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Garcia v. Absolute Bail Bonds Appellant's Brief Dckt. 43315

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JOSE LUIS GARCIA and MARIA GARCIA

Plaintiffs / Appellants,

v.

ABSOLUTE BAIL BONDS, LLC.,
WALTER ALMARAZ

Defendants / Respondents

SUPREME COURT No: 43315-2015

APPELLANTS' BRIEF

Appeal from the District Court of the Third Judicial District for Canyon County
Case No. CV-2013-4362-C
The Honorable George Southworth, District Judge

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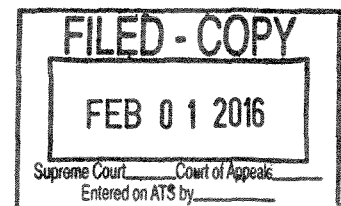


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I. STATEMENT OF THE CASE

A. SUMMARY

This appeal is over the primary issue of the District Court's sua sponte decision in favor of Respondents in a default proceeding holding that Appellant Maria Garcia ("Maria"), a legal permanent resident and mother, and Appellant Jose Luis Garcia ("Jose Luis"), who filed a petition for a legal permanent resident status and son of Maria, are not legally eligible to seek or receive consequential damages due to their immigration status.

Maria hired Respondents to post bond in a misdemeanor criminal matter for her son (Jose Luis) with the expressed purpose that 1. Jose Luis had applied for and not yet received his Legal Permanent Residence card and 2. Time was of the essence and the bond needed to be placed quickly due to an ICE hold that would be placed any day. Respondents posted the bond and revoked it the same day, the 15th of October 2012 and falsely informed the Appellants the jail was at fault for the delay. Respondents also failed to inform the Appellants he revoked the bond, and failed to return the payments.

An ICE hold was placed on the 17th of October 2012 and Appellants' money was never returned. Jose Luis remained in custody until the 3rd of May 2013, until his criminal matter was resolved due to the ICE hold placed the 17th of October 2012. Jose Luis was removed from the country due to an unlawful sentence and forfeited his application for Legal Permanent Residence even though he appealed and corrected his illegal sentence. The District Court again denied Appellants' consequential and other damages due to an incorrect factual finding and failed to account that the Respondents posted and revoked the bond before the ICE hold was placed.

B. BACKGROUND

Maria is a United States Legal Permanent Resident (Record, 109-130, paragraph 2). Maria filed a family application for her children including her son Jose Luis with the United States Department of Justice Immigration and Naturalization Service to become Legal Permanent Residents wherein Jose Luis was required to remain in the United States until final approval (Record, 109-130, paragraphs 4-8) (Record, 135 – 143, paragraph 3-7). Jose Luis and Maria received an Approval Notice dated the 20th of July 1999 and were waiting for final processing of the application for Jose Luis (Record 135-143, paragraphs 4).

Maria, monolingual Spanish speaking (Record, 11, paragraph 2) hired Respondents on the 15th of October 2012, while waiting for the above application to be processed, to post bond for her son Jose Luis who was charged with misdemeanor matters (Record, 51-54). Maria and her family contacted Respondents, informed them that Jose Luis had not yet received his formal Legal Permanent Residence Card that the bond needed to be posted immediately to prevent an ICE Hold. Respondents agreed to the express condition and purpose that the bond be placed immediately to prevent Immigration and Customs Enforcement “ICE” from placing a hold on Jose Luis (Record, 109-130, paragraphs 11-12). The ICE hold required Jose Luis to remain in custody during the pendency of his criminal matter. Respondents posted the bond on the 15th of October 2012 but then revoked bond the same day, contrary to the agreement and contract between the parties and never informed Maria or her family that he did such (Record 109-130, paragraph 20) (Record, 135 – 143, paragraph 17). Respondents lied to

Maria and her family and blamed the delay on the Sheriff's Office while knowing the delay was due to Respondents revocation of the bond. (Record 51-54, paragraphs 5-12). Respondents again lied to Maria and her family and told them additional delay was due to the need for Maria and Jose Luis to pay for an ankle bracelet which they arranged and paid for on the 17th of October 2012 (Record 109-130, paragraphs 24-25). Respondents' revoking and failing to notify Maria and Jose Luis that he revoked the bond prevented them from being able to post the bond or hire a separate bondsman before the ICE hold was placed on the 17th of October 2012.

After the ICE hold was placed on the 17th of October 2012 on Jose Luis (Record 51-54, paragraph 13) Mr. Garcia remained in the Canyon County Jail from the 15th of October 2012 until the 3^d of May 2013 when he was initially sentenced (Record 51-54, paragraph 13). Jose Luis successfully corrected his illegal sentence; however, the ICE hold did not allow Jose Luis to remain in the United States during his criminal appeal which resulted in the correction of his sentence to only 106 days and obtained a ruling that his original sentence was unlawful (Record, 90-105). Had Jose Luis remained in the United States during the Appeal, he would have not been removed as the corrected sentence resulted in Jose Luis being eligible for Legal Permanent Resident had he not left the United States because the corrected sentence was less than six months under 8 U.S.C. section 1101(a)(43)(G) or 8 U.S.C. section 1182(a)(2)(A)(i)(I).

