITIONER'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE; POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby moves the Court for emergency relief in the form of a temporary restraining

order directing Respondents to release Petitioner from their custody or to provide Petitioner with individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of issuance of an Order.

Petitioner also seeks a temporary restraining order enjoining the Respondents from relocating Petitioner outside of the District of Oklahoma pending final resolution of this case. Petitioner further moves for the issuance of an order to show cause. This application is supported by the Memorandum of Points and Authorities.

INTRODUCTION

Petitioner is a class member[1] of two separate class action lawsuits: In *Mendoza Gutierrez v. Baltasar*, Civil Action No. 25-CV-2720-RMR (D. Colo. Nov. 21, 2025) and *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), a nationwide class action. Despite being a class member in both *Mendoza Gutierrez* and *Maldonado Bautista*, Immigration Judge ("IJ") refuses to follow the nationwide class certification ordered by *Maldonado Bautista* Court and keeps stating he lacks jurisdiction citing *Matter of YAJURE HURTADO, 29* I&N Dec. 216 (BIA 2025) as well as *Mendoza Gutierrez* incorrectly stating that "Until and unless the Baltasar court issues a class-wide declaratory judgment or

[1] Petitioner's class membership in both lawsuits is detailed in Count I and II of his Habeas Petition.

injunction, this Court is still obligated to follow *Matter of Hurtado*." *See* Exhibit A.

In the interest of expedition and in light of the ongoing irreparable harm, Petitioner hereby incorporates and respectfully refers the Court to his Verified Petition for a full statement of the facts giving rise to this motion. In sum, this case presents facts like recent cases in which courts have provided swift interim relief: ICE detained Petitioner while he was driving his car in around November of 2025, not because he presents a danger or flight risk, but rather pursuant to a new, unlawful policy targeting people for arrest at immigration court for the purpose of re-routing them through expedited removal procedures. S*ee, e.g., Garcia v. Andrews*, No. 25-cv-01884-TLN, 2025 WL 1927596, at *4 (E.D. Cal. July 14, 2025) (Chief Judge Nunley ordering ICE to release recently detained individual for whom, two years prior, an immigration judge had granted bond); *Singh v. Andrews*, No. 1:25-CV-801, 2025 WL 1918679, at *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction); *Garro Pinchi v. Noem,* No. 5:25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction* at__F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (same). This re-detention violates Petitioner's due process rights and causes his irreparable, ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d

976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner thus respectfully requests that this Court issue a temporary restraining order (1) prohibiting the government from transferring or removing Petitioner pending these proceedings; and (2) provide him with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO. Petitioner asks the Court to order Respondents TO SHOW CAUSE within THREE days as to, why the petition in this case should not be granted to the extent it seeks a bond hearing, and the Court should not order that Petitioner receive a bond hearing at which the government bears the burden to demonstrate, by clear and convincing evidence, that Petitioner is a danger to the community or a flight risk and at which the immigration judge must consider non-bond alternatives to detention or, if setting a bond, Petitioner's ability to pay.

ARGUMENT

To warrant a TRO, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary

relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The purpose of a temporary restraining order "is to preserve the status quo [ante]" before a final decision on the merits. *Resolution Trust Corp v. Cruce*, 972 F.2d 1195, 1198 (10th Cir. 1992). The status quo ante is defined as "as the last peaceable uncontested status existing between the parties before the dispute developed." *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 798 n. 3 (10th Cir. 2019).

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's detention violates substantive due process.

The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment-from government custody, detention, or other forms of physical

restraint-lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, Respondents' deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates either that the government acted with a punitive purpose or that it lacks any legitimate reason to detain him").

Petitioner here, who has no criminal record and who is diligently pursuing his immigration case, is neither a danger nor a flight risk. Therefore, his re-detention is not justified by a legitimate purpose. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Nothing has transpired since to disturb that finding.

First, because Petitioner had no criminal history since arriving in this country in 2022, with no intervening criminal history or arrests since his release, there is no credible argument that he is a danger to the community.

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that Petitioner, who has previously appeared in immigration court for a master calendar hearing, is a flight risk. Moreover, Petitioner has viable paths toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). Petitioner has filed an application

for asylum. He has every intention of continuing with his case and attending court. Respondents have no evidence to suggest otherwise.

