No. 09-9100

In The
Supreme Court of the United States

October Term 2010

BEAU RADLEY,

Petitioner,

v.

FAIR COUNTY POLICE DEPARTMENT and ARTHUR GOODE,

Respondents.

On Writ of Certiorari to the

United States Court of Appeals for the Fifteenth Circuit

BRIEF FOR RESPONDENTS

Corey Stewart
Counsel for Respondents

QUESTIONS PRESENTED

I. Whether the Fourth Amendment protection against excessive force extends beyond initial seizure?

II. If the Court were to apply a rule of continuing seizure to the Fourth Amendment protection against the use of excessive force, to what point beyond initial seizure should that protection extend?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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OPINIONS BELOW

The opinions of the District and Appeals Courts
have not been reported. The opinions appear in the record.

JURISDICTION

The court of appeals entered judgment on March 15, 2010. (R. at 16). Petitioner filed his petition for writ of certiorari on May 15, 2010. (R. at 17). This Court granted the petition on October 7, 2010. (R. at 18). This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2000). A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

STATEMENT OF THE CASE

On the night of September 23, 2008, Fair County police officer John Marlin ("Marlin") pulled over Beau Radley ("Radley") for drunk driving. (R. at 11). After refusing to take a breathalyzer test, Radley was arrested by Marlin and driven to the Fair County Police Station. (R. at 11-12). Radley asserts no use of excessive force claim against Marlin. (R. at 11).

Upon reaching the Fair County Police Station, Radley's custody was transferred to Fair County police officer Arthur Goode ("Goode"). (R. at 11-12). Goode removed Radley's handcuffs and proceeded with the booking process. (R. at 12).

Once booking was complete, Goode replaced Radley's handcuffs, but Radley claimed that the handcuffs were too tight. (R. at 12). Marlin had re-entered the booking room upon completion of the booking process, and subsequently loosened Radley's handcuffs. (R. at 12).

Goode then walked Radley to a holding cell where the two became involved in an altercation, during which the handcuffed Radley was pushed to the ground and suffered a cut lip. (R. at 12). This event led to Radley's filing of a 42 U.S.C. § 1983 claim against

Goode and the Fair County Police Department for Fourth and Fourteenth Amendment violations. (R. at 12).

Radley's original 42 U.S.C. § 1983 claims were filed February 1, 2009. (R. at 12). Goode and the Fair County Police Department filed a motion to dismiss on March 12, 2009, and the United States District Court for the Southern District of Fair granted the motion to dismiss Radley's Fourth Amendment claim for failure to state a claim upon which relief can be granted. (R. at 13); Fed. R. Civ. P. 12(b)(6). On March 15, 2010, the United States Court of Appeals for the Fifteenth Circuit affirmed the district court's judgment. (R. at 16). On May 15, 2010, Radley filed petition for certiorari, and on October 7, 2010, the Supreme Court of the United States granted the petition to review two questions: 1) Whether the Fourth Amendment protection against excessive force extends beyond initial seizure; and 2) If the Court were to apply a rule of continuing seizure to the Fourth Amendment protection against the use of excessive force, to what point beyond initial seizure should that protection extend? (R. at 17).

SUMMARY OF THE ARGUMENTS

I

In cases of excessive force by a state actor, the Fourth Amendment protects arrestees during seizure, the Fourteenth Amendment protects pretrial detainees after seizure and before conviction, and the Eighth Amendment protects inmates after they have been convicted and incarcerated. However, the circuit courts are split on the issue of how long the Fourth Amendment protection should apply post-arrest (or, initial seizure) in cases of excessive force. But, there is nothing in the text of the Fourth

Amendment that indicates that "seizure" is anything more than a single act, and this Court has declined to decide where Fourth Amendment protection ends, or more importantly, to decide that Fourth Amendment protection extends beyond initial seizure. To resolve the circuit split, the Court should establish a "bright line" rule ceasing Fourth Amendment protection against excessive force at the conclusion of the initial seizure.

