



PREPARED BY THE COURT

STATE OF NEW JERSEY

v.

PAUL CANEIRO,

Defendant.

SUPERIOR COURT OF NEW
JERSEY

LAW DIVISION: CRIMINAL PART
MONMOUTH COUNTY

INDICTMENT No. 19-02-0283
CASE No. 18-4915

ORDER

THIS MATTER having been opened by the Court on September 12, 2025, to address Defendant's continued detention pending trial pursuant to N.J.S.A 2A:162-22(a)(2)(a). This matter was addressed in the presence of Defendant Paul Caneiro represented by Monica Mastellone, Esq. and Andy Murray, Esq., and Christopher Decker, Esq., Assistant Prosecutor, and Nicole Wallace, Esq., Assistant Prosecutor, for the State of New Jersey, and the Court having heard arguments of counsel and for good cause shown;

IT IS on this 12th day of September, 2025;

ORDERED that the Defendant will remain detained pending trial; and it is further

ORDERED that a status conference will be **Friday, October 10, 2025, at**
10:00AM.



HON. MARC C. LEMIEUX, A.J.S.C.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
COUNTY OF MONMOUTH

Ind. No.: 19-02-0283
Case No.: 18-4915

Decided: September 12, 2025

STATE OF NEW JERSEY,

v.

PAUL CANEIRO
Defendant.

FINDINGS AND CONCLUSIONS OF THE COURT ON
DEFENDANT'S CONTINUED DETENTION PENDING TRIAL
PURSUANT TO N.J.S.A 2A:162-22(a)(2)(a)

CHRISTOPHER DECKER, ESQ. and NICOLE WALLACE, ESQ.,
for the State of New Jersey Monmouth County Prosecutor's Office

MONIKA MASTELLONE and ANDY MURRAY, for Defendant,
PAUL CANEIRO

MARC C. LEMIEUX, A.J.S.C.

I. INTRODUCTION

a. Relevant Procedural and Factual History

Paul Caneiro (hereinafter, “Defendant”) was arrested and charged on November 21, 2018, with aggravated arson in violation of N.J.S.A. 2C:17-1(a)(1) for allegedly setting fire to his home. His first Public Safety Assessment, issued November 21, 2018, recommended his release with the condition of monthly reporting. On November 29, 2018, Defendant was additionally charged with four murders for the death of his brother Keith Caneiro and his family.

The Defendant’s second Public Safety Assessment was issued November 29, 2018. This Public Safety Assessment recommended not to release the Defendant, as he was subject to life imprisonment. On November 29, 2018, the State filed a Motion for Pretrial Detention.

Ruling on the State’s motion and considering the Defendant’s consent to detention, Judge McGann, J.S.C. signed a Pretrial Detention Motion Order on November 29, 2025, detaining the Defendant.

On February 25, 2019, the Defendant was indicted under Monmouth County Indictment No. 19-02-0283 on multiple counts of murder, aggravated arson, weapons offenses, theft, and hindering apprehension.

Six years later, on May 7, 2025, the Defendant filed a Motion to Suppress the digital video recorder (hereinafter, “DVR”), seized in the early morning of

November 20, 2018, while first-responders were tending to the fire at Defendant's home. The Defendant asserted that the warrantless seizure of the DVR violated both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. This Court ruled to suppress the DVR on June 24, 2025. The Appellate Court affirmed the decision on August 6, 2025.

On the morning of September 3, 2025, the Court held an in-person pre-trial conference with the Defendant, defense counsel, and the State. Later that day, the Supreme Court of New Jersey granted the State's Motion for Leave to Appeal and granted, in part, the State's Motion for Acceleration. The Supreme Court set an expedited schedule and ordered the State's brief to be served and filed on or before September 17, 2025. The Defendant's brief was to be served and filed on or before October 1, 2025, and oral argument to be heard during the session of November 3 or 5, 2025.

Voir dire for Defendant's trial was set to begin on September 8, 2025, with thousands of prospective jurors summoned. Due to the State's appeal pending in the Supreme Court, voir dire was rescheduled to January 5, 2026. The Defendant's two-year limit for pretrial detention, under the New Jersey's Criminal Justice Reform Act (hereinafter "CJRA"), will expire on September 14, 2025.

