

No.

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY JOSEPH NESDAHL,

Petitioner,

v.

C. GARRETT, WARDEN, FCC FORREST CITY,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the due process clause of the fifth amendment to the United States Constitution requires an appellate court to address a purely legal error concerning a liberty interest raised for the first time on appeal where the proper resolution is beyond any doubt?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Timothy Joseph Nesdahl (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), John D. Webster (Assistant United States Attorney), and D. John Sauer (Solicitor General of the United States of America).

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Eighth Circuit Court of Appeals can be found at *Nesdahl v. Garrett*, No. 24-2318, 2025 WL 1733498 (8th Cir. June 23, 2025), and is attached as Appendix A.

JURISDICTION

The Judgment of the Eighth Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on June 23, 2025. However, a timely Petition for Rehearing was filed on June 24, 2025, which was not denied until July 17, 2025. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V.

STATEMENT OF FACTS

On October 18, 2023, Mr. Nesdahl filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, and a Memorandum of Law in Support thereof, in the United

States District Court for the Eastern District of Arkansas. In his Petition and Memorandum of Law in Support thereof, Mr. Nesdahl explained that on May 16, 2019, he was sentenced to 120 months imprisonment for the offense of possessing with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1), in the United States District Court for the Eastern District of Arkansas. In a separate case, on December 13, 2021, Mr. Nesdahl was sentenced to 2 months imprisonment for possessing a prohibited object in prison in violation of 18 U.S.C. § 1791(a)(2), with said sentence imposed consecutively to his 120 month sentence for possessing with intent to distribute methamphetamine. The 2 month sentence was later reduced to 1 month. Mr. Nesdahl then explained that the Bureau of Prisons (hereinafter “BOP”) had administratively aggregated the two sentences into a single sentence under 18 U.S.C. § 3584(c), resulting in him becoming ineligible for early release credits under the First Step Act. Accordingly, the BOP was not applying early release credits earned under the First Step Act to his sentence for possessing with intent to distribute methamphetamine.

Mr. Nesdahl specifically argued that “[a] habeas corpus petition is the appropriate vehicle for challenging a refusal to restoring forfeited First Step Credits or restoring good conduct time where restoration would shorten the prisoners sentence under the First Step Act passed on December 21, 2018.” (Dist. Doc. 2, at 1)(citations omitted). Mr. Nesdahl then argued that because his sentence for possessing a prohibited object in prison was imposed consecutively to his 120 month sentence for possessing with intent to distribute methamphetamine, he was eligible

to receive early release credits on his 120 month sentence under the First Step Act, and thus the BOP had erroneously deprived him of early release credits to which he was entitled under the First Step Act.

Following a response from the government, Mr. Nesdahl filed a reply in which he argued “that this habeas corpus petition is the appropriate vehicle for challenging a refusal to restore his First Step Credits where restoration would shorten Petitioner’s sentence.” (Dist. Doc. 10, at 9).

A magistrate judge then recommended denying Mr. Nesdahl’s claim concluding:

The United States Court of Appeals for the Eighth Circuit has previously rejected Mr. Nesdahl’s argument. *See Sok v. Eischen*, No. 23-1025, 2023 WL 5282709 (8th Cir. Aug. 17, 2023) (per curiam). As the Eighth Circuit stated, multiple terms of imprisonment, whether ordered to run consecutively or concurrently, “shall be treated for administrative purposes as a single, aggregate term of imprisonment,” pursuant to 18 U.S.C. § 3584(c). *Id.* at 1. Therefore, a prisoner who has been convicted of a disqualifying offense is ineligible to receive First Step Act credits, even if he has also been convicted of offenses that are not disqualifying. *Id.*; *see also Davila- Robles v. Kessel*, No. 2:23-cv00017-LPR, 2024 WL 474853 (E.D. Ark. Feb. 7, 2024); *Tyler v. Garrett*, No. 2:23-cv-00038-JM-JTR, 2023 WL 8244088 (E.D. Ark. Oct. 11, 2023), report and recommendation adopted, 2023 WL 8235250 (E.D. Ark. Nov. 28, 2023); *Satizabal v. Edge*, No. 2:23-cv-00040-KGB-PSH, 2023 WL 5746932 (E.D. Ark. Sept. 6, 2023) (recommended decision). In light of this authority, Mr. Nesdahl’s claim is without merit.