In sum, Petitioner's actions since Respondents first released him confirm that he is neither a danger nor flight risk. Indeed, his ongoing compliance compels the conclusion that he is even less of a danger or flight risk than when he was originally released. Accordingly, Petitioner's ongoing detention is unconstitutional, and due process principles require his release.

B. Petitioner's detention without the opportunity to contest his detention before a neutral decision-maker violates procedural due process.

Noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671,683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre- parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

Accordingly, the Supreme Court has repeatedly held that individuals released from custody on bond, parole, or other forms of conditional release have a protected interest in their ongoing liberty, because "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Morrissey*, 408 U.S. at 482. "By whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due Process Clause]." *Id.* This liberty interest also applies to noncitizens, including those who have been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Garcia*, 2025 WL 1927596, at *4 (agreeing with petitioner that release on immigration bond "create[d] a powerful interest for Petitioner in his continued liberty."). Petitioner thus has a protected liberty interest in his freedom from physical custody.

Once a petitioner has established a protected liberty interest, as Petitioner has done here, courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under that test, the court weighs: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and (3) the government's interest. *Id.*

In this case, the factors weigh heavily in favor of releasing Petitioner and prohibiting his re-detention without a custody hearing at which the government bears the burden of proof.

First, the private interest affected in this case is profound. Petitioner's interest here "is the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And "[c]ase after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Velasco Lopez*, 978 F.3d at 851 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

Moreover, although "the liberty interest of a noncitizen detained under section 1226(a) may . . . be slightly less weighty than that of individuals facing indefinite and prolonged detention," it is "only slightly less." *Hernandez-Lara*, 10 F.4th at 29 (noting that "[t]he exact length of detention under section 1226(a) is impossible to predict and can be quite lengthy"). As the Second Circuit noted in *Velasco Lopez*, "[d]etention under [section] 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded." 978 F.3d at 852. "Absent release on bond, detention lasts through the initial removal

determination proceedings (which themselves can take months or years) and all inter-agency and federal court appeals, even where an individual has prevailed and the [g]overnment appeals." *Id.*

Finally, it is important to recognize that the deprivation of liberty that individuals detained under section 1226(a) experience is "not the result of a criminal adjudication." *See id.* at 851; *see also Hernandez-Lara*, 10 F.4th at 36 ("Unlike section 1226(c), section 1226(a) applies to a wide swath of noncitizens, many of whom . . . have no criminal record at all."). This, too, heightens Petitioner's interest in his liberty.

Second, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No.1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal Jan. 30, 2020)); *see also Diep v. Wofford*, No. 1 :24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents grabbed Petitioner by surprise when he was outside of his hotel, detaining her with no notice and no opportunity to contest her re-detention before a neutral arbiter. In such circumstances, when Respondents have provided no procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5. This is especially true here, where there is

no change in Petitioner's circumstances suggesting that he now poses a flight risk or danger to the community. His re-detention instead appears to be motivated by Respondents' arrest and removal quotas. Neither constitutes a lawful justification to re-detain a person who does not pose a flight risk or danger to the community.

Because the private interest in freedom from immigration detention is substantial, due process also requires that in cases like this one, the government bears the burden of proving "by clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community." *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which government bears burden by clear and convincing evidence).

Third, the government's interest in detaining Petitioner without first providing notice and submitting to a custody hearing is negligible. Immigration courts routinely conduct custody hearings, which impose a "minimal" cost to the government. *See Doe*, 2025 WL 691664, at *6; A.E., 2025 WL 1424382, at *5. Petitioner has a record of compliance, and there is no reason to believe that will change between the date of his release and his custody hearing. Indeed, courts regularly hold that the government's interest in re-detention without a custody

hearing is low when the petitioner "has long complied with his reporting requirements." *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-deprivation bond hearing); *Jorge M F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp.3d at 970 (granting habeas petition ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627(GBD), 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing petitioner who had been detained without process, who had "voluntarily attended his scheduled immigration court proceedings" and "established ties" through his work and volunteering with the church).