The issue before the Court is whether Defendant's release on September 14, 2025, pursuant to the CJRA's two-year cap on pretrial detention is required or if the

two-year cap may be extended. For Defendant's release to be mandated, the period during the State's Leave to Appeal must not constitute excludable time attributable to the Defendant, and the State must not be trial-ready.

On September 12, 2025, this Court heard oral argument by the parties.

b. State's Argument

The State makes two primary arguments in its brief submitted September 9, 2025, and in oral argument on September 12, 2025. First, the State maintains that the timeframe of this appeal is attributable to Defendant's irregular course of filing his Motion to Suppress the DVR. The State contends that because the Defendant's Suppression Motion is where the State's appeal stems from, the according excludable time must be attributable to the Defendant. Second, the State argues that it is trial ready, and the sole reason it cannot proceed is because of the appeal pending in the Supreme Court.

The State requests that this Court attribute the excludable time to Defendant in the "interest of justice," given that Defendant's Motion to Suppress was not filed until May 7, 2025, which is five years post indictment. While the State makes clear it in no way blames defense counsel for the timing of the Motion to Suppress the DVR, or any other filings, the State argues that Defendant's Motion to Suppress "spawned" the appeal to the Supreme Court, and therefore excludable time is attributable to Defendant.

In support, the State contends that it has not contributed to any significant delays in this case, pointing to Defendant's Olenowski Motion and again to the Motion to Suppress the DVR. State v. Olenowski I, 253 N.J. 133 (2023); State v. Olenowski II, 255 N.J. 259 (2023). At the heart of its argument, the State acknowledges the unparalleled circumstances which contributed to the timing of the motions in this case; however, if the two-year cap is not extended, the State presents the Court with its presumed options: either abandon its right to appeal or release a defendant charged with four murders.

The State cites N.J.S.A. 2A:162-22(b)(1)(c) in arguing that interlocutory appeals are excludable from the two-year time clock because the Appellate Court in State v. Washington determined that an interlocutory appeal is considered a motion. 453 N.J. Super. 164, 203 (App. Div. 2018). The State also cites N.J.S.A. 2A:162-22(b)(1)(l) in the alternative, arguing that the Court may grant excludable time for good cause. Under this framework, the State asks that this excludable time be attributed to Defendant because the delay is reasonable and does not originate with the State.

In relying on State's Exhibits 2 and 3, the State conveys to the Court that it was trial-ready on two separate occasions: August 25, 2022, and March 25, 2024. In that same vein, the State submits that it is still trial ready, and the only reason that it cannot proceed to trial is that it is exercising the right to have the Supreme Court

of New Jersey hear its appeal. The State, again, emphasizes that the Defendant filed his Motion to Suppress in an irregular manner, and had the motion been filed normally, the State would not be in this position. For this reason, the State maintains the position that it is ready to proceed, meaning the two-year time cap should be extended. The State ends its brief arguing that Defendant poses a substantial and unjustifiable danger and that the State's delay was not unreasonable.

c. Defendant's Argument

Defendant's principal argument is that the CJRA mandates that he be released on September 14, 2025, because he has not been brought to trial and the State is not ready to proceed. Defendant relies on N.J.S.A. 2A:162-22(a)(2)(a). The statute states, in relevant part, that "a defendant shall be released from jail...after a release hearing if, two years after the court's issuance of the pretrial detention order for the eligible defendant, excluding any delays attributable to the defendant, the prosecutor is not ready to proceed to voir dire or to opening argument." N.J.S.A. 2A:162-22(a)(2)(a).

The Defendant argues the State is not trial ready and State v. Mackroy-Davis only deals with the question of what happens when the state is ready to proceed to trial but is unable to because of the COVID-19 pandemic. 251 N.J. 217, 221-2 (2022). In other words, Defendant argues that Mackroy-Davis is only applicable when the prosecution and defense are ready to proceed to trial, but the court is unable

to proceed because of unavailability of courtrooms attributed to the pandemic. Defendant asserts that since the Court's inability to proceed to trial is not related to the COVID-19 pandemic, that Mackroy-Davis is inapplicable. Defense Counsel, in oral argument on September 12, 2025, asserts that because the State has chosen to pursue its right to have the Supreme Court of New Jersey hear its appeal, the State is not genuinely trial-ready. On the morning of September 3, 2025, the Court held a pre-trial conference, and the Defendant conceded at that time the State was trial-ready. However, the Defendant argues the State's status of the readiness expired once it chose to pursue its appeal to the Supreme Court.