Suit was filed against Respondents herein for breach of express and implied contract, breach of implied covenant of good faith and fair dealing, breach of Idaho Code 48-603C and their fiduciary duty, failure to provide an accounting under Idaho Code 28-9-601 et sec and Idaho Code 48-603(13), bad faith, reimbursement on the funds paid,

interest, costs, attorney fees, pecuniary damages, consequential damages, and relief to amend the complaint to include punitive damages. The District Court ruled on the 21st of November 2013 that Appellants were not legally eligible to seek or receive consequential damages requested in their complaint due to the immigration status; Appellants subsequently filed a Verified Motion for Reconsideration or for the Honorable Judge Southworth to recuse himself under I.R.C.P 40(d)(2) with a legal basis of such (Record 59-67). The Honorable Judge Southworth denied such motion for reconsideration or for recusal on the 13th of December 2013 and failed to provide any basis, reasons or grounds to deny such (Record, 68-69).

Appellants filed a motion to amend the complaint to include punitive damages under Idaho Code 61-604 and I.R.C.P 15(a) based upon the previous affidavits filed, the sworn complaint and additional supportive affidavits (Record, 71-143) all supporting the allegation that Respondents revoked the bond before the ICE hold knowing that it was almost certain to result in Mr. Garcia's deportation. However, the District court denied such motion based upon the incorrect factual finding that the Respondents revoked the bond "**after** finding that an ICE hold had been placed of Mr. Garcia..." [emphasis added] (Record, 148-149). Such ruling was contrary to the evidence that stated the bond was placed and revoked on the 15th and the ICE hold was not placed until the 17th of October 2012 (Record 109-130, paragraph 20) (Record, 135 – 143, paragraph 17). Appellants reminded the court at the April 23, 2015 hearing three times that the court's understanding was backwards that the bond was placed and revoked before the ICE hold was placed (Hearing, 6: 4-6) again (Hearing, 12:6-20) and again (Hearing, 13:6-10). Appellants provided an additional affidavit, with leave of the court (Hearing, 14: 1-8),

again supporting the bond was placed and revoked on the 15th of October 2012 and the ICE hold was not placed until the 17th of October 2012 and that Respondents never notified Appellants of either (Record 109-130, paragraphs 10-17) (Record, 135-143, paragraphs 12-18); however, the court continued with the incorrect finding that the ICE hold was placed first and that that allowed the Respondents to subsequently withdraw the bond.

The District Court at the April 23, 2015 hearing repeated his previous ruling that his court could not enter an order for consequential damages for the Appellants due to the immigration status. (Hearing, 7:5-10). Appellants argued that the Respondents knew that the ICE Hold was coming and of its harm to the Appellants. The Respondents not only revoked the bond, but failed to notify the Appellants of the coming ICE hold or the need to hire another bail bondsman (Hearing, 7:11 – 9:15). This behavior, along with the Respondent's failure to return the funds paid to him, manifests an intent on the part of the Respondent to see the Appellant deported in order to keep the money paid to him. The District court denied Appellants' Motion to Amend the Complaint on the 6th of May 2015 (Record, 144-150) after making an incorrect finding that the bond was revoked after the ICE hold was placed.

The District also, sua sponte, without a hearing, notice or opportunity to argue the damages, ordered the amount of damages in the Memorandum Decision and Order upon Plaintiffs' Motion to Amend Re: Punitive damages and failed to grant interest, filing fees, other costs, etc. (Record, 144-150). The District Court also, sua sponte, issued a Final Judgment on the 6th of May 2015 (Record, 152-153).

C. FACTUAL BASIS

Maria testified in her Affidavit (Record 51-54):