(Dist. Doc. 11, at 8). Mr. Nesdahl objected to the magistrate’s recommendation, arguing “[p]etitioner is not attacking his conviction as the Magistrate suggests, he is simply requesting his First Step Credits be restored, which is clearly cognizable in a

habeas corpus petition under Section 2241.” (Dist. Doc. 14, at 2). Mr. Nesdahl concluded his argument by “requesting this Honorable Court exercise its discretion and restore his First Step Credits like the other thousands of inmates in Petitioner’s exact circumstances now receiving their First Step Credits.” (Dist. Doc. 14, at 7). Nonetheless, the district court approved and adopted the magistrate’s findings and recommendation, and denied Mr. Nesdahl’s Petition.

Mr. Nesdahl then appealed to the Eighth Circuit, and argued he was entitled to the restoration of the First Step Act Credits earned prior to becoming ineligible to earn additional credits. The government did not dispute that Mr. Nesdahl was entitled to the restoration of his credits, but argued he was not entitled to relief because he had not raised the argument in the district court. The Eighth Circuit affirmed, concluding Mr. Nesdahl’s credit-restoration claim was not presented in the district court and therefore could not be heard on appeal. *Nesdahl v. Garrett*, No. 24-2318, 2025 WL 1733498, at *1 (8th Cir. June 23, 2025).

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT WHERE A PURELY LEGAL ERROR CONCERNING A LIBERTY INTEREST IS RAISED FOR THE FIRST TIME ON APPEAL AND THE PROPER RESOLUTION IS BEYOND ANY DOUBT THAT AN APPELLATE COURT MUST ADDRESS THE ERROR.

At issue in this Petition is whether an appellate court must address a purely legal error concerning a liberty interest raised for the first time on appeal where the proper resolution is beyond any doubt. Mr. Nesdahl submits that his Court should grant review to establish that in such circumstances an appellate court must address the error.

“The Due Process Clause of the Constitution prohibits deprivations of life, liberty, or property without ‘fundamental fairness’ through governmental conduct that offends the community's sense of justice, decency and fair play.” *Roberts v. State of Me.*, 48 F.3d 1287, 1291–92 (1st Cir. 1995)(citations omitted). “For all its consequence, ‘due process’ has never been, and perhaps can never be, precisely defined.” *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 24–25, 101 S. Ct. 2153, 2158, 68 L. Ed. 2d 640 (1981) “[U]nlike some legal rules,’ this Court has said, due process ‘is not a technical conception with a fixed content unrelated to time, place and circumstances.’” *Id.* (quoting, *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230). “Rather, the phrase expresses the requirement of ‘fundamental fairness,’ a requirement whose meaning can be as opaque as its importance is lofty.” *Id.* “Applying the Due Process Clause is therefore an uncertain enterprise which must discover what ‘fundamental fairness’ consists of

in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake.” *Id.*

Here, the government did not dispute that Mr. Nesdahl is entitled to the restoration of his First Step Act credits. Accordingly, under Eighth Circuit precedent, it could have granted relief, *see, e.g., Gap, Inc. v. GK Dev., Inc.*, 843 F.3d 744, 748–49 (8th Cir. 2016) (Explaining that the circuit court has discretion to consider an issue for the first time on appeal where the proper resolution is beyond any doubt, or when the argument involves a purely legal issue in which no additional evidence or argument would affect the outcome of the case, or where the new issue is encompassed in a more general argument previously raised and no new evidence is presented on appeal.), but it chose not to. Mr. Nesdahl acknowledges that there are sound reasons for restricting appellate review to issues raised in the trial court. *See, Puckett v. United States*, 556 U.S. 129, 134, 129 S. Ct. 1423, 1428, 173 L. Ed. 2d 266 (2009). However, when a purely legal error concerning a liberty interest is raised and its proper resolution is beyond any doubt, permitting the error to stand for no other reason than it wasn’t raised sooner is offensive to the community’s, and any reasonable person’s, sense of justice, decency and fair play, not to mention harms the public reputation of the judiciary, and serves no legitimate state interest.

Here, for instance, in the Eighth Circuit, the government did not dispute that Mr. Nesdahl’s First Step Act credits should be restored. Accordingly, the sole reason he will spend additional time in prison rather than home with his family is he didn’t say something sooner. The government has no legitimate interest in seeing Mr.