Regarding excludable time, the Defendant maintains that the period pending appeal is attributable to the State, and only time attributable to the Defendant can extend the two-year cap under N.J.S.A. 2A:162-22(a)(2)(a) and R. 3:25-4(d)(1).

II. GOVERNING LAW AND LEGAL ANALYSIS

The CJRA has three components: (1) it allows for pretrial detention of defendants who pose a risk of danger, flight, or obstruction such that no release conditions would be adequate; (2) it calls for an objective evaluation of each defendant's risk level and consideration of conditions of release that pretrial services officers will monitor, instead of relying heavily on cash bail; and (3) it establishes speedy trial deadlines for defendants who are in pretrial detention. State v.

Robinson, 229 N.J. 44, 54 (2017). Defendant’s Motion for Pre-trial Release concerns the third component of the CJRA.

N.J.S.A. 2A:162-22(a)(2)(a) provides that an eligible defendant “shall be released” after two years of pretrial detention, “excluding any delays attributable to the defendant,” if “the prosecutor is not ready to proceed to voir dire or opening argument, or to the hearing of any motions reserved for the time of trial.”

The Supreme Court has described the two-year limit as a “protective measure to guard against unduly prolonged detention.” In re Request to Release Certain Pretrial Detainees, 245 N.J. 218, 232 (2022). Unlike the 90- and 180-day provisions in N.J.S.A. 2A:162-22(b), which incorporate a broad list of excludable time, the two-year cap does not import those categories; it subtracts only defendant-attributable delay. See Mackroy-Davis, 251 N.J. at 227 (recognizing the categorical difference). The Appellate Division has explained that this design was intentional: the Legislature wanted the two-year cap to be a blunt check on prosecutorial unreadiness, “measured by the prosecutor’s readiness,” rather than subject to the expansive tolling rules that apply elsewhere. State v. D.F.W., 468 N.J. Super. 422, 441 (App. Div. 2021).

Thus, the determination of whether to release a defendant pending trial under N.J.S.A. 2A:162-22(a)(2)(a) requires two inquiries: (1) has the defendant been detained pending trial in excess of two years, excluding delays directly attributable

to him; and (2) on or before the two-year date, was the prosecutor “ready to proceed to trial?” If both elements are satisfied, release is mandatory. However, if the prosecutor is ready, release is barred. Mackroy-Davis, 251 N.J. at 236; R. 3:25-4(d)(3).

a. “Defendant-Attributable” Delay

Rule 3:25-4(d)(2) categorizes delays in trial commencement attributable to a defendant under the two-year limit provided in N.J.S.A. 2A:162-22(a)(2)(a). Subsection (d)(2)(C), cross-referencing Rule 3:25-4(i)(3), provides that time resulting from a motion “filed by the defendant” is attributable to him, but only within strict temporal caps.¹

Critically, State-initiated motion practice and appellate proceedings are not among the categories attributable to the defendant for the two-year calculation (even though such proceedings may be “excludable time” under other provisions in the statute). See Mackroy-Davis 251 N.J. at 233; Washington, 453 N.J. Super at 203 (holding that an interlocutory appeal constitutes “a motion” in terms of excludable time); N.J.S.A. 2A:162-22(b)(1)(c).

¹ Briefing, argument, and evidentiary hearings generally must be completed within 60 days of the motion’s filing, unless extended under Rule 3:10-2(f). The court must decide within 30 days of the record being complete; at most another 30 days may be excluded for extraordinary circumstances. If the motion is reserved to trial, the time from reservation to disposition is not excluded. See R. 3:25-4(i)(3)(A)–(C).

