

The Court first tested and upheld under the Due Process Clause of the Fourteenth Amendment a state statute providing for preventive detention of juveniles.²⁰ Then, in *United States v. Salerno*,²¹ the Court upheld application of preventive detention provisions of the Bail Reform Act of 1984 against facial challenge under the Eighth Amendment. The function of bail, the Court explained, is limited neither to preventing flight of the defendant prior to trial nor to safeguarding a court's role in adjudicating guilt or innocence. "[W]e reject the proposition that the Eighth Amendment categorically prohibits the government from pursuing other admittedly compelling interests through regulation of pretrial release."²² Instead, "[t]he only arguable substantive limitation of the Bail Clause is that the government's proposed conditions of release or detention not be 'excessive' in light of the perceived evil."²³ "[D]etention prior to trial of arrestees charged with serious felonies who are found after an adversary hearing to pose a threat to the safety of individuals or to the community which no condition of release can dispel" satisfies this requirement.²⁴

Bail is "excessive" in violation of the Eighth Amendment when it is set at a figure higher than an amount reasonably calculated to ensure the asserted governmental interest.²⁵ If the only asserted interest is to guarantee that the accused will stand trial and submit to sentence if found guilty, then "bail must be set by a court at a sum designed to ensure that goal, and no more."²⁶ To challenge bail as excessive, one must move for a reduction, and, if that motion is denied, appeal to the Court of Appeals, and, if unsuccessful, appeal to the Supreme Court Justice sitting for that circuit.²⁷ The

added general preventive detention authority. See 18 U.S.C. § 3142(d) and (e). Those amendments authorized pretrial detention for persons charged with certain serious crimes (*e.g.*, crimes of violence, capital crimes, and crimes punishable by 10 or more years' imprisonment) if the court or magistrate finds that no conditions will reasonably assure both the appearance of the person and the safety of others. Detention can also be ordered in other cases where there is a serious risk that the person will flee or that the person will attempt to obstruct justice. Preventive detention laws have also been adopted in some states. *Parker v. Roth*, 202 Neb. 850, 278 N.W.2d 106, *cert. denied*, 444 U.S. 920 (1979).

²⁰ *Schall v. Martin*, 467 U.S. 253 (1984).

²¹ 481 U.S. 739 (1988).

²² 481 U.S. at 753.

²³ 481 U.S. at 754.

²⁴ 481 U.S. at 755. The Court also ruled that there was no violation of due process, the governmental objective being legitimate and there being a number of procedural safeguards (detention applies only to serious crimes, the arrestee is entitled to a prompt hearing, the length of detention is limited, and detainees must be housed apart from criminals).

²⁵ *Stack v. Boyle*, 342 U.S. 1, 4–6 (1951).

²⁶ *United States v. Salerno*, 481 U.S. at 754.

²⁷ *Stack v. Boyle*, 342 U.S. at 6–7.