**9.29 Particular Rights—Fourteenth Amendment—Pretrial**

**Detainee’s Claim of Excessive Force**

**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). More recently, in *Kingsley v. Hendrickson*,

135 S. Ct. 2466, 2472 (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.

In *Hyde v. City of Willcox*, 23 F.4th 863 (9th Cir. 2022), the Ninth Circuit held that the use of force is constitutionally excessive when officers continue to use force after a pretrial detainee had been restrained and is not resisting, at least where the officers had sufficient time to realize that the defendant could no longer resist and did not pose a threat. “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 870 (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)). “The most important factor is whether the suspect posed an immediate threat.” *Id.* (citng *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.” *Id.* (citing *Jones v. Las Vegas Metro. Police Dep’t*, 873 F.3d 1123, 1130 (9th Cir. 2017)).

 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 has 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) (applying Fourth Amendment to assess constitutionality of

duration, conditions, or legal justification for prolonged warrantless post-arrest pre-arraignment

custody).

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