Therefore, the State's Motion for Leave to Appeal in the Supreme Court of New Jersey, is not attributable to the Defendant, even though it stemmed from his successful suppression motion. In accordance, the period from the Supreme Court's grant of leave on September 3, 2025, through the pendency of that appeal, including the scheduled trial date of September 8, 2025, counts toward the two-year cap on pretrial detention and is not excluded. Consequently, the Court finds that with these additional days included, the Defendant has reached the two-year threshold for purposes of N.J.S.A. 2A:162-22(a)(2)(a). The remaining question is whether, on or before that date, the State was "ready to proceed." Mackroy-Davis, 251 N.J. at 233.

b. Prosecutor Readiness

N.J.S.A. 2A:162-22(a)(2)(a) itself does not define prosecutorial readiness. Rule 3:25-4(d)(3), however, provides:

"An eligible defendant shall not be released from jail... if, on or before the expiration of the applicable period of detention, the prosecutor has represented that the State is ready to proceed to voir dire or to opening arguments, or to proceed to the hearing of any motions that had been reserved for trial. The prosecutor's statement of readiness shall be made on the record in open court or in writing."
[R. 3:25-4(d)(3) (emphasis added)].

At the outset, this Court acknowledges that there is no case directly on point, addressing whether a prosecutor may be deemed "ready" when jurisdiction has been divested by a grant of leave to appeal. The existing precedents arose in different contexts: D.F.W., in the setting of systematic trial suspensions during the COVID-

19 pandemic, and Mackroy-Davis, in the context of time-exclusion disputes under the ninety- and one-hundred-eighty-day clocks. Nevertheless, their reasoning provides the best available guide to apply the statute and rules here.

In D.F.W the court held that readiness is measured by prosecutorial preparedness, not by the court system's ability to start trial. 468 N.J. Super. at 441. There, the Appellate Division addressed whether pandemic-related court closures rendered prosecutors "not ready" for two-year purposes. The court held that the CJRA measures compliance by "the prosecutor's readiness," not by "the availability of the court to try the case." Id. at 441.

A prosecutor can be "ready to proceed" even when the courts cannot presently seat a jury. Id. at 443-4. The remedy for fairness concerns is not to redefine readiness but to ensure readiness is genuine and to manage the docket accordingly.

Mackroy-Davis, 251 N.J. at 236-7.

Mackroy-Davis, reinforced this framework when it highlighted that (1) the two-year cap is categorically narrower than the 90- and 180-day clocks, focusing only on defendant-attributable delay and prosecutorial readiness; and (2) readiness must be made meaningful by procedural guardrails: pre-cap readiness hearings, on-the-record and/or written declarations, substantive predicates (discovery, motions, indictment posture, witness availability), and continued judicial management when a ready case cannot immediately be reached. 251 N.J. at 234-7.

Later, Administrative Directive #06-22 codified these requirements: a readiness statement must be substantive, addressing: (1) completion of discovery, (2) resolution of substantive motions, (3) no reasonably anticipated superseding indictment with diligence, and (4) witness availability. NJ Directives Dir. 06-22; Mackroy-Davis, 251 N.J. at 234-5. Courts must also actively manage cases where readiness is established but trial cannot immediately begin. Mackroy-Davis, 251 N.J. at 234.

Collectively, in synthesizing the applicable statutes, court rules, and controlling case law, a consistent theme becomes clear: prosecutorial readiness is controlling under the two-year cap. Read together, these provisions confirm that the critical inquiry is whether the prosecutor has prepared the case for trial, not whether intervening judicial events temporarily prevent the trial from commencing.

The CJRA's federal counterpart, The Speedy Trial Act, is instructive by contrast. The Speedy Trial Act expressly excludes "delay resulting from any interlocutory appeal," per 18 U.S.C. § 3161(h)(1)(C), and pretrial detention under the Bail Reform Act continues during such appeals subject to due process, not a fixed statutory cap. See, e.g., United States v. Loud Hawk, 474 U.S. 302, 316-7 (1986); United States v. Salerno, 481 U.S. 739, 747-8 (1987). New Jersey did not adopt that broad appellate exclusion in the two-year provision. Instead, the CJRA focuses on defendant-attributable delay and prosecutorial readiness. This legislative

choice supports the conclusion that appellate pendency is not equated with prosecutorial unreadiness.

The Defendant urges a different construction: that the statute's phrase "ready to proceed to voir dire or opening argument" requires functional capacity to begin trial (i.e., the ability to practically empanel a jury). Because the Supreme Court's grant of leave divested this Court of jurisdiction to start trial, the Defendant argues the State could not "proceed" and therefore was not "ready."