1. I am the mother of Jose Luis.
2. I previously contracted, hired and paid the Defendants to bond Jose Luis out of jail without any complications.
3. I subsequently entered into contract on the 15th of October 2012 at approximately 8:30 AM where the Defendants contracted to pay the bonds for Jose Luis in CR 2012-25742-C and CR 2012-23262-C.
4. I paid the Defendants \$800.00 for the first case and \$500.00 for the second case for the Defendants to post the bonds in the above cases which were \$3,200.00 combined.
5. The Defendants posted the bond; however, the Defendants kept giving excuses why my son was not released and stated that the sheriff was not doing the paperwork correctly.
6. n/a
7. Jose Luis was not released due to the Defendants withdrawing the bond paid and the Defendants never notified me of such for various months.
8. Approximately one week later I learned through an attorney that Jose Luis was not released because the Defendants withdrew the bond; the defendants admitted to me in February 2013 that they withdrew the bond.
9. I complied with each and every requirement under my contract and agreement with the Defendants.
10. I contacted the Defendants at his home office and asked what happened and his employee informed me I did not need to do anything wrong and had complied with the above contract and that the error was due to the jail.
11. I learned that after the bonds were withdrawn, that an immigration hold was placed.
12. If the Defendants complied with the above contract and did not withdraw the bond, that Jose Luis would have been released before the ICE hold was placed and may not have been placed.
13. My son Jose Luis was not released from the jail until approximately the 3rd of May 2013 when he was subsequently taken to Mexico.
14. On or about the 8th of February 2013 I was present when the Defendants admitted telephonically that my son and I complied with the above contract and gave truthful information to them when we contracted them and knew that time was of the essence to post the bond to prevent an ICE hold from being placed due to immigration problems of Jose Luis.
15. n/a
16. Jose Luis was living with me and provided substantial financial assistance to me and the Defendants knew we lived together.
17. Jose Luis was working in Wilder doing maintenance, cleaning and other manual labor working 45 hours weekly and earned \$9.50 per hour.

18. I picked up Jose Luis's paycheck from his employer after Jose Luis was arrested on or about the 17th of October 2012 and learned Jose Luis would have continued his employment if the bonds were paid as contracted.
19. The Defendants failed to communicate with me and failed to produce the records, information and other documents as alleged in the Complaint and Demand for Jury Trial filed herein.
20. The Defendants also failed to refund and or account for any of the funds paid as alleged above.
21. n/a
22. n/a
23. I have hired the services of other bail bondsmen of for additional cases and Defendants' actions and breach of the above contract is intentional, reckless, and an extreme deviation of reasonable standard of conduct.
24. A foreseeable and proximate damage from the Defendants' actions and inactions is that I lost approximately 20 days of work and I lost \$9.00 per hour and 9 hours per each day.
25. A foreseeable and proximate damage from the Defendants' actions and inactions is that I suffered deep depression for the loss of my son while he was in jail and after he was sent away.
26. Jose Luis lost his trailer he was purchasing before being arrested that he and I was living in; I was forced to leave Jose's trailer shortly after he was arrested because I could not pay the fees due to the money paid to bail bondsman.
27. Jose Luis also had a car that was forced to be sold in February 2013 to retain the services of an attorney to help us with the bail bonds matter and with the criminal matter.
28. Jose Luis is currently living in unsafe conditions living outside of the home of a friend due to his financial loss.
29. n/a

Maria testified in her Second Affidavit (Record 109-130):

1. n/a
2. I am legally in the United States and have been since 2007 as reflected in Exhibit A.
3. I have three children and came to the United States after the father of my children left me.
4. I applied for all of my children to be legal in the United States in 1998.
5. Exhibit B is a copy of the Passport of my daughter Anaya Garcia reflecting that she is a United States Citizen.
6. The application for Jose Luis was delayed when he reached 21 years and he was placed into a separate category and we submitted an amended application.
7. That Jose Garcia was required to remain in the United States during the pendency of his Immigration application for his position or her would have to reapply for legal status and lose his position if he left the United States.
8. The application for Jose Luis lost his priority and starts over due to him leaving the United States.

9. Prior to hiring the Defendants and entering into a contract on the 15th of October 2012 at approximately 8:30 AM where the Defendants contracted to pay the bonds for Jose Luis in CR 2012-25742-C and CR 2012-23262-C, I informed the Defendants that Jose Luis had not received approval of his immigration documentation yet and that the bond needed to be placed quickly to prevent an ICE hold from being placed; the ICE hold would have prevented Jose Garcia from being released and would result in him being held for additional 48 hours.
10. The Defendants informed me they posted the bond immediately on the 15th of October 2012 after receipt of our payments to ensure that an ICE hold would not be placed.
11. After posting the bond, the Defendants told us to wait outside waiting for him to be released with his clothes; however, the Defendant informed me that the Canyon County Sheriff paperwork was taking longer than expected and that we needed to return the next morning with additional money.
12. The Defendants informed me that I needed to wait and I waited at the jail the entire day of the 15th of October 2012 without any answers. I went home and returned the morning of the 16th of October 2012 and waited the entire day.
13. I paid the Defendants \$1,300.00 for bond on the above cases.
14. On the 17th of October 2012 the Defendant informed me that I also needed to also pay for an ankle bracelet wherein I paid for the ankle GPS bracelet and made arrangements for it to be used on the 17th of October 2012.
15. However, on the 17th of October 2012, the Sheriff department informed me that they would not release Jose Luis because of the ICE hold that was placed on the 17th of October 2012; after the Defendants posted and withdrew the bonds.
16. I confirmed that Defendants withdrew the above bail bonds on the same day that he posted the bonds on the 15th of October 2012, and that took place the ICE hold was not posted until the next day on the 17th of October 2012.
17. Defendants subsequently admitted to me that Jose Luis was not released due to the Defendants withdrawing the bond on the 15th of October 2012; Defendants further admitted that after they withdrew the bond in the above cases, Immigration placed an ICE hold on Plaintiff a day or two later.
18. n/a
19. My son Jose Luis was not released from the jail until approximately the 3rd of May 2013 when he was subsequently taken to Mexico.
20. My son Jose Luis's application with Immigration will be delayed due to his lack of presence in the United States.
21. Had the bond not been revoked, Jose Luis would have been released within 48 hours of the ICE hold and he would not have been deported.
22. Had ICE come and picked up Jose Luis at the end of the 48 hours, Jose Luis would have been eligible to remain pending his application because there would not have been a conviction or sentence that would have made him deportable.
23. On or about the 8th of February 2013 I was present when the Defendants admitted telephonically that my son and I complied with the above contract and gave truthful information to them when we contracted them and they knew that time was of the essence to post the bond to prevent an ICE hold from being placed due to immigration problems of Jose Luis.

