**ANNOTATIONS AND COMMENTS**

1. **Excessive Force Claims by Arrestees and Pretrial Detainees**

Claims of excessive force against law enforcement officials in the course of making an arrest of a private person are analyzed under the Fourth Amendment’s “objective reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 388, 395 n.10 (1989). 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 v. Hendrickson*, 135 S. Ct. 2466 (2015) (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). While this instruction applies to claims brought by both arrestees and pretrial detainees, Pattern Instruction 5.6 applies if the excessive force claim is brought by a convicted prisoner.

1. **Elements of Excessive Force Claim**

In *Graham v. Connor*, the Supreme Court held that claims of excessive force asserted by a private citizen are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard. 490 U.S. at 388. The Court also recognized that “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it,” but that the proper application of the Fourth Amendment’s objective reasonableness test “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” *Id.* at 396. Additional factors to consider may include “the need for the application of force, . . . the relationship between the need and amount of force used, and . . . the extent of the injury inflicted.” *Lee v. Ferraro*, 284 F.3d 1188, 1198 (11th Cir. 2002) (citing *Leslie v. Ingram*, 786 F.2d 1533, 1536 (11th Cir. 1986)). The “reasonableness” of a particular use of force is “judged [objectively] from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S*.* at 397.

In *Kingsley v. Hendrickson*, the Supreme Court held that a pretrial detainee alleging a claim of excessive force “must show only that the force purposely or knowingly used against him was objectively unreasonable.” 135 S. Ct. at 2473. In this regard, the Court also stated that the following factors may bear on the reasonableness of the force used against a pretrial detainee: “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.*

1. **Causation**

For additional information regarding the instruction on causation, see the annotation following Pattern Instruction 5.3.

1. **Damages**

For the damages instruction, see Pattern Instruction 5.13.