The Court acknowledges that the statutory phrase "ready to proceed to voir dire or opening argument" can be read to require functional capacity to begin trial. On that reading, when the Supreme Court has granted leave and jurisdiction is removed from the trial court, the prosecutor cannot "proceed," and the cap would compel release. This Court declines that construction for three reasons.

First, it is inconsistent with D.F.W.'s controlling instruction that readiness is measured by prosecutorial preparedness, not court availability. 468 N.J. Super. at 441. Second, it would effectively make release hinge on judicial happenings and decisions, outside either party's control, irrespective of the Legislature explicitly providing the appropriate measures of whether a defendant's release is required under this provision: defendant-attributable delay and prosecutor readiness. Third, it would nullify Rule 3:25-4(d)(3). If the Court implemented the Defendant's construction of governing law, a timely, substantiated readiness representation

would never prevent release if any appellate step intervened between the representation and the trial date. This outcome is contrary to the rule's mandatory language that "the defendant shall not be released." R. 3:25-4(d)(3).

Finally, this record underscores why the defendant's construction cannot prevail. Prior to the cap date, the State represented, on the record and in writing, that it was ready: discovery was complete; no substantive motions remained for trial disposition; no superseding indictment was contemplated with reasonable diligence; and witnesses were available. These are the precise indicia of readiness contemplated by Mackroy-Davis and Directive #06-22. 251 N.J. at 234-5. Moreover, this Court has already set a new trial date, underscoring that the case remains trial-ready and actively managed, notwithstanding the temporary divestiture of jurisdiction by the Supreme Court's grant of leave.

Irrespective, the Defendant argues that the trial had been scheduled for September 8, 2025, and that, *but for* the Supreme Court's grant of leave on the eve of that date, jury selection would have commenced. He further notes that he has been detained nearly seven years overall and more than two years under the detention order. From this, the Defendant argues that the State's strategic choice to seek Supreme Court review demonstrates it was not ready to start trial.

The Court disagrees. The State's Motion for Leave was a valid exercise and preservation of appellate rights on a suppression ruling, not a concession of

unreadiness. The subsequent grant of leave by the New Jersey Supreme Court imposed a judicial constraint on the commencement of trial, not a reversal of prosecutorial readiness.

The Defendant's cited authorities do not compel a different outcome. State v. Hulse addressed whether Mackroy-Davis's five-day appellate timetable for speedy trial calculation appeals also applied to a suppression order appeal. No. A-3923-21 (N.J. Super. Ct. App. Div. Mar 10, 2023) (slip op. at 7 n.3). The Appellate Division held it did not. Id. at 7 n.3. That footnote does not bear on the two-year cap's readiness inquiry here. The Defendant's own memorandum recounts Hulse in that limited posture. Further, while Washington recognizes trial-court authority to enter excludable-time orders during interlocutory appeals, the Defendant correctly observes that such time is not deducted from the two-year cap unless it is defendant-attributable. 453 N.J. Super. at 203. This Court agrees and has not relied on appellate pendency to subtract time. But that does not resolve readiness. Readiness and attribution are distinct: the former asks what the prosecutor has done; the latter asks what time is chargeable to the defendant.

What is more, the Court also notes, without cataloging every order in this lengthy case, that considerable period of pretrial time has previously been attributed to the Defendant. For years, delay was occasioned by Defendant's own need to review discovery, consult with experts, and pursue pretrial motions. For nearly the

past four years, excludable time orders were entered on that basis, and the Defendant did not object. Anecdotally, since this Court issued its Olenowski decision, the Defendant has filed leave to appeal to the Appellate Court. That filing was denied on April 14, 2025. The Defendant then filed leave to appeal with the New Jersey Supreme Court, which was denied on July 1, 2025. With trial scheduled for September 8, 2025, that filing, too, carried the potential foreseeable effect of delaying proceedings.

To be clear, the Court finds that the present delay caused by the pendency of the State's appeal is not attributable to the Defendant for purposes of calculating the two-year clock, and no portion of that delay has been charged against him in this ruling. The Court also does not suggest fault of either party in exercising and preserving their appellate rights. However, the Defendant cannot credibly recast the pace of this case's litigation as the isolated fault of the State, a harm our jurisprudence sought to prevent. See In re Request to Release Certain Pretrial Detainees, 245 N.J. at 232 (explaining that the Legislature adopted the two-year limit as a protective measure against unduly prolonged detention, one that conditions release on prosecutorial unreadiness, not on ordinary case-management delays or court unavailability).