24. That I have a medical condition which causes me substantial seizures and am unable to provide for myself.
25. Jose Luis was living with me and provided substantial financial assistance to me and the Defendants knew we lived together.
26. I have hired the services of other bail bondsmen of for additional cases and Defendants' actions and breach of the above contract is intentional, reckless, and an extreme deviation of reasonable standard of conduct.
27. A foreseeable and proximate damage from the Defendants' actions and inactions is that I suffered deep depression for the loss of my son while he was in jail and after he was sent away.
28. That after our attorney sent the packet of records to the United States Customs and Border Protection on or about the 15th of April 2014, Attached as Exhibit C, I went to the border with my son Jose Luis wherein the officials denied his entry and Jose Luis was not able to be present at his resentencing in the Criminal Case.
29. I went to the border on two separate occasions to ask for the United States Customs and Border Protection as my son Jose Luis's first sentence was continued to attempt to get permission a second time.
30. Due to the Defendants' acts and misrepresentations, the foreseeable and proximate damage from the Defendants' actions and inactions is that I lost in excess of 30 days of work and I lost \$9.00 per hour and 9 hours per each day.
31. n/a

Dulce Garcia testified (Record, 135 – 143):

1. I am the daughter of Maria and sister of Jose Luis and am a competent adult over the age of 21 years of age.
2. I have been legally present in the United States 2003 and am currently a Legal Permanent Resident as reflected in Exhibit A.
3. My mother and step father filed an application with the U.S. Department of Justice Immigration and naturalization Service for the Plaintiff Jose L. Garcia, for me, and for my sister Ana C. Garcia on or about the 14th of May 1999 and Exhibit B is a true and correct copy of such Application.
4. Our family received an Approval Notice on or about the 20th of July 1999 and Exhibit C is a true and correct copy of such Approval Notice.
5. The children, including the Plaintiff, were assigned the priority date of the 28th of June 1999.
6. Myself and my sister Ana were made Legal Permanent Residents; however, Plaintiff Jose Luis has 21 years of age and he was required to submit an supplemental petition placing him in a longer wait category.
7. We were notified that if we left the United States before our application was eligible for approval, our application would be withdrawn and abandoned.
8. I was present when my Mother, Plaintiff Maria hired and paid the Defendants and hired the Defendants.
9. Prior to my Mother Paying the Defendants the \$1,300.00, Defendants were advised that Plaintiff Jose Luis needed the bond placed immediately to prevent an ICE hold.

10. We also notified the Defendant the reason for the bond was because Plaintiff Jose Luis was not yet a Legal Permanent Resident.
11. Defendants agreed to post the bond before and ICE hold was made.
12. The Defendants informed us they posted the bond immediately on the 15th of October 2012 after receipt of the payments to ensure that an ICE hold would not be placed.
13. After posting the bond, the Defendants told us to wait outside waiting for him to be released with his clothes; however, the Defendant informed us that the Canyon County Sheriff paperwork was taking longer than expected and that we needed to return the next morning with additional money.
14. The Defendants informed us that we needed to wait and we waited at the jail the entire day of the 15th of October 2012 without any answers. We went home and returned the morning of the 16th of October 2012 and waited the entire day.
15. On the 17th of October 2012 the Defendant informed us that we also needed to also pay for an ankle bracelet wherein our Mother paid for the ankle GPS bracelet and made arrangements for it to used on the 17th of October 2012.
16. However, on the 17th of October 2012, the Sheriff department informed us that they would not release Jose Luis because of the ICE hold that was placed on the 17th of October 2012; after the Defendants posted and withdrew the bonds.
17. We confirmed that Defendants withdrew the above bail bonds on the same day that he posted the bonds on the 15th of October 2012, and that took place the ICE hold was not posted until the next day on the 17th of October 2012.
18. Defendants subsequently admitted to us that Jose Luis was not released due to the Defendants withdrawing the bond on the 15th of October 2012; Defendants further admitted that after they withdrew the bond in the above cases, Immigration placed an ICE hold on Plaintiff a day or two later.
19. On or about the 8th of February 2013 I was present when the Defendants admitted telephonically that my son and I complied with the above contract and gave truthful information to them when we contracted them and they knew that time was of the essence to post the bond to prevent an ICE hold from being placed due to immigration problems of Jose Luis.