II

Even if this Court were to allow Fourth Amendment protection against excessive force to extend beyond initial seizure, the protection should end when the custody of the arrestee is relinquished by the arresting officer or officers. Of the circuit courts that have adopted the "continuing seizure" doctrine applying Fourth Amendment protection against excessive force past the point of initial seizure, the majority have held that Fourth Amendment protection ends when the arrestee is released from the custody of the arresting officer or officers, or at the latest when the arrestee has completed the booking process. Therefore, if this Court were to allow Fourth Amendment protection to extend beyond initial seizure, the protection should end when the detainee is no longer in custody of the arresting officer or officers, or, at maximum, with the completion of the booking process.

ARGUMENT

The Fourth Amendment protects against unreasonable searches and seizures. U.S. CONST. amend. IV. The Due Process Clause of the Fourteenth Amendment prohibits state and local governments from depriving citizens of life, liberty, and property without due process of law. U.S. CONST. amend. XIV, § 1. Congress has enacted legislation to

enable persons that have been deprived of their civil rights to bring a federal action against the state actor that caused the harm. *See* 42 U.S.C. § 1983 (2006). However, the statute itself is merely the vehicle for enforcement, and the constitutional right infringed must be asserted and proven to have been violated. *Graham v. Connor*, 490 U.S. 386, 394 (1989).

The Supreme Court in *Graham* explicitly declined to determine where Fourth Amendment protection ends, and Fourteenth Amendment protection begins, post-initial seizure. *Graham*, 490 U.S. at 395 n. 10. The *Graham* Court also upheld the idea that the Fourth Amendment's "objective reasonableness" standard should be used to review cases of excessive force during the course of arrest. *Id.* at 1867-68. Yet, some circuits have adopted the view that the Fourth Amendment protection continues to apply post-seizure, resulting in a circuit court split. *See, e.g.*, *Riley v. Dorton*, 115 F.3d 1159, 1164 (4th Cir. 1997). Generally said, assertion of a Fourteenth Amendment due process violation demands that the act done "shocks the conscience." *Graham,* 490 U.S. at 396 (citing *Rochin v. California*, 342 U.S. 165 (1952)). Plaintiffs pursuing an action under section 1983 commonly allege a violation of Fourth Amendment rights over Fourteenth Amendment rights, as an "objective reasonableness" violation of the Fourth Amendment is not as difficult to prove as is a "shocks the conscience" violation under the Fourteenth Amendment. *See Graham,* 490 U.S. 386. Though a pretrial detainee exposed to excessive force should be constitutionally protected, the protection should not pose a hindrance to the successful administration of law enforcement. Opening-up nearly every action towards a pretrial detainee by a state actor to "objective reasonableness" review

places an undue burden on the judicial system; thus, Fourth Amendment protection against excessive force should aptly cease with the completion of the initial seizure.

I. FOURTH AMENDMENT PROTECTION AGAINST EXCESSIVE FORCE SHOULD END WHEN THE INITIAL SEIZURE IS COMPLETE.

A. "Seizure" is a single act.

The Fourth Amendment only applies to the arrest and not the detaining after an arrest, as seizure constitutes nothing more than a singular act. *Riley*, 115 F.3d at 163 (quoting *California v. Hodari*, 499 U.S. 621, 625 (1991)). Three circuit courts strongly support this definition of "seizure." *See Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996); *Riley*, 115 F.3d at 1159; and *Valencia v. Wiggins*, 981 F.2d 1440 (5th Cir. 1993). Aside from viewing the text of the Fourth Amendment to decide where its protection should end, these decisions provide the best-reasoned analyses of why the Amendment's protection against excessive force should end with the conclusion of initial seizure.