In similar cases, courts have ruled that re-detaining noncitizens without a pre-deprivation hearing in which the government bears the burden of proof violates due process and have granted the emergency relief Petitioner seeks here. *See, e.g., Garcia v. Andrews*, No. 25-cv-01884-TLN, 2025 WL 1927596, at *4 (E.D. Cal. July 14, 2025) (Chief Judge Nunley ordering ICE to release recently detained individual for whom, two years prior, an immigration judge had granted bond); *Singh v. Andrews*, No. 1:25-CV-801, 2025 WL 1918679, at *10 (E.D. Cal. July 11, 2025)(granting preliminary injunction); *Ruiz Otero v. Kaiser*, No. 3:25-cv-06536, ECF 4 (E.D. Cal. Aug. 3, 2025) (ordering release for individual released from DHS

custody less than two years prior to filing); *Garro Pinchi v. Noem*, No. 5:25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025*), converted to preliminary injunction* at__F. Supp. 3d __2025 WL 2084921 (N.D. Cal. July 24, 2025) (converting TRO requiring release of asylum seeker arrested at her immigration court hearing into preliminary injunction prohibiting the government from re-detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO over one month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kafaer*, No. 22-CV-02508-TSH, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D, Cal. Aug. 23, 2020).

In short, Respondents violated Petitioner's due process rights when they detained him without notice and without a custody hearing before a neutral arbiter. Here, only an order releasing Petitioner and enjoining re-detention-unless Respondents provide her with a custody hearing where the government bears the burden of proof would return the parties to the "last uncontested status which preceded the pending controversy." *Doe v. Noem*, _F. Supp. 3d 2025 WL 1141279, at * 9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*,

202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, a t *4-*5 (ordering petitioner's immediate release as remedy for procedural due process violation).

II. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.

In the absence of a TRO, Petitioner will continue to be unlawfully detained by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ. Petitioner has now been detained without a bond hearing for weeks. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) ("Thus, it follows inexorably from our conclusion that the government's current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the

plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm.").

III. The Balance of Equities Tips in Petitioner's Favor and a TRO is in the Public Interest.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in her favor because her claims assert that the new policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioner from obtaining bond "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli,* 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in

original) (citation omitted). Indeed, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Application for a Temporary Restraining Order and Order to Show Cause. Petitioner asks the Court to order Respondents TO SHOW CAUSE within three days as to, why, the petition in this case should not be granted to the extent it seeks a bond hearing, and the Court should not order that Petitioner receive a bond hearing at which the government bears the burden to demonstrate, by clear and convincing evidence, that Petitioner is a danger to the community or a flight risk and at which the immigration judge must consider non-bond alternatives to detention or, if setting a bond, Petitioner's ability to pay.

Dated: December 17, 2025

Saidazizkhon Malikov
NEXT FRIEND FOR PETITIONER Mukhammadjon Makhmudov (as permitted by *Whitmore v. Arkansas*, 495 U.S. 149 (1990).
5374 Wilshire Rd
Harrisburg, PA 17112
Telephone: (717) 571-7775

CERTIFICATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 65(b)(1)(B)

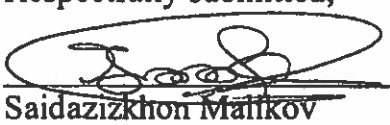
I, Saidazizkhon Malikov, certify as follows:

I am the next friend of Mukhammadjon Makhmudov, the *pro se* Petitioner in this action. I submit this certification in support of the petitioner's motion for temporary restraining order. This certification is made pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure. Notice of the motion for temporary restraining order has been provided to respondents through counsel. On December 17, 2025, I transmitted a copy of the motion for temporary restraining order and supporting materials by electronic mail to Scott A. Maule, United States Attorney for the Western District of Oklahoma at scott.maule@usdoj.gov. Notice was provided as soon as practicable under the circumstances, given the urgent and time-sensitive nature of the relief requested.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: December 17, 2025

Respectfully submitted,



Saidazizkhon Malikov
NEXT FRIEND FOR PETITIONER Mukhammadjon Makhmudov (as permitted by *Whitmore v. Arkansas*, 495 U.S. 149 (1990).
5374 Wilshire Rd
Harrisburg, PA 17112
Telephone: (717) 571-7775