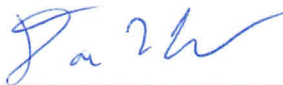
Nesdahl locked up for the time he should be credited, accordingly, whose interest is served by refusing to address the issue? No ones. It's nothing more than punishment for the sake of punishment, and elevates form over substance to the point that efficiency now takes precedent over fairness. Such a proposition is offensive to the very concept of justice which is supposed to be the hallmark of our legal system. *Stone v. Powell*, 428 U.S. 465, 491 FN. 30, 96 S. Ct. 3037, 3051 FN. 30, 49 L. Ed. 2d 1067 (1976) ("I am criticizing, not our concern with procedures, but our preoccupation, in which we may lose sight of the fact that our procedures are not the ultimate goals of our legal system. Our goals are truth and justice, and procedures are but means to these ends. . . . "Truth and justice are ultimate values, so understood by our people, and the law and the legal profession will not be worthy of public respect and loyalty if we allow our attention to be diverted from these goals.") (quoting, *Ethics, Morality and Professional Responsibility*, 1975 B.Y.U.L.Rev. 591, 596).

Accordingly, Mr. Nesdahl respectfully submits that this Court should grant the instant petition, establish that where a purely legal error concerning a liberty interest is raised for the first time on appeal and the proper resolution is beyond any doubt, that an appellate court must address the error, quash the decision below, and remand Mr. Nesdahl's case with instructions that his first step act credits be restored. *See, Id.*

CONCLUSION

For the reasons stated above, this Court should the instant petition, establish that where a purely legal error concerning a liberty interest is raised for the first time on appeal and the proper resolution is beyond any doubt, that an appellate court must address the error, quash the decision below, and remand Mr. Nesdahl's case with instructions that his first step act credits be restored.

Respectfully Submitted,



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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 24-2318

Timothy Nesdahl

Plaintiff - Appellant

v.

C. Garrett, Warden, FCC Forrest City

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Arkansas - Delta

Submitted: June 16, 2025

Filed: June 23, 2025

[Unpublished]

Before LOKEN, GRUENDER, and KOBES, Circuit Judges.

PER CURIAM.

Timothy Nesdahl appeals the district court's¹ denial of his 28 U.S.C. § 2241 petition, which claimed that his right to equal protection had been violated because he was treated more harshly than other inmates who had possessed a cell phone in prison and were not indicted for a contraband offense, and that the Bureau of Prisons improperly aggregated his prior drug sentence and his recent contraband sentence into a single sentence, thereby rendering him ineligible to earn credits under the First Step Act. On appeal, counsel now argues that Nesdahl earned credits before his recent contraband sentence, and he is entitled to have those credits restored.

Following careful review, we conclude that the equal-protection and credit-eligibility claims set forth in Nesdahl's petition in the district court have been forfeited because they were not raised in his counseled brief on appeal. See United States v. Owen, 854 F.3d 536, 541 n.5 (8th Cir. 2017) (issues not raised by counsel on appeal were forfeited); see also United States v. Mink, 9 F.4th 590, 614 n.7 (8th Cir. 2021) (declining to consider pro se issues where appellant had counsel). We further determine that the credit-restoration claim he now raises in his counseled brief was not properly presented below. See Thompson v. United States, 872 F.3d 560, 565 n.5 (8th Cir. 2017) (claim generally cannot be raised for first time on appeal).

Accordingly, we affirm. See 8th Cir. R. 47A(a).

¹The Honorable James M. Moody, Jr., United States District Judge for the Eastern District of Arkansas adopting the report and recommendations of the Honorable Joe J. Volpe, United States Magistrate Judge for the Eastern District of Arkansas.

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-2318

Timothy Joseph Nesdahl

Appellant

v.

C. Garrett, Warden, FCC Forrest City

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:23-cv-00212-JM)

ORDER

The petition for rehearing by the panel is denied.

July 17, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

TIMOTHY NESDAHL
Reg. #31388-009

PETITIONER

v.