Appellants filed an uncontested sworn Complaint (Record, 4-13) as follows:

- 1.-5. n/a
6. Plaintiff Maria contacted Defendants regarding posting the bond of her son Jose Luis.
7. Plaintiffs previously hired the Defendants in a 2012 previous case and previously had informed the Defendants that Plaintiff Jose Luis was not a U.S. Citizen and was not currently documented with immigration.
8. Plaintiff Maria expressly informed the Defendants of the need to post the bond in a timely manner to prevent any immigration official complications due to Jose Luis was not a U.S. Citizen and may have immigration problems.
9. n/a
10. n/a

11. Plaintiff Maria accepted the offers of the Defendants in the paragraphs above, paid consideration in exchange for the Defendants posting the full bond amount in both cases above.
12. Defendants posted the necessary bond in both criminal cases above wherein Plaintiff Maria went to the jail and waited the release of her son Plaintiff Jose Luis.
13. The jail subsequently did not release Plaintiff Jose Luis.
14. On or about the 8th of February Plaintiff Maria telephoned Defendants who admitted that he was informed prior to receiving the consideration from Plaintiff Maria that Plaintiff Jose Luis was not a U.S. Citizen and knew before posting the bond that Plaintiff Jose Luis was not documented with immigration and knew of the need to post the bond posted quickly due to the immigration problems.
15. During the above conversation with the Defendants on the 8th of February 2013 Defendant admitted that after posting the bonds on both calls, he received a call from immigration authorities requesting that the Defendants revoke the bond posted for the Plaintiff Jose Luis wherein the Defendants revoked the bond before the Plaintiff Jose Luis was released from custody.
16. During the above conversation with the Defendants on the 8th of February 2013 Defendants admitted that Plaintiffs did not make any misrepresentations in obtaining the bond, that the Plaintiffs were truthful, and did not revoke the bond due to actions or inactions by the Plaintiffs.
17. Plaintiffs complied with each and every requirement under the above agreement, paid every bill received from the Defendants after hiring the attorney herein and Defendants failed to comply with the express and implied terms of the agreement despite written demands for such and caused Plaintiffs damages in an amount established in trial including but not limited to over six months of incarceration, loss of wages, loss of service, loss of companionship, etc.
18. There are certain elements of damages provided by law that Plaintiffs are entitled to have the jury consider in determining the sum of money that will fairly and reasonably compensate him for his damages caused by the acts of the Defendants and those elements of damage include, but are not limited to, the following, both up to the time of trial and in the future:
 - a. Expenses and damages stemming from Plaintiff's failure to be released from custody;
 - b. Damages suffered by Plaintiff as a result of being incarcerated for an extended period of time including, lost earnings and lost earning capacity sustained and to be sustained by Plaintiff and loss of liberty.
 - c. The reasonable amount necessary to reimburse Plaintiff for time spent on additional tasks necessitated by this injury, such as seeking further legal help;
 - d. Recovery for damages to property and/or lost property;
 - e. Reasonable attorney fees; and
 - f. The costs of prosecuting and presenting the evidence in this case.
 - g. The other natural and foreseeable consequences caused by failure to ensure that the Plaintiff Jose Luis's bond was posted and not revoked and spending the subsequent time in custody.
19. n/a

CAUSE 1: BREACH OF EXPRESS AND OR IMPLIED CONTRACT

20. Plaintiff Maria entered into a contract with the Defendants wherein Plaintiff provided consideration to Defendants who agreed to post the entire bail amount of Jose Luis who was the expressed and implied third party beneficiary to the contract.
21. Plaintiffs complied with each and every requirement under the above agreement and Defendants failed to comply with the express and implied terms of the agreement despite written demands for such and caused Plaintiffs damages in an amount established in trial including but not limited to over six months of incarceration, loss of wages, loss of service, loss of companionship, etc.