In *Cottrell*, the detainee was arrested and died en route to the police station post-initial seizure by "positional asphyxia." *Cottrell*, 85 F.3d at 1483. Concededly, the opinion in *Cottrell* was more focused on issues concerned with interlocutory jurisdiction; however, the court discussed excessive force and how it should be judged by constitutional amendment, and indicated that Fourth Amendment protection applied to excessive force during the course of arrest and no further. *Cottrell*, 85 F.3d at 1492. If the arrestee had died during the course of arrest, or, perhaps before the police car set out for the police station, the "objective reasonableness" standard could have applied. However, *Cottrell* shows that, even when the alleged wrong only remotely qualifies

under excessive force, the Fourth Amendment protection should not apply post-arrest. *Id.*

Cases more similar in kind to that at bar also demand that Fourth Amendment protection be refused post-initial seizure. *Riley*, 115 F.3d at 1161-62. In *Riley*, the pretrial detainee had been arrested by one officer, transported to the police station by another officer, but again released into the custody of the arresting officer (and another officer), who took him to another county and subjected him to an alleged excessive force. *Id.* Similar to Radley's facts, the events in *Riley* took place at a location far removed from the site of the initial seizure. *Id.* at 1161. The *Riley* court goes further to explain that the Fourteenth Amendment is the proper tool to adjudge acts of excessive force against pretrial detainees, that courts should determine if the excessive force was meant to "punish" the pretrial detainee, and that this contention is supported by this Court's precedent. *Id.* at 1162 (quoting *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). Perhaps most importantly, the court acknowledged that arrest and detention are two separate acts worthy of two separate standards for adjudication. *Id.* (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975)).

The Fifth Circuit was faced with a set of facts that could be resolved with a bright-line rule ending Fourth Amendment protection at the conclusion of initial seizure. *See Valencia v. Wiggins*, 981 F.2d 1440 (5th Cir. 1993). In *Valencia*, the arresting officer of the detainee had become the Chief Deputy of the county jail after Valencia's arrest, and had subjected Valencia to excessive force three weeks after he was incarcerated in the jail. *Id.* at 1442. The problems in this case are twofold and show the difficulty posed by

the absence of a clear rule establishing a cutoff for Fourth Amendment protection. First, different jurisdictions have different time periods between initial seizure and formal arraignment. *Id.* Second, that it is possible, as in this case, that the detainee could be subjected to excessive force by the arresting officer, but the force could take place well beyond the point of initial seizure, and after the arresting officer has relinquished, then regained, custody. *Id.* The court, through a succinct and rational discussion, held that Fourth Amendment protection could not apply after arrest (initial seizure) has been completed. *Id.* at 1443-44. In its own words the court opined that the Due Process Clause of the Fourteenth Amendment is the proper standard to review cases of excessive force occurring against pretrial detainees. *Id.* at 1445.

B. Those Circuits that have held in favor of "continuing seizure" have done so with faulty logic.

At least two circuit courts have held that a doctrine of "continuing seizure" is a proper extension of Fourth Amendment protection against excessive force. *See Wilson v. Spain*, 209 F.3d 713 (8th Cir. 2000) and *Barrie v. Grand County*, 119 F.3d 862 (10th Cir. 1997). However, their reason for doing so seems unfounded and generally incorrect.

The *Wilson* court was presented with a set of facts involving an officer's accidental "knocking out" of a pretrial detainee in a holding cell just subsequent to the booking process. *Wilson*, 209 F.3d at 714. The court based its decision on prior precedent in the circuit. *Id.* at 715-16. The court acknowledges that the detainee would be unable to win a claim under the Fourteenth Amendment standard if he was unable to

win under the Fourth Amendment; however, the court does little to explain why applying the Fourth Amendment is proper or legally justified. *Id.* at 716.

In *Barrie*, the Tenth Circuit was confronted with the issue of a pretrial detainee's suicide. *Barrie*, 119 F.3d at 863. Although the court held that the Fourth Amendment was applicable in this case to pretrial detainees, the case had nothing to do with excessive force, and the opinion was primarily focused on conditions of confinement rather than any claim of excessive force. *See id.* at 863-68.

The proper constitutional protection afforded to victims of excessive force has been, on occasion, improperly analyzed because the major concerns of the courts dealt with other issues, or was only cursorily reviewed because the facts of the case didn't warrant a formal analysis of what Amendment to apply. When the major issue of a case has been what constitutional protection to apply concerning excessive force, great care has been taken to analyze the factors that influence the timing of certain law enforcement events and the pitfalls of applying the incorrect constitutional protection. For those cases, the Fourth Amendment protection against excessive force has ceased with the conclusion of the initial seizure.

