

Twitter Thread by LightlyThreatenHat



LightlyThreatenHat

@Popehat



How about a brief refresher on federal bail, since everyone's got opinions on it this week? Yes?

Okay, here we go. In federal criminal cases, bail is governed by the Bail Reform

/2 Under the Bail Reform Act, a defendant **MUST BE RELEASED ON BAIL** unless the judicial officer (usually a federal magistrate judge) finds that no condition or combination of conditions will reasonably assure (1) them appearing for trial or (2) the safety of the community.

/3 It's the burden of the government -- the federal prosecutor - to **PROVE** by **CLEAR AND CONVINCING EVIDENCE** that the danger element applies, and no conditions can reasonably control it, if the government wants someone detained without bail. Preponderance burden for flight risk.

/4 **HOWEVER** there are certain statutory categories of crimes where there is a rebuttable presumption that no conditions will prevent flight or danger -- in other words, for those crimes, the burden shifts to the defendant.

/5 The Federal Rules of Evidence don't govern detention hearings and they can and do proceed by "proffer" -- that is, the government saying what they will prove if necessary.

/6 Here is a government-side description of the law and the process -- shaded towards the government but pretty reliable.

<https://t.co/4qYabZo7St>.

/7 Since bail is an entitlement unless **NO COMBINATION OF CONDITIONS** will prevent flight risk or danger, judges must and do consider measures like pretrial supervision, home detention, bail posted by the defendant or loved ones, restrictions on activities, etc.

/8 Before the bail hearing the Pretrial Services Office -- an arm of the court -- does a brief investigation, background check, and interviews (including of the defendant and family). Their recommendation tends to weigh heavily with the judge.

/9 The bottom line is that "why would someone accused of that federal crime be released" is, legally and practically, the wrong question.

/end