

## Use-of-Force Recipient Status Matrix

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Force Recipient	Free Person		Pre-Trial Detainee	Incarcerated and Convicted Person
	Seized Person - 4th Amendment	Not Seized Free Person Under 4th Amendment		
<b>Constitutional Amendment</b>	4th Amendment	5th Amendment - Federal Officers 14th Amendment - State Officers		8th Amendment
<b>Use-of-Force Standard</b>	Objective Reasonableness Test (Objective Test)	Due Process Clause Shock the Conscience Test		Cruel & Unusual Punishment (Subjective Test)
<b>Leading Cases</b>	<u>Graham v. Conner</u> , 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989); <u>Tennessee v. Garner</u> , 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); <u>Brower v. County of Inyo</u> , 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989); <u>Chew v. Gates</u> , 27 F.3d 1432 (9th Cir. 1994); <u>Saucier v. Katz</u> , 533 U.S. 194, 121 S. Ct. 2151, 150 L.Ed.2d 272 (2001).	<u>County of Sacramento v. Lewis</u> , 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998); <u>Johnson v. Glick</u> , 481 F.2d 1028 (2 <sup>nd</sup> Cir. 1973), <i>cert denied</i> , 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973) <u>Bell v. Wolfish</u> , 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); <u>Rochin v. California</u> , 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952). See also <u>Brothers v. Klevenhagen</u> , 28 F.3d 452 (5 <sup>th</sup> Cir. 1994); <u>Valencia v. Wiggins</u> , 981 F.2d 1440 (5 <sup>th</sup> Cir.), <i>cert. denied</i> , 509 U.S. 905, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993); <u>Neal v. St. Louis</u> , 217 F.3d 955 (8 <sup>th</sup> Cir. 2000).	<u>Hudson v. McMillian</u> , 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992); <u>Wilson v. Seiter</u> , 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991); <u>Whitley v. Albers</u> , 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986); <u>Estelle v. Gamble</u> , 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); <u>Hope v. Pelzer</u> , 536 U.S. 730, 122 S. Ct. 2508, 153 L.Ed.2d 666 (2002).	
<b>Use-of-Force Test Parameters</b>	<p>- A "seizure" occurs when there is a "governmental termination of freedom of movement through means intentionally applied. <u>Brower</u>, 489 U.S. at 597. The 4<sup>th</sup> Amendment addresses "misuse of power," not the accidental effects of otherwise lawful conduct. <u>Brower</u>, 489 U.S., at 596.</p> <p>- Are the officers' actions "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation?</p> <p>- Reasonableness is determined by balancing the nature and quality of the intrusion with the countervailing governmental interests.</p> <p>- Reasonableness contemplates (<u>Graham</u>):</p> <ol style="list-style-type: none"> <li>1. Is the suspect an immediate threat to officers and/or others?</li> <li>2. Is the suspect actively resisting seizure?</li> <li>3. Are the circumstances tense, uncertain, and/or rapidly evolving?</li> <li>4. What is the severity of the crime(s) at issue?</li> <li>5. Is the suspect attempting to evade seizure by flight (trying to get away)?</li> </ol>	<p><u>County of Sacramento v. Lewis</u> - Police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. Holding - in such circumstances, "only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." Two standards:</p> <ol style="list-style-type: none"> <li>(1) Where a state actor is afforded a reasonable opportunity to deliberate various alternatives prior to electing a course of action, the chosen action will be deemed "conscience shocking" if the action was taken with "deliberate indifference." <u>Lewis</u>, 118 S. Ct. at 1719.</li> <li>(2) In rapidly evolving, fluid, and dangerous situations which preclude the luxury of calm and reflective deliberation, a state actor's action will shock the conscience only if the actor intended to cause harm. See <u>Lewis</u>, 118 S.Ct. at 1720.</li> </ol> <p><u>Johnson v. Glick</u> - Four-Part "Shock the Conscience Test"</p> <ol style="list-style-type: none"> <li>1. The need for the use of force;</li> <li>2. The relationship between that need and the amount of force that was used;</li> <li>3. The extent of the injuries inflicted; and</li> <li>4. Whether the force applied was in good faith or maliciously and sadistically for the purpose of causing harm.</li> </ol>	<p><u>Whitley</u> held that only an "unnecessary and wanton infliction of pain" and "actions taken in bad faith and for no legitimate purpose" are a cruel and unusual punishment. <u>Hudson</u> stated that the <u>Whitley</u> standard applies in both prison-riot and non-riot contexts. <u>Hudson</u> also held that all excessive force claims must show malice, sadism, and intent to cause harm. <u>Hudson</u> also held the 5th Circuit's "significant injury" requirement was improper under the 8th Amendment analysis. <u>Hope</u> - The policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the Eighth Amendment.</p>	