# 9.29 Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Excessive Force

As previously explained, the plaintiff has the burden to prove that the acts or failures to act of the defendant deprived the plaintiff of particular rights under the United States Constitution. In this case, the plaintiff alleges the defendant deprived [him] [her] [other pronoun] of [his] [her] [other pronoun] rights under the Fourteenth Amendment to the Constitution when the defendant used excessive force against the plaintiff.

 Under the Fourteenth Amendment, an officer may use only such force as is “objectively reasonable” under all of the circumstances. You must judge the reasonableness of a particular use of force from the perspective of a reasonable officer on the scene and not with the 20/20 vision of hindsight. Although the facts known to the officer are relevant to your inquiry, an officer’s subjective intent or motive is not relevant to your inquiry.

To prove the defendant deprived the plaintiff of this Fourteenth Amendment right, the plaintiff must prove the following elements by a preponderance of the evidence:

First, the defendant purposely or knowingly used force against the plaintiff;

Second, the force used against the plaintiff was objectively unreasonable; and

Third, the acts of the defendant caused harm to the plaintiff.

In determining the objective reasonableness or unreasonableness of the force used, consider the following factors:

1. The relationship between the need for the use of force and the amount of force used;
2. The extent of the plaintiff’s injury;
3. Any effort made by the defendant to temper or to limit the amount of force;
4. The severity of the security problem at issue;
5. The threat reasonably perceived by the defendant; and
6. Whether the plaintiff was actively resisting.

**Comment**

 The Fourteenth Amendment applies to excessive force claims brought by pretrial

detainees. Specifically, the Supreme Court has held, “It is clear … that the Due Process Clause

protects a pretrial detainee from the use of excessive force that amounts to punishment.” *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). In *Kingsley v. Hendrickson*, 576 U.S. 389, 395 (2015), the Supreme Court held that to prove an excessive force claim under the Fourteenth Amendment, a pretrial detainee must show that the officers’ use of force was “objectively” unreasonable; the detainee is not required to show that the officers were “subjectively” aware that their use of force was unreasonable. Claims of excessive force asserted by pretrial detainees, while governed by the Fourteenth Amendment’s Due Process Clause, are likewise analyzed under an objective reasonableness standard. *See Kingsley*, 576 U.S. at 395 (holding that excessive force claims asserted by pretrial detainees are governed under an objective reasonableness standard which should account for the government’s need to maintain order). “The following considerations may bear on the reasonableness (or unreasonableness) of the force used: ‘the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.’” *Id.* at 397; *accord* *Bell v. Williams*,108 F.4th 809, 819 (9th Cir. 2024) (citing *Kingsley* factors bearing on reasonableness of force used.).

In *Hyde v. City of Willcox*, 23 F.4th 863 (9th Cir. 2022), the Ninth Circuit held that the use of force was constitutionally excessive when officers continued to use force after a pretrial detainee had been restrained and was not resisting, at least where the officers had sufficient time to realize that the detainee could no longer resist and did not pose a threat. *Id.* at 871. “The most important factor is whether the suspect posed an immediate threat.” *Id.* at 870(citing *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (en banc)). “This analysis is not static, and the reasonableness of force may change as the circumstances evolve.” *Hyde*, 23 F.4that 870 (citing *Jones v. Las Vegas Metro. Police Dep’t*, 873 F.3d 1123, 1130 (9th Cir. 2017)). Courts review these claims “from the perspective of a reasonable officer on the scene,” and take into account the particular facts and circumstances of each case. *Bell,* 108 F.4th at 819 (quoting *Kingley*, 576 U.S. at 397).

In the appropriate case, the trial court may instruct the jury that in considering the elements, it should give deference to prison officials in the adoption and execution of policies and practices that in their judgment are needed to preserve discipline and to maintain internal security in a prison. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Courts “must defer to the judgment of correctional officials unless the record contains substantial evidence showing [that] their policies are an unnecessary or unjustified response to problems of jail security.” *Florence v. Bd. of Chosen Freeholders Cnty. of Burlington*, 566 U.S. 318, 322-23 (2012). “It is well established that judges and juries must defer to prison officials’ expert judgments.” *Norwood v. Vance*, 591 F.3d 1062, 1066 (9th Cir. 2010).

 The Ninth Circuit has held that failing to give a jury deference instruction based on the general principles outlined in *Bell* was an error. *Norwood*, 591 F.3d at 1066-67 (“Prison officials are entitled to deference whether a prisoner challenges excessive force or conditions of confinement.”). In subsequent cases, the Ninth Circuit explained that a deference instruction should be given only where both of the conditions in *Bell* were present: first, the prison officials adopted and executed “policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security,” *Shorter v. Baca*, 895 F.3d 1176, 1183 (9th Cir. 2018) (quoting *Bell*, 441 U.S. at 547), and second, the record did not contain “substantial evidence showing [that the prison’s] policies are an unnecessary or unjustified response to problems of jail security.” *Id.* (quoting *Florence*, 566 U.S. at 323); *see also Fierro v. Smith*, 39 F.4th 640, 648 (9th Cir. 2022) (restating the rule that “two conditions” inform whether the deference instruction should be given when prisoners assert Eighth Amendment claims challenging their treatment in prison, namely “whether the treatment the prisoner challenges (1) was provided pursuant to a security-based policy or practice, and, if so, (2) was a necessary, justified, and non-exaggerated response to security needs”).