2:23-cv-00212-JM-JJV

C. GARRETT, Warden,
FCC Forrest City

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. Your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of this recommendation. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

DISPOSITION

I. INTRODUCTION

Petitioner Timothy Nesdahl, an inmate at the Forrest City Federal Prison Camp, brings this *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) He alleges his prosecution for possession of a prohibited object in prison violated his equal protection rights and that the Bureau of Prisons (“BOP”) is improperly denying him time credits under the First Step Act of 2018, 18 U.S.C. §§ 3631-3635. (*Id.* at 6, Doc. No. 2 at 4-14.) After careful

consideration of Mr. Nesdahl's Petition as well as the Response (Doc. No. 7) and Reply (Doc. No. 10), I recommend the Petition be denied.

II. FACTS

In 2019, Mr. Nesdahl pleaded guilty to one count of possession with intent to distribute methamphetamine and was sentenced to ten years' imprisonment. (Doc. No. 7-1 at 1-2.) In 2021, while Mr. Nesdahl was serving that sentence at the Federal Correctional Institution – Forrest City, he was charged by misdemeanor information with one count of possessing a prohibited object – namely, a phone – in prison, in violation of 18 U.S.C. § 1791(a)(2). *United States v. Timothy Nesdahl*, No. 2:21-cr-00125-1-JJV (E.D. Ark. 2021), Doc. No. 1. Mr. Nesdahl entered a guilty plea and was sentenced to two months' imprisonment, to run consecutively to the sentence he was already serving.¹ (Doc. No. 7-2 at 1-2.)

III. ANALYSIS

A. Equal Protection

Mr. Nesdahl alleges he received “more severe treatment” than other similarly situated inmates, as he was prosecuted for possessing a cell phone in prison while many other inmates who committed the same violation only received an incident report. (Doc. No. 1 at 6.) According to Mr. Nesdahl, this discrepancy amounts to a violation of his equal protection rights. (Doc. No. 2 at 6.)

As Respondent points out (Doc. No. 7 at 2-3), this claim challenges the lawfulness of Mr. Nesdahl's conviction, and it is not cognizable in a habeas corpus petition under § 2241. An inmate seeking to challenge the lawfulness of the imposition of his federal conviction and sentence must

¹ Mr. Nesdahl's sentence has recently been reduced to one month based on an amendment to the United States Sentencing Guidelines. *U.S. v. Nesdahl*, 2:21-cr-00125-1-JJV, Doc. No. 14.

generally bring a 28 U.S.C. § 2255 motion to the sentencing court. *Abdullah v. Hedrick*, 392 F.3d 957, 959 (8th Cir. 2004). Because a § 2255 motion attacks the validity of the conviction or sentence, it is a “further step in the movant’s criminal case,” and subject matter jurisdiction lies with the convicting and sentencing court. *Thompson v. Smith*, 719 F.2d 938, 940 (8th Cir. 1983) (per curiam); *DeSimone v. Lacy*, 805 F.2d 321, 323 (8th Cir. 1986) (per curiam). In contrast, a § 2241 habeas corpus petition attacks the execution of a sentence, or the manner in which the sentence is being carried out, and is properly brought before the court presiding in the judicial district where the prisoner is incarcerated. *Matheny v. Morrison*, 307 F.3d 709, 711-12 (8th Cir. 2002); *DeSimone*, 805 F.2d at 323; *Nichols v. Symmes*, 553 F.3d 647, 649 (8th Cir. 2009). Mr. Nesdahl’s claim, although filed as one pursuant to § 2241, does not attack the execution of his sentence but the validity of it.

A petitioner cannot use § 2241 to challenge a conviction or sentence unless he first shows that § 2255 would be inadequate or ineffective. *Abdullah*, 392 F.3d at 959. The requirement that a petitioner must first demonstrate that § 2255 is inadequate or ineffective comes from § 2255’s savings clause:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255(e). As a purely practical matter, it is the burden of the petitioner to demonstrate that § 2255 relief in the sentencing court would be inadequate or ineffective. *DeSimone*, 805 F.2d at 323 (citing *Von Ludwitz v. Ralston*, 716 F.2d 528, 529 (8th Cir. 1983) (per curiam)). In establishing such a requirement, the United States Court of Appeals for the Eighth Circuit has clearly stated:

Significantly, in order to establish a remedy is “inadequate or ineffective” under § 2255, there must be more than a procedural barrier to bringing a § 2255 petition. This court has held a § 2255 motion is not “inadequate or ineffective” merely because: (1) “§ 2255 relief has already been denied,” (2) “[the] petitioner has been denied permission to file a second or successive § 2255 motion,” (3) “a second or successive § 2255 motion has been dismissed,” or (4) “[the] petitioner has allowed the one year statute of limitations and/or grace period to expire.”