CAUSE 2: BREACH OF IMPLIED COVENANT OF GOOD FAITH / FAIR DEALING

22. Defendants also breached the corresponding implied covenant of good faith and fair dealing inherent in every contact as the Plaintiffs did not receive the benefit of the agreement as outlined above and are did not receive any benefit to the consideration given to the Defendants.

CAUSE 3: BREACH OF IC 48-603C AND FIDUCIARY DUTY

23. Defendants had a fiduciary duty as a Bail Bondsman of the Plaintiffs and under IC 48-603(c) to post and not revoke the bail and or to fail to refund the consideration paid and such was an unconscionable method, act or practice as the Defendants knew of the condition of the Plaintiffs.

CAUSE 4: FAILURE TO PROVIDE RECORDS AND ACCOUNTING

24. Plaintiff requested in writing the financial records of the Plaintiff from the Defendants on various occasions, including but not limited to the 1st of March 2013 as reflected in Exhibit A without receiving records, accounting, or the information sought.
25. Defendant, upon information and belief, has failed or refused to maintain the above records of the Plaintiffs who is a protected class of person outline above.
26. Defendant also failed and refused to provide such financial records regarding the Plaintiffs in violation of the above statutes and Idaho Code 28-9-601 et. sec, specifically 28-9-210, 28-9-608, 28-9-615, 28-9-616 and 48-603(13).

CAUSE 5 BAD FAITH

27. That Defendant is guilty of bad faith breach of contract by failing to abide by the terms of the contract or refund the consideration paid.
28. That Plaintiffs and their attorney made several attempts to convince Defendants of the error without a response to date.
29. Defendants have intentionally and unreasonably denied payment, thus Defendant's denial is not fairly debatable and has resulted in Plaintiff sustaining damages not fully compensable in contract.
30. For reasons stated above, Defendants' denial is reckless, intentional breach of the agreement between the parties, and an extreme deviation of reasonable standard of conduct and extreme disregard of the likely consequences of the conduct and must pay damages in an amount to be proven at trial. Plaintiff will seek to amend the Complaint Idaho Code § 6-1604 to add a claim for punitive damages.

31. That as a direct and proximate result of the conduct of the Defendants as herein alleged, Plaintiffs was caused to suffer loss of employment in an amount, scope and extent subject to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

1. For pecuniary damages in the amount paid to the Defendant per the contract;
2. For consequential damages allowed pursuant to law including but not limited to wage loss, loss of use, and interest on such losses consistent with I.C. § 12-120(1) and consistent with the demand letter submitted to Defendants herein;
3. For compensatory damages for the Plaintiff regarding all general damages available pursuant to law and consistent with I.C. § 12-120(1), and consistent with the demand letter submitted to Defendants herein;
4. For allowance to amend the complaint to allege other causes of action including, but not limited to punitive damages as the court deems appropriate to deter willful breaches of contract and extreme deviations from the reasonable standard of conduct.
5. For pre-judgment interest on the amount due at the rate provided in Idaho Code 28-22-104 and for costs and reasonable attorney fees pursuant to Idaho Code § 48-608(5), 12-120(1), 12-121, 12-123 et al., Rule 54, and such other and further relief as the Court deems just and proper. A reasonable amount of attorney fees is \$2,500.00 if default is entered or additional if contested.

DEMAND FOR JURY TRIAL

Plaintiff, pursuant to Rule 38 (b) of the Idaho Rules of Civil Procedure, hereby demands a trial by jury of all issues so triable by right herein. Plaintiff is willing to have a jury panel of less than twelve (12) jurors.

VERIFICATION PAGE

Maria, being first duly sworn upon oath, deposes and states as follows:

1. I am the Plaintiff in the above matter and am a competent adult and make the following statements to the best of my personal knowledge.
2. I am Hispanic and am monolingual Spanish.
3. n/a

Appellant sent Request for Admissions that were never denied (Record, 26-50):

1. That at the time of the events described in Plaintiff's Complaint and Demand for Jury Trial, the Defendant Walter Almaraz was an agent and or employee of Absolute Bail Bonds LLC.
2. That at the time of the events described in Plaintiff's Complaint and Demand for Jury Trial, the Defendant Walter Almaraz was acting as an independent agent and not working as an employee or agent of Absolute Bail Bonds LLC.

