

# **Bond Case Briefs**

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## **CIVIL RIGHTS - NEW YORK**

### **Berg v. Kelly**

**United States District Court, S.D. New York - November 30, 2018 - F.Supp.3d - 2018 WL 6252383**

Protesters filed § 1983 action alleging that city police officers unlawfully detained them and other putative class members during protest, that their detention was in retaliation for their exercise of First Amendment rights, that they were subjected to selective enforcement, and that some officers failed to intervene.

The United States District Court for the Southern District of New York denied officers' motion for summary judgment in qualified immunity grounds, and officers filed interlocutory appeal. The Court of Appeals reversed and remanded. On remand, the district court issued opinion granting in part and denying in part motion for summary judgment by officers. Protestors moved for reconsideration of that opinion to extent it dismissed their purported *Monell* claim.

The District Court held that municipality was not put on notice that protestors were making *Monell* claim merely by stating in complaint that police commissioner and chief of police department were being sued in their "official" capacities.

Municipality was not put on notice that protestors were making *Monell* claim merely by stating in complaint under § 1983 that police commissioner and chief of police department were being sued in their "official" capacities; complaint recited single incident of alleged unconstitutional conduct in detail when protestors were detained and kept inside "pen" set up for press for approximately two hours, but protestors did not state that municipality or those officials had policy that caused them to be confined and they did not take any discovery addressing *Monell* liability.