Hill v. Morrison, 349 F.3d 1089, 1091 (8th Cir. 2003) (citing *United States v. Lurie*, 207 F.3d 1075, 1077 (8th Cir. 2000)). It is well settled that “§ 2255 is not inadequate or ineffective where a petitioner had any opportunity to present his claim beforehand.” *Abdullah*, 392 F.3d at 963 (citing *Hill*, 349 F.3d at 1092).

Mr. Nesdahl offers no basis on which to find that the remedy under § 2255 would be inadequate or ineffective to test the legality of his conviction and sentence. Accordingly, this claim should be dismissed for lack of jurisdiction.²

B. First Step Act Credits

Mr. Nesdahl also argues the BOP has improperly denied him time credits under the First Step Act. (Doc. No. 2 at 12-14.) He acknowledges that possession of contraband in prison is a disqualifying offense pursuant to 18 U.S.C. § 3632(d)(4)(D)(xxix). (*Id.* at 12.) However, he contends the BOP has erroneously aggregated his two sentences. (*Id.* at 13-14.) According to Mr. Nesdahl, because the sentences were ordered to run consecutively, he is presently serving time only for the possession with intent to distribute methamphetamine, which is not a disqualifying offense. (*Id.* at 14.) Mr. Nesdahl submits he is eligible to receive time credits while serving this sentence. (*Id.*)

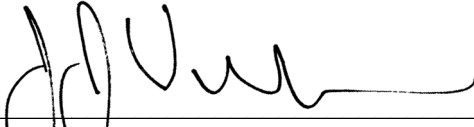
² Mr. Nesdahl’s claim cannot be converted to one under § 2255, even though he was convicted and sentenced in this Court, because it would be barred by § 2255’s one-year statute of limitations. *See* 28 U.S.C. § 2255(f).

The United States Court of Appeals for the Eighth Circuit has previously rejected Mr. Nesdahl's argument. *See Sok v. Eischen*, No. 23-1025, 2023 WL 5282709 (8th Cir. Aug. 17, 2023) (per curiam). As the Eighth Circuit stated, multiple terms of imprisonment, whether ordered to run consecutively or concurrently, "shall be treated for administrative purposes as a single, aggregate term of imprisonment," pursuant to 18 U.S.C. § 3584(c). *Id.* at 1. Therefore, a prisoner who has been convicted of a disqualifying offense is ineligible to receive First Step Act credits, even if he has also been convicted of offenses that are not disqualifying. *Id.*; *see also Davila-Robles v. Kessel*, No. 2:23-cv-00017-LPR, 2024 WL 474853 (E.D. Ark. Feb. 7, 2024); *Tyler v. Garrett*, No. 2:23-cv-00038-JM-JTR, 2023 WL 8244088 (E.D. Ark. Oct. 11, 2023), *report and recommendation adopted*, 2023 WL 8235250 (E.D. Ark. Nov. 28, 2023); *Satizabal v. Edge*, No. 2:23-cv-00040-KGB-PSH, 2023 WL 5746932 (E.D. Ark. Sept. 6, 2023) (recommended decision). In light of this authority, Mr. Nesdahl's claim is without merit.

IV. CONCLUSION

IT IS, THEREFORE, RECOMMENDED that Mr. Nesdahl's § 2241 Petition for Writ of Habeas Corpus (Doc. No. 1) be DENIED.

DATED this 16th day of April 2024.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

TIMOTHY NESDAHL
Reg. #31388-009

PETITIONER

v.

2:23-cv-00212-JM-JJV

C. GARRETT, Warden,
FCC Forrest City

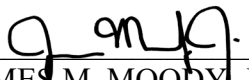
RESPONDENT

ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Joe J. Volpe and Petitioner's Objections. After carefully considering the objections and making a *de novo* review of the record, the Court concludes the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS, THEREFORE, ORDERED that the Petition for Writ of Habeas Corpus (Doc. No. 1) is DENIED.

SO ORDERED this 10th day of June, 2024.



JAMES M. MOODY, JR.
UNITED STATES DISTRICT JUDGE