3. That at the time of the events described in Plaintiff's Complaint and Demand for Jury Trial, the Defendant Walter Almaraz was acting outside his scope of his employment of Absolute Bail Bonds LLC.
4. n/a
5. n/a
6. n/a
7. n/a
8. Plaintiff Maria contracted with Defendants regarding posting the bond of her son Jose Luis in Canyon County CR 2012-23262-C.
9. Plaintiff Maria contracted with Defendants regarding posting the bond of her son Jose Luis in Canyon County CR 2012-25742-C.
10. Plaintiff Maria paid Defendants funds in relation to the above contract to post the bond for her son Jose Luis.
11. n/a
12. n/a
13. Defendants posted the bond of her son Jose Luis in Canyon County CR 2012-23262-C on or about October 2012.
14. Defendants posted the bond of her son Jose Luis in Canyon County CR 2012-25742-C on or about the October 2012.
15. n/a
16. Defendants subsequently revoked the bond previously paid on behalf of Jose Luis in Canyon County CR 2012-25742-C on or about October 2012.
17. Defendants subsequently revoked the bond previously paid on behalf of Jose Luis in Canyon County CR 2012-23262-C on or about October 2012.
18. Defendants failed and or refused to refund any funds paid by Plaintiffs to Defendants.
19. Exhibit A herein is a true and correct copy of a letter sent to Defendants on or about the 1st of March 2013.
20. Defendants herein failed to provide any records in response to Exhibit A.
21. Defendants herein failed to provide any information in response to Exhibit A.
22. Defendants violated Idaho Code 48-603(13) for failing and refusing to provide Plaintiffs a copy of the contract herein relating to the bonds for Jose Luis.
23. Defendants violated Idaho Code 48-603(13) for failing and refusing to provide Plaintiffs a copy of the documents signed by the Plaintiffs after receiving Exhibit A.
24. Defendants failed and refused to provide Plaintiffs an accounting of any and all payments made by Plaintiffs before suit was filed herein after receiving Exhibit A.
25. n/a
26. n/a
27. n/a
28. The following statements accurately reflect the statements made on the 8th of February 2013 by Mr. Almaraz: (Please answer individually)

- a. Before posting the DUI and Petty Theft bonds, Mr. Almaraz was advised by our client's family that Jose Luis was not documented.
 - b. Before posting the DUI and Petty Theft bonds, Mr. Almaraz was advised by our client's family that Jose Luis had immigration problems.
 - c. Before posting the DUI and Petty Theft bonds for Jose Luis, Mr. Almaraz was advised by our client's family that an Immigration ICE Hold was placed or will likely be placed shortly and the bond needed to be placed immediately.
 - d. Mr. Almaraz admitted that Plaintiffs did not give any false or misleading statements before posting the bond.
 - e. That the reason for revoking the bond was not due to any thing the Plaintiffs or his family said or did, but because the ICE agent advised him to revoke the bond.
 - f. That Mr. Almaraz revoked the one or more bond(s) bond for Jose Luis despite previously knowing of our client's immigration problems.
29. n/a
30. n/a
31. Plaintiffs previously hired the Defendants in a 2012 previous case and previously had informed the Defendants that Plaintiff Jose Luis was not currently documented with immigration.
32. Plaintiff Maria expressly informed the Defendants of the need to post the bond in a timely manner to prevent any immigration official complications due to Jose Luis was not a U.S. Citizen and may have immigration problems.
33. Defendants offered to post the bond for Jose Luis in Criminal Cases Cr 2012 25742-C where Jose Luis was charged with Driving under the Influence.
34. Defendants offered to post the bond for Jose Luis in Criminal Cases Cr 2012 23262-C where Jose Luis was charged with Petty Theft.
35. Plaintiff Maria accepted the offers of the Defendants in the paragraphs above, paid consideration in exchange for the Defendants posting the full bond amount in both cases above.
36. n/a
37. The jail subsequently did not release Plaintiff Jose Luis.
38. Plaintiffs complied with each and every requirement under the above agreement.
39. Plaintiff Maria entered into a contract with the Defendants wherein Plaintiff provided consideration to Defendants who agreed to post the entire bail amount of Jose Luis who was the expressed and implied third party beneficiary to the contract.
40. Defendants breached the corresponding implied covenant of good faith and fair dealing inherent in every contact as the Plaintiffs did not receive the benefit of the agreement as outlined above and are did not receive any benefit to the consideration given to the Defendants.

41. Defendants had a fiduciary duty as a Bail Bondsman of the Plaintiffs and under IC 48-603(c) to post and not revoke the bail and or to fail to refund the consideration paid and such was an unconscionable method, act or practice as the Defendants knew of the condition of the Plaintiffs.
42. Plaintiff requested in writing the financial records of the Plaintiff from the Defendants as reflected in Exhibit A without receiving records, accounting, or the information sought.
43. Defendants failed or refused to maintain the above records of the Plaintiffs who is a protected class of person outline above.
44. Defendants also failed and refused to provide such financial records regarding the Plaintiffs in violation of the above statutes and Idaho Code 28-9-601 et. sec, specifically 28-9-210, 28-9-608, 28-9-615, 28-9-616 and 48-603(13).
45. Defendants violated in bad faith a contract by failing to abide by the terms of the contract or refund the consideration paid.
46. That Plaintiffs and their attorney made several attempts to convince Defendants of the error without a response to date.
47. That as a direct and proximate result of the conduct of the Defendants as herein alleged, Plaintiff Jose Luis was caused to suffer loss of freedom.
48. That as a direct and proximate result of the conduct of the Defendants as herein alleged, Plaintiff Jose Luis was caused to suffer loss of employment.
49. That as a direct and proximate result of the conduct of the Defendants as herein alleged, Plaintiff Jose Luis was caused to suffer loss of association with his family and friends.
50. n/a
51. \$185.00 per hour is a reasonable rate for an attorney to prosecute this type of case.