II. IF THIS COURT WERE TO ADOPT A RULE OF "CONTINUING SEIZURE" IN CASES OF EXCESSIVE FORCE, FOURTH AMENDMENT PROTECTION SHOULD END WITH THE RELINQUISHMENT OF CUSTODY BY THE ARRESTING OFFICER OR OFFICERS.

A. Even if this Court were to allow the Fourth Amendment protection against excessive force to extend beyond initial seizure, the protection should end when custody of the arrestee has been relinquished by the arresting officer or officers.

Of the circuits that have adopted the "continuing seizure" doctrine, many have been reluctant to extend the protection to pretrial detainees subjected to excessive force once the detainee has left the custody of the arresting officer or officers. *See Torres v. City of Madeira*, 524 F.3d 1053 (9th Cir. 2008); *McDowell v. Rogers*, 863 F.2d 1302 (6th Cir. 1988); and *Powell v. Gardner*, 891 F.2d 1039 (2d Cir. 1989). If this Court were to also adopt the "continuing seizure" doctrine, the decisions of these circuits should be the guide in determining where Fourth Amendment protection should end.

The Ninth Circuit's holding in *Torres* was supported by Ninth Circuit precedent and a broadening of this Court's opinions. *Torres*, 524 F.3d at 1056. A seizure continues while the detainee remains in the custody of the arresting officers. *Id.* (quoting *Robins v. Harum*, 773 F.2d 1004 (9th Cir. 1985)). Fourth Amendment protection continues to apply when the detainee is in the custody of the arresting officer. *Id.* (quoting *Fontana v. Haskin*, 262 F.3d 871 (9th Cir. 2001)). In the case of *Torres*, the excessive force concerned a mistake on the part of the officer in drawing her pistol rather than her Taser; however, the Fourth Amendment was held to be the correct standard of analysis since the detainee was still, by the court's analysis, seized. *Id.* (citing *Maryland v. Garrison*, 480 U.S. 79 (1987) and *Hill v. California*, 401 U.S. 797 (1971)). The *Torres* decision does not necessarily negate that initial seizure is a single act, it merely shows that the act of initial seizure can take several moments in time to complete. *Id.* From this perspective a "continuing seizure" analysis is appropriate, and deserving of Fourth Amendment protection.

In *McDowell*, the court based its decision to apply the Fourth Amendment based on pre-*Graham* Supreme Court precedent. *McDowell*, 863 F.2d at 1305 (citing *Tennessee v. Garner*, 471 U.S. 1 (1985) (where a suspect had fled from arrest and was shot by a police officer)). The action was held to be unreasonable, and thus adjudged by the Fourth Amendment standard. *Id.* However, the court acknowledged that there was a dispute as to which Amendment, the Fourth or Fourteenth, should apply. *Id.* at 1306. The case does not suggest that Fourth Amendment protection against excessive force should extend to detainees post-initial seizure, but that apprehending a fleeing suspect was actually part of initial seizure. *Id.* at 1305.

Like the facts of the case at bar, the basis for the excessive force complaint in *Powell* occurred at the police station and after the booking process was complete. *Powell*, 891 F.2d at 1041. However, the detainee was subjected to the excessive force, unlike in Radley's case, at the hands of the arresting officer (and several other officers). *Id.* The *Powell* court went into some discussion about the holding of *Graham* and its decline to determine where Fourth Amendment protection ends, but ultimately based its determination to use the Fourth Amendment to guide its decision on a previous Second Circuit case. *Id.* at 1044 (citing *Calamia v. City of New York*, 879 F.2d 1025 (2d Cir. 1989) (Fourth Amendment protection against excessive force applied to detainee that was handcuffed and left for hours on the floor of his home)). Though the Fourth Amendment should not be applied post-initial seizure, and the reason for applying the Fourth Amendment to the facts of the *Powell* case is an extension of the rule, the *Powell*

decision at least draws the line of application to those detainees that remain in the custody of the arresting officer or officers.