 In light of the two *Bell* conditions, the Ninth Circuit has explained the contours of giving a deference instruction in different scenarios. The plaintiff bears the burden of producing “substantial evidence” in the record that the two conditions are not met. *Shorter*, 895 F.3d at 1183 (“In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to [security] considerations courts should ordinarily defer to their expert judgment in such matters” (citing *Block v. Rutherford*, 468 U.S. 576, 584-85 (1984)). If the plaintiff has failed to carry this burden, or if the parties do not dispute that both *Bell* conditions are met, the trial court must give a jury the deference instruction. *Fierro*, 39 F.4th at 648; *Norwood*, 591 F.3d at 1067. Where the parties agree that one condition is met and one is absent, or that both conditions are absent, then the trial court may not give the jury deference instruction. *Fierro*, 39 F.4th at 648.

 In cases involving the denial of medical care to prisoners, which highlight *Bell*’s first condition (whether the policy or procedure addressed the need for prison security), the deference instruction should not be given “unless a party’s presentation of the case draws a plausible connection between a security-based policy or practice and the challenged medical care decision.” *Chess v. Dovey*, 790 F.3d 961, 972 (9th Cir. 2015); *see also* *Shorter*, 895 F.3d at 1184 (holding that “the [jury deference] instruction may be given only when there is evidence that the treatment to which the plaintiff objects was provided pursuant to a security-based policy”); *Coston v. Nangalama*, 13 F.4th 729, 734 (9th Cir. 2021) (holding, in a medical care case, that the deference instruction should not have been given because, among other things, defendants “did not draw a plausible connection between a security-based policy or practice and the challenged decision to terminate [defendant’s] morphine prescription without tapering”).

 In a case highlighting *Bell*’s second condition (whether there was substantial evidence that prison officials had exaggerated their response), a deference instruction was not appropriate when the record contained substantial evidence that the jail’s search practice “was an unnecessary, unjustified, and exaggerated response to jail officials’ need for prison security.” *Shorter,* 895 F.3d at 1184 (stating that “jail officials concede[d] that there was no legitimate penological purpose for shackling mentally ill, virtually unclothed, female pretrial detainees to their cell doors for hours at a time”).

 Finally, in some cases, whether or not to give deference to prison officials should be left to the jury to decide. *Coston,* 13 F.4th 735. If the plaintiff offered substantial evidence that the prison official’s action “was not provided pursuant to a security-based policy or practice,” and the policy at issue was “an unnecessary, unjustified, or exaggerated response,” but in response the prison adduced substantial evidence that the prison official’s “actions were (1) taken because of a security-based policy or practice and (2) necessary, justified, and not exaggerated,” *Coston*, 13 F.4th at 735, then “it might be appropriate to instruct the jury that ‘whether to give deference to prison officials [is] left to the jury to decide.’” *Fierro*, 39 F.4that 648-49 (citing *Coston*, 13 F.4th at 735).

This framework also applies to pretrial detainees challenging use of force and other conditions of confinement. *See Fierro*, 39 F.4th 648. n.6 (“This framework also applies to pretrial detainees challenging their conditions of confinement under the Fourteenth Amendment.”). A court must also account for the “legitimate interests that stem from [the government’s] need to manage the facility in which the individual is detained,” appropriately deferring to “policies and practices that in th[e] judgment” of jail officials “are needed to preserve internal order and discipline and to maintain institutional security.” *Kingsley*, 576 U.S. at 397 (quoting *Bell v. Wolfish*, 441 U.S. at 540). *See also Bell v. Williams*, 108 F.4th 809, 828 (9th Cir. 2024) (approving instructing the jury on deference owed to jail’s security interests for pretrial detainee’s claims under the ADA and Rehabilitation Act: “consider a detention facility's legitimate correctional interests, and whether there is a valid, rational connection between the action taken and the legitimate and neutral governmental interest put forward to justify it.”).

 The Fourth Amendment may also be applicable. In *Graham v. Connor*, 490 U.S. 386,

395 n.10 (1989), the Supreme Court observed that it was an open question “whether the Fourth

Amendment continues to provide individuals with protection against deliberate use of excessive

physical force beyond the point at which arrest ends and pretrial detention begins.” But with

regard to pre-arraignment custody, the Ninth Circuit held that the Fourth Amendment

provides protection against the use of excessive force. *Pierce v. Multnomah County*, 76 F.3d

1032, 1043 (9th Cir. 1996) (“We hold, therefore, that the Fourth Amendment sets the applicable constitutional limitations on the treatment of an arrestee detained without a warrant up until the time such arrestee is released or found to be legally in custody based upon probable cause for arrest.”).

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