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## Summary of All Star Bail Bonds, Inc. v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. 45

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## SURETY LAW: EXONERATION OF A BOND

### **Summary**

The Court determined (1) whether a defendant who left the country voluntarily, but was denied admission when he tried to return, is considered “deported” under NRS 178.509(1)(b)(5), and (2) whether contract law defenses, such as impossibility, permit the district court to exonerate a bond.

### **Disposition**

A defendant who left the country voluntarily, but was denied admission upon returning to the country, is considered “excluded,” not “deported,” for purposes of NRS 178.509(1)(b)(5). Furthermore, a district court may not exonerate a bond without a statutory basis for doing so.

### **Factual and Procedural History**

Petitioners All Star Bail Bonds, Inc., and Safety National Casualty Corporation (collectively, the surety) posted a bond for Rodrigo Rascon-Flores’s release after the court continued sentencing for more than six months subsequent to Rascon-Flores’s plea of guilty to fraudulent use of a credit card. After the arraignment, Rascon-Flores traveled to Mexico. Upon returning, Rascon-Flores was stopped by U.S. Customs and Border Protection. Rascon-Flores admitted his arrest and charges, and Custom and Border Protection detained him and declared him inadmissible pursuant to federal law.<sup>2</sup> Federal officers revoked his nonimmigrant visa and verified his return to Mexico. After Rascon-Flores missed his sentencing, the district court sent a notice of intent to forfeit bond to the surety. The surety filed a motion to exonerate the bond, and the district court denied it. The surety subsequently paid the forfeiture and sought relief in this Court.

### **Discussion**

An original writ petition is the proper mode of review for orders entered in ancillary bail bond proceedings. A writ of mandamus is available to control a manifest abuse of discretion or compel an act the law requires. Therefore, we ask whether the district court manifestly abused its discretion in deciding whether to exonerate a bail bond. The district court’s findings of fact will not be disturbed unless they are clearly erroneous and not based on substantial evidence. However, the district court’s conclusions of law are reviewed de novo.

#### *Deportation*

NRS 178.509(1)(b)(5) permits a court to exonerate a bond upon application of the surety if the defendant has been deported. Deportation requires both a legal expulsion from the country

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<sup>1</sup> By Sean Daly.

<sup>2</sup> 8 U.S.C. § 1182(a)(2)(A)(i)(I) (2012).

and a crossing of the border. A border stop is not a deportation. Immigration law distinguishes between “exclusion” and “deportation.”<sup>3</sup> Historically, someone denied entry cannot be considered deported because detention at the border is not considered entry into the country. As the federal government prevented Rascon-Flores from entering the country, he was excluded (not deported), and NRS 178.509(1)(b)(5) is not applicable.

#### *Common law contract defenses*

A bail bond is a contract between the surety of the accused and the State.<sup>4</sup> However, statutes governing bail bonds are incorporated into the agreement of the parties.<sup>5</sup> NRS 178.509(1) states that “the court *shall not* exonerate the surety before the date of forfeiture prescribed in NRS 178.508 unless one of the five conditions listed in the statute is present (emphasis added).” The words “shall not” impose a prohibition against acting and are intended to prohibit judicial discretion. The legislative history behind the statute also supports the proposition that the words “shall not” were added specifically to remove courts’ discretion, as some bailbondsmen had made deals with some judges and not all bondsmen were being treated equally. Furthermore, previous case law supports the principle that the district court did not have discretion to exonerate without a statutory ground.<sup>6</sup>

#### **Conclusion**

The surety is not entitled to exoneration because (1) Rascon-Flores was not “deported” under NRS 178.509(1)(b)(5), and (2) there is no statutory ground for exoneration based on common law contract defenses. Therefore, the petition for extraordinary relief is denied.

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<sup>3</sup> See *Landon v. Plasencia*, 459 U.S. 21, 25 (1982).

<sup>4</sup> *All Star Bonding v. State*, 119 Nev. 47, 49, 62 P.3d 1124, 1125 (2003).

<sup>5</sup> See *Gilman v. Gilman*, 114 Nev. 416, 426, 956 P.2d 761, 767 (1998).

<sup>6</sup> See *State v. Stu's Bail Bonds*, 115 Nev. 436, 440, 991 P.2d 469, 471 (1999) (holding that a court has no discretion to consider equity before the statutory grounds of NRS 178.509(1) are met).