Accordingly, the Court holds that the State remained "ready to proceed" within the meaning of N.J.S.A. 2A:162-22(a)(2)(a), notwithstanding the Supreme

Court's grant of leave. The State's timely, on-record, and substantive readiness representation precludes mandatory release under Rule 3:25-4(d)(3). The State submitted two letters dated August 25, 2022, and March 25, 2024, affirming its readiness to proceed.² While the Court recognizes that prior assertions of readiness do not, in themselves, establish current readiness, the State expressly renewed its readiness on the record on September 12, 2025. D.F.W., 468 N.J. Super at 433.

As outlined in Mackroy-Davis, the State's readiness encompasses four elements: (1) discovery is complete; (2) no substantive motions remain to be filed; (3) the indictment is final, and no superseding indictment is contemplated; and (4) the State's witnesses are generally available. 251 N.J. at 234-235. On September 12, 2025, the State affirmatively represented that discovery was complete, no substantive motions remained, the indictment was final, and the witnesses were generally available. The Court finds the State has satisfied its burden under N.J.S.A. 2A:162-22(a)(2)(a) and Rule 3:25-4(d)(3). The only outstanding delay is the pending appeal before the Supreme Court of New Jersey, which does not negate that the State satisfies all four Mackroy-Davis elements.

To be sure, the Court is mindful of the CJRA's protective purpose and the substantial period of detention in this matter. In re Request to Release Certain Pretrial Detainees, 245 N.J. at 232. The Defendant emphasizes that absent the

² State's Exhibits 2 and 3.

State's appeal, trial would have proceeded on the scheduled date. The proper safeguard in this posture, however, is active, continuing judicial management and, when appropriate, individualized due-process review, not a finding that the State is not ready to proceed to trial. This Court will therefore maintain close oversight with regular status conferences at 30-day intervals during appellate pendency.

c. Alternative Grounds Asserted by the State under (Rule 3:25-4(c)(2)).

Because the Court concludes the State was "ready" within the meaning of N.J.S.A. 2A:162-22(a)(2)(a) and Rule 3:25-4(d)(3), it need not reach the State's alternative application. The State's brief nevertheless details public safety and obstruction risks and asserts the absence of unreasonable prosecutorial delay as independent grounds to extend detention if necessary.

The State, relying on Rule 3:25-4(b)(2), argues that the Defendant poses a substantial and unjustifiable danger and the State's delay was not unreasonable, both of which are attributable to excludable time pursuant to the 180-day time clock. There are several periods which have been designated as excluded in computing the time in which a case shall be indicted or tried under the 180-day limit. The State also cited N.J.S.A. 2A:162-22(b)(1)(l) in arguing that the Court may grant excludable time for good cause. However, neither the public safety and unreasonable delay standard, nor the good cause "catchall" govern the two-year time clock. Mackroy-Davis, 251 N.J. at 227. Were the instant motion asserted under the

180-day limit, the State's application would warrant consideration. However, with the Defendant having made the instant motion under the two-year limit, which does not permit this Court to issue the additional period to commence trial the State asks it to grant, this Court need not and will not reach this issue.

d. Alternative Grounds Asserted by Defendant (R. 2:9-4).

In the alternative, the Defendant requests the Court set bail pursuant to R. 2:9-4. However, as the Court has determined the Defendant shall be detained pending further proceedings, the request for bail will not be considered at this time.

III. CONCLUSION

The Court finds that (1) the two-year threshold has been reached after subtracting only defendant-attributable time; (2) on or before that date, the State made a timely, substantive readiness representation on the record and in writing within Rule 3:25-4(d)(3) and Directive #06-22; and (3) the Supreme Court's grant of leave/certification did not render the State "not ready" under N.J.S.A. 2A:162-22(a)(2)(a). The statutory trigger for release is unmet; therefore, the Defendant's motion is **DENIED**.

The matter will be listed for status conferences at 30-day intervals during appellate pendency. The first status conference will be on **Friday, October 10, 2025, at 10:00AM**. Nothing herein precludes the Defendant from seeking Due

Process relief should future detention become constitutionally excessive in duration or character.