

Debunking the Pro-Trump Right's Claims About the Jan. 6 Riot

[nytimes.com/2021/09/17/us/politics/capitol-riot-pro-trump-claims.html](https://www.nytimes.com/2021/09/17/us/politics/capitol-riot-pro-trump-claims.html)

September 17, 2021

In the eight months since a pro-Trump mob stormed the Capitol, some Republicans have tried to build a case — belied by the facts — that the vast federal investigation of the riot has been essentially unfair, its targets the victims of political persecution.

The people charged in the Jan. 6 attack are “being persecuted so unfairly,” former President Donald J. Trump said in a statement on Thursday.

That sentiment is the organizing principle behind the rally scheduled in Washington on Saturday, billed as “Justice for J6.” According to the permit application submitted by the organizers, a group called Look Ahead America, the event is meant to “bring awareness and attention to the unjust and unethical treatment of nonviolent Jan. 6 political prisoners.”

The rally is the latest effort in the right's continuing attempt to rewrite the history of the mob attack on Congress, which prosecutors say led to as many as 1,000 assaults against the police and sought to disrupt certification of President Biden's victory in the 2020 election.

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Here is what the facts say about assertions from those seeking to promote a false narrative about Jan. 6.

The rioters weren't just tourists who now face excessive criminal charges.

One of the first claims that pro-Trump conservatives made about Jan. 6 was that the rioters were little more than tourists and that those arrested were victims of prosecutorial overreach. Representative Andrew Clyde, Republican of Georgia, described the scene at the Capitol that day as “a normal tourist visit,” implying that hundreds of people taken into custody were facing excessive charges.

But, in fact, nearly half of the more than 600 people charged have been accused only of misdemeanors like trespassing and disorderly conduct, rather than more serious felonies.

At this point, more than 50 of these low-level defendants have pleaded guilty. All of them will serve prison terms of six months or less, or no time at all — fairly modest sentences for the federal penal system. But even when the authorities have agreed to lenient penalties, they have still insisted that no one who broke into the Capitol is innocent.

“A riot cannot occur without rioters,” prosecutors wrote in a recent memo proposing no jail time for Valerie Ehrke, a California woman who only spent one minute in the building. “And rioter’s actions — from the most mundane to the most violent — contributed, directly and indirectly, to the violence and destruction of that day.”

The government hasn’t widely detained nonviolent protesters.

At an event last month hosted by Republican officials in his home state of North Carolina, Representative Madison Cawthorn repeated an oft-heard myth. He complained that hundreds of people taken into custody after Jan. 6 were “political hostages.”

The truth is that about 15 percent of those arrested so far in connection with the riot have been denied bail and remain in pretrial custody — much lower than the overall federal pretrial detention rate of 75 percent. Moreover, all of those being detained on charges related to Jan. 6 are facing serious charges like assault or obstruction of Congress; none have been accused of only misdemeanors.

Far from jailing everyone, in fact, judges have granted bail to numerous defendants accused of violent attacks on the police or of belonging to extremist groups like the Proud Boys or the Oath Keepers militia.

There are a handful of cases in which people have been denied bail without having engaged in physical violence, but those are the exceptions to the rule.

This week, a lawyer for [Ethan Nordean](#), a leader of the Proud Boys, complained in court that his client has been in jail for months not because of anything he personally did on Jan. 6, but rather because he is a member of a reviled political organization.

Judge Timothy J. Kelly, who was appointed to the federal bench by Mr. Trump, responded that the law alone was guiding Mr. Nordean’s case.

“Politics has nothing to do with it,” Judge Kelly said. “Not one whit.”

Capitol Police officers preparing riot equipment at the Capitol before the rally on Saturday. Credit...T.J. Kirkpatrick for The New York Times

Jan. 6 defendants haven’t been treated more harshly than racial justice protesters.

The assertion has become a staple on the right: Trump supporters were charged with violent crimes in the Capitol attack because of their conservative beliefs while many leftist activists had similar charges stemming from the racial justice protests last year in cities like Portland, Ore., reduced or dismissed.

This summer, a Jan. 6 defendant named Garret Miller filed court papers making that argument. Mr. Miller, who lives in Dallas, claimed he had been “treated differently by the government than the Portland rioters based upon the politics involved,” his lawyer wrote.

In rebutting these claims, the government argued there was no comparison between the protests last year prompted by the murder of George Floyd in Minneapolis and the storming of the Capitol. While prosecutors acknowledged that those arrested during weeks of unrest at the Portland federal courthouse had committed “serious offenses,” they insisted that the rioters in Washington were involved in “a singular and chilling event” that threatened not only the Capitol but also “democracy itself.”

Trying to explain why many cases in the racial justice protests were eventually dismissed, prosecutors also said they have much better evidence against Capitol rioters like Mr. Miller than they ever had against protesters in Portland. Among the material they collected after Jan. 6 were thousands of hours of video footage from surveillance and body cameras worn by the police, and hundreds of thousands of social media posts.

A few months after Mr. Miller filed his claims, The Associated Press published an analysis of more than 300 criminal cases stemming from the protests incited by Mr. Floyd’s murder. The analysis undercut the argument that pro-Trump defendants were treated more harshly than Black Lives Matter protesters, showing that many leftist rioters had received substantial sentences.

There’s no evidence that Jan. 6 defendants are being treated worse than others in jail.

Perhaps the loudest grievances about Capitol defendants concern the jail conditions of those denied bail.

The accusations have been many and wide-ranging. Some defendants have complained of being locked in their cells for 23 hours a day in what amounts to solitary confinement. Others have claimed that they have been denied the right to hold religious services and that their hygiene needs have been restricted.

One defendant, charged with assaulting the police, has said that he was zip-tied and then “savagely” beaten by a correctional officer in the District of Columbia jail, according to his lawyer. The assault resulted in a broken nose, a dislocated jaw and the loss of sight in the man’s right eye.

Jail, of course, is a terrible place to be, regardless of one’s politics. But at least so far, no one has offered evidence that the authorities have imposed harsh conditions on Jan. 6 defendants because of their political beliefs.

A spokeswoman for the District of Columbia jail said the 23-hour lockdown was not imposed solely on the Capitol defendants but was a medical provision used throughout the jail to curb the spread of the coronavirus. It has recently been lifted, she said.

The Justice Department is using a novel charge in some cases.

Prosecutors have taken a legal risk in the way they have chosen to prosecute scores of Capitol cases. The potential problem concerns the use of a federal obstruction law to charge people with disrupting Congress's certification of the Electoral College vote. Lawyers for some of the defendants are challenging the Justice Department in court over use of the law, but pro-Trump activists have yet to make it a big public issue.

Instead of using politically fraught and hard-to-prove charges like sedition or insurrection to describe the attempt to block certification of the election results, the Justice Department used a much more measured — albeit novel — law: obstruction of an official proceeding.

The law is not a perfect match for what happened on Jan. 6; indeed, it had never before been used in a situation like the Capitol attack.

Passed in 2002 as part of the Sarbanes-Oxley Act, a corporate overhaul law, the measure was devised to prohibit things like shredding documents or tampering with witnesses. Several lawyers have filed papers arguing that the law does not apply to the riot at the Capitol. Two federal judges have signaled that they might agree and could decide to toss the charge for more than 200 defendants.

The Justice Department's use of the obstruction law is arguably the most political move prosecutors have made to date. After all, as some defense lawyers have noted, the government did not use the same charge in 2018 when left-wing activists swarmed the Capitol to protest the Supreme Court nomination of Brett Kavanaugh.