NEW HAMPSHIRE BAR FOUNDATION
Strengthening Justice for All

Civics Essay Contest 2027: *You Be the Judge: Drafting a Court Order*

Open To: 11th/12th Grade New Hampshire students
Word Count: 750–1,000 words

Introduction & Context

The Eighth Amendment to the U.S. Constitution guarantees that "excessive bail shall not be required." Because every citizen is legally presumed innocent until proven guilty, pretrial detention is meant to be an exception, not the standard rule. When a person is arrested for a federal crime, a U.S. Magistrate Judge holds a detention hearing shortly after the arrest. The judge must decide a critical question: ***Can this defendant be safely released into the community while awaiting trial, and if so, under what conditions?*** As the federal judge, you must balance individual constitutional liberties against public safety, the risk of interstate flight, and the integrity of the federal justice system. Under the Federal Bail Reform Act (18 U.S.C. § 3142), a federal judge must choose the least restrictive conditions necessary to ensure the defendant returns to court and does not obstruct justice.

The Case File: *United States v. Marcus Clarke*

- **The Jurisdiction:** Federal Court (U.S. District Court).
- **The Charges:** Interstate wire fraud (18 U.S.C. § 1343) and tampering with physical evidence (18 U.S.C. § 1512).
- **The Allegations:** The Federal Bureau of Investigation (FBI) alleges that Marcus Clarke, a 45-year-old corporate accountant, embezzled $45,000 from a local non-profit youth center over an 18-month period while he was serving as treasurer on their Board of Directors. To hide the theft, prosecutors allege he used wire transfers to route the funds into a bank account he established in another state**.** Federal investigators further allege he attempted to shred critical financial ledgers immediately after a surprise audit was announced

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Defense's arguments:

- Clarke is a lifelong Concord, New Hampshire resident with strong community ties.

- He is the primary caregiver for his elderly mother, who has dementia and lives in Concord. He visits daily to provide meals, check her medication, and take her to medical appointments.
- The prosecution is asking this court to violate the Eighth and Fifth Amendments by illegally detaining Mr. Clarke before his trial. Mr. Clarke is presumed innocent until he is proven guilty.
- Mr. Clarke is no longer employed, and his bank accounts are frozen. He would find it very difficult to pay to travel anywhere.
- When Mr. Clarke learned of the federal warrant, he didn't flee to another state or overseas; he walked into the federal courthouse and voluntarily surrendered to marshals.
- He has no history of violent behavior and successfully completed all probation requirements for a misdemeanor DUI conviction five years ago.
- His prescription-forgery conviction occurred 20 years ago. The Government cites a missed hearing in that earlier case; the defense asks the court to weigh the age of that incident when assessing his present risk of non-appearance.
- If convicted of wire fraud and tampering with evidence, he is facing 18-30 months in jail. This relatively short amount of time in jail would not be a motivation for Clarke to flee his family, lifelong community, and country.
- Mr. Clarke admits he has a substance abuse problem and knows he needs continuing treatment for this disease.
- We ask for a personal recognizance release with strict conditions like passport surrender.

Prosecution's Arguments:

- The Government requests detention of Mr. Clarke, as he is facing serious federal charges of wire fraud and obstruction of justice.
- This is a calculated, sophisticated crime where the defendant deliberately sent stolen non-profit funds intended for at-risk youth across state lines to conceal his actions.
- When a surprise audit was announced, Mr. Clarke ran to the shredder. If he is willing to destroy evidence to avoid accountability, we cannot trust his promise to return to court. Mr. Clarke is at risk of further destroying evidence to obstruct justice.
- Mr. Clarke poses a severe flight risk. He holds a valid passport and has traveled to Ecuador twice recently.
- Mr. Clarke missed a court hearing when he was facing the forging of prescription charges. He has a history of not showing up.
- $30,000 of the stolen funds may sit waiting for him in an out-of-state account. He has the financial means and the global experience to flee. A signature bond will not secure his appearance.

- Mr. Clarke needs to be detained until his trial to ensure he does not flee and has no more opportunities to alter evidence

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Essay Requirements:

Your essay must be written in a formal, analytical tone befitting a court order and include the following clearly labeled sections:

I. The Ruling: State your exact decision in the opening paragraph. Will the defendant be released on his own recognizance or detained in jail while awaiting trial? If he is released, what conditions would you impose on Mr. Clarke until his trial?

II. Statutory Evaluation: Break down the four judicial factors under 18 U.S.C. § 3142. Analyze how the specific facts of Clarke's case point toward or away from detention.

a. Nature and Circumstances of the Offense

b. The Strength of the Evidence

c. History & Characteristics of the Defendant

d. Danger to the Community/Justice System

III. Constitutional Balancing Act: Explain how your decision respects the defendant's Eighth Amendment protections and Fifth Amendment due process rights while simultaneously protecting the community and upholding the integrity of the evidence and the judicial process.

IV. Final Justification: Defend why your specific set of conditions/your decision is the most appropriate, fair, and constitutionally sound outcome for this case. Why did you reject the alternatives proposed by the prosecution or defense?

You need only consult and refer to the following sources:

- The Fifth and Eighth Amendments to the US Constitution
- The Federal Bail Reform Act (18 U.S.C. § 3142
- **Case law: *U.S. v. Winegar*, No. 20-mj-229-AJ (D.N.H. Feb. 4, 2021).**
- **Written laws:** Interstate wire fraud (18 U.S.C. § 1343) and tampering with physical evidence (18 U.S.C. § 1512).

Please also review the Essay Contest rules.

Disclaimer that this is a work of fiction.