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