B. Some Circuits hold that Fourth Amendment protection should apply up to formal arraignment; however, the reasons for doing so lack legal merit.

The primary problem with applying the Fourth Amendment up to arraignment is that certain factors could prevent the detainee from promptly being arraigned. This could be, for instance, due to an extended hospital stay to treat wounds suffered during an arrest or some incident immediately subsequent to initial seizure. The question, then, is should a detainee that has left the custody of the arresting officer for a situation such as this resume the Fourth Amendment protection once he or she is put back in the custody of the arresting officer or another officer of the law?

Furthermore, it is likely that some jurisdictions will differ in the statutorily prescribed time before subjection to formal arraignment. In Radley's case, there is no statutory provision that dictates the latest a detainee must be taken for arraignment. DM CODE CRIM. PROC. art. 1.07 (West 2010). Thus, if this Court were to adopt a rule allowing the Fourth Amendment to apply up to arraignment, just as much ambiguity of application would continue as is present now, rather an establishment of a "bright line" holding to cease the application of the protection upon completion of initial seizure or when the detainee is passed from the custody of the arresting officer or officers.

Looking first to *Austin v. Hamilton*, 945 F.2d 1155 (10th Cir. 1991), the Tenth Circuit noted it was confronted with an "analytical snarl" regarding what Amendment, the Fourth or Fourteenth, should apply. *Austin*, 945 F.2d at 1158. The Tenth Circuit

acknowledges that the Fourth Amendment applies during arrest, but grappled with the idea that Fourth Amendment should apply post-initial seizure. *Id.* at 1159 (citing *Graham*, 490 U.S. at 395 n. 10). The court ultimately reached its decision to use the Fourth Amendment up to formal arraignment. *Id.* at 1162. However, it did so after citing a series of authority from other jurisdictions that do not support the idea. *Id.* at 1159. Later discussing that the Fourth Amendment governs initial arrest, due process covers excessive force after initial arrest. *Id.* at 1162. Thus, the primary reason for applying the Fourth Amendment up to arraignment is to cover the reasonableness of the pre-arraignment detention. *Id.* at 1162-63.

Returning to the decision of *Barrie*, the court held that Fourth Amendment protection should extend up until formal arraignment. *Barrie*, 119 F.3d at 869-70. *Barrie* concerned a detainee that had been arrested without a warrant and subsequently committed suicide while awaiting arraignment in a jail's "drunk tank." *Id*. at 863-64. The court distinguished its case from that of *Austin* since it involved a jail suicide, and not excessive force. *Id.* at 866. (citing *Austin v. Hamilton*, 945 F.2d 1155, 1160 (10th Cir. 1991)). Therefore, *Barrie* would also be distinguished from the case at bar. Ultimately, the court held that the Fourteenth Amendment is the proper amendment to address issues of "deliberate indifference" towards pretrial detainees. *Id.* at 868-69. The Fourteenth Amendment is the proper standard to judge "deliberate indifference" in cases such as this, but by that rationale the Fourteenth Amendment would also provide the proper test to view "excessive force." One civil rights infraction ("deliberate

indifference") is merely the mirror image of the other civil rights infraction ("excessive force") and is no less of an infraction than the other.

In *Aldini v. Johnson*, 609 F.3d 858 (6th Cir. 2010), the Sixth Circuit held that the Fourth Amendment applies up through probable cause hearings. *Id.* at 866. However, the court held this by extending its earlier holdings applying Fourth Amendment protection up through the booking process. *Id.* Even the facts of the case don't warrant the extension, as the excessive force occurred during the booking process, and did not present the court with a fact situation showing the need for the Fourth Amendment protection to extend to probable cause hearings. *Id.* at 867.

C. At least two Circuits have refused to decide where Fourth Amendment protection against excessive force ends, applying a case-by-case rule, which should be rejected.

