

Twitter Thread by Barb McQuade



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1/ In response to some questions about release of some Capitol Hill defendants on bond pending trial, I offer this brief explainer. Detention is governed by the federal Bail Reform Act.

2/ Keep in mind that pretrial, defendants are presumed innocent, and cannot be held to punish them for the crime of which they are accused. Detention is to prevent them from harming others or fleeing.

3/ Defendants get a presumption of release, and the majority are released on bond, a promise to pay a sum if they fail to return, often \$10,000. Defendants are detained only if no conditions can ensure their appearance at trial or the safety of the community.

4/ At a detention hearing, the government bears the burden of proving danger to the community by clear and convincing evidence or risk of flight by a preponderance of the evidence.

5/ If the judge finds this burden is not met, she will release the defendant on bond. She may include conditions, like an ankle monitor to reduce risk of flight, or no contact with victims, to reduce risk of harm or obstruction.

6/ Conditions may also include surrendering passport, no possession of firearms, drug testing, and others, depending on the facts.

7/ Where there is some risk of flight, a judge may make the bond amount higher to provide an incentive to return. For example, I have seen judges require defendants to pledge the title to their homes as a bond.

8/ The federal system does not use cash bail, which has been criticized for penalizing the poor. In a cash bail system, a judge sets a dollar amount the defendant must pay for release, usually based on the seriousness of the crime. Inability to pay results in detention.

9/ As judges decide whether the Capitol Hill defendants should be released, they consider the nature of the offense charged, including the individual's conduct, the weight of the evidence, criminal history and character of the offender, and danger posed.

10/ Judges are not seeking to punish defendants at this stage, but to decide whether the government has proven they are a risk of flight or pose a danger to the community between now and trial such that preventive detention is required.

11/ If convicted at trial or by guilty plea, the judge will then sentence the defendant for his crimes. The goals then are different - to punish as well as to protect public safety, deter crime, promote respect for the rule of law, and rehabilitate the defendant.

12/ The judges will decide detention in the Capitol Hill cases on a case-by-case basis, depending on all of these factors.
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