Both the Third and Eighth Circuits have not indicated where exactly Fourth Amendment protection against excessive force should end post-initial seizure. *See United States v. Johnstone*, 107 F.3d 200 (3d Cir. 1997), and *Wilson v. Spain*, 209 F.3d 713 (8th Cir. 2000). The two Circuits essentially turn to the facts of each case presented to determine if Fourth Amendment protection applies. Though this idea is presented as a realistic approach to solving problems, it complicates how cases should be viewed and ensures that efficient and economical justice is missed.

In *Johnstone*, a police officer was accused of excessive force against several detainees. *Johnstone*, 107 F.3d at 202-03. In the excessive force counts discussed by the court, all action had been taken after the detainees were in handcuffs, and thus after the arrests of the detainees and not at initial seizure. *Id.* at 204. However, rather than

applying the "continuing seizure" doctrine, the court stated that they would not decide where seizure ends and pretrial detention begins. *Id.*

The *Wilson* court faced the question of what Amendment to apply, but essentially focused its opinion on the facts of the case and the remote circumstances that brought the case to bar. *See Wilson*, 209 F.3d 713. In *Wilson*, the detainee had been arrested, booked, and accidentally knocked unconscious by the arresting officer when he attempted to enter the holding cell and bring the detainee to order. *Id.* at 714. At most, the "arresting officer" rule could apply, but not a holding of the Fourth Amendment applicable up until formal arraignment.

CONCLUSION

The Circuit courts are split as to how long to apply Fourth Amendment protection of pretrial detainees in cases of excessive force, where the act occurs post-initial seizure. And, though state laws can and should be able to vary under our form of government, Congress enacted legislation to allow those subjected to excessive force by government officials to pursue a remedy in federal court. This fact in of itself should be compelling for the Court to prescribe a bright line standard as to when, and when not, the Fourth Amendment should apply.

In viewing the issue from the perspective of the text of the Fourth and Fourteenth Amendments, and furthermore from well-reasoned Circuit decisions that have held that the Fourth Amendment should cease to apply once initial seizure is complete, it is a stretch to allow the Fourth Amendment to extend past "seizure," when seizure has been shown to be a single act. Those subjected to excessive force should certainly be

protected under the Constitution; however, ample protection exists under the Fourteenth Amendment, and no logical reason exists to broaden the scope past what the Amendments were originally intended to accomplish. In conflicting decisions, the concept of continuum still exists: initial seizure leads to pretrial detention leads to formal arraignment leads to conviction. The Fourth Amendment "objective reasonableness" standard protects against excessive force during the initial seizure, the Fourteenth Amendment's "shocks the conscience" standard protects against excessive force during the pretrial detention period, and the Eighth Amendment protection against "cruel and unusual punishment" exists to protect the convicted from excessive force.

If, however, the Court were to look to the ambiguous situations occasionally encountered during arrest and adopt a "continuing seizure" rule, the Fourth Amendment protection against excessive force should at least end when the arresting officer or officers relinquishes custody of the arrestee. Holding otherwise would invariably flood the courts with assertions of Fourth Amendment violations, and though the detainees would be further protected, state officers would be unduly hindered in their responsibilities. Creating avenues of protection for some should not come at the unreasonable expense of others.

Finally, if the Court were to broaden the rule and allow Fourth Amendment protection to extend past initial seizure, and past the relinquishment of custody from the arresting officer or officers, the protection should not extend past the completion of the booking process. Though timing between arrest and booking can be influenced by a number of factors, the majority of booking processes occur in a reasonable time after the

initial seizure has concluded. Formal arraignment, on the other hand, can vary greatly between jurisdictions. Thus, holding Fourth Amendment to apply up until formal arraignment is just too broad of a rule.

PRAYER

For the reasons stated above, Respondents pray that this Court affirm the decision of the court below.

_____

Counsel for the Respondents

CERTIFICATE OF SERVICE

Counsel for Respondents certifies that this brief has been prepared and served on all opposing counsel in compliance with the Rules of the Freshmen Moot Court Competition.

_____

Counsel for the Respondents

APPENDIX

42 U.S.C. § 1983 (2006)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. CONST. amend. IV

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.

U.S. CONST. amend. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. CONST. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.