Jose Luis stated in his declaration (Record 20-25):

That during his time in jail experienced fights, other inmates stole his food, another inmate hung himself and such was a traumatic experience for the Appellant and caused him depression. Jose Luis was the financial provider for his home and mother as his mother was sick. Jose Luis, due to the incarceration and inability to provide, lost his truck, his wife and his family. Jose Luis was further, due to failure of being released, transferred to Mexico without his family and without a job, sometimes without eating and sleeping in the parks. He was treated by a Psychologist to help him overcome the trauma he experienced due to the jailing and being sent to Mexico.

II. ISSUES PRESENTED ON APPEAL

- a. Did the District Court err as a matter of law or abuse their discretion when the Court denied Appellants' consequential damages due to the immigration status and refused to reconsider or recuse himself after making such oral ruling on the 21st of November 2013 and subsequent 13th of December 2013 Order Denying Motion to Recuse himself?
- b. Did the District Court err as a matter of law or abuse their discretion when the Court denied Appellants' consequential damages, Appellants' costs, Interest pursuant to Idaho Code 28-22-104, and the Courts refusal to allow Appellants to amend their complaint to include punitive damages?

III. STANDARD OF REVIEW

Over questions of law the Idaho Supreme Court exercises free review. *Kawai Farms, Inc. v. Longstreet*, 121 Idaho 610, 613, 826 P.2d 1322, 1325 (1992); *Cole v. Kunzler*, 115 Idaho 552, 555, 768 P.2d 815, 818 (Ct. App. 1989). “Where ‘the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review.’” *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 930, 277 P.3d 374, 377 (2012). When a district court decides a motion to reconsider, “the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered.” *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

The Court exercises “free review over the lower court's conclusions of law, however, to determine whether the court correctly stated the applicable law, and whether the legal conclusions are sustained by the facts found.” *Nampa & Meridian Irr. Dist. v. Washington Federal Sav.*, 135 Idaho 518, 521, 20 P.3d 702, 705 (2001). A trial court's decision to grant or to deny a motion to amend a pleading is reviewed by this Court under an abuse of discretion standard. *Indian Springs, LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 750, 215 P.3d 457, 470 (2009) (citing *Silver Creek Computers, Inc. v.*

Petra, Inc., 136 Idaho 879, 881, 42 P.3d 672, 674 (2002)). "A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason." *O'Connor v. Harger Constr., Inc.*, 145 Idaho 904, 909, 188 P.3d 846, 851 (2008) (citing *West Wood Invs., Inc. v. Acord*, 141 Idaho 75, 82, 106 P.3d 401, 408 (2005)). "To determine whether a trial court has abused its discretion, this Court considers whether the district court: (1) perceived the issue as one of discretion; (2) acted within the outer boundaries of that discretion consistent with applicable legal standards; and (3) reached its decision through the exercise of reason." *Hansen v. Roberts*, 154 Idaho 469, 472, 299 P.3d 781, 784 (2013).

IV. ARGUMENTS

a. The District Court erred as a matter of law when the Court sua sponte ruled that consequential damages were not allowed due to the immigration status of the party; The District Court abused its discretion when it refused to recuse himself.

i. Consequential damages are allowed despite immigration status

Nothing in Idaho law limits the ability of Plaintiffs to recover damages based solely on their immigration status. Even so, the district court took it upon itself to rule that Plaintiffs would not be entitled to consequential damages because of their status as non-citizens. Not only did this preclude Mr. Garcia from receiving damages based on his deportation, but also precluded him from receiving damages based on his increased time spent incarcerated and his lost wages, both of which were foreseeable and direct consequences of Respondents breach of contract. Further, the ruling denied to Ms. Garcia, a legal permanent resident, the possibility of recovering the full measure of damages under Idaho law such as loss of protection, comfort, society and companionship

see *Checketts v. Bowman*, 70 Idaho 463, 220 P.2d 682 (1950) as well as punitive damages and other damages.

ii. The court abused its discretion by issuing sua sponte rulings not based on the evidence in the record.

Adam Milani and Michael Smith, in the 2002 Article, *Playing God: A Critical*

Look at Sua Sponte Decisions by Appellate Court, stated as follows:

In the legal setting, sua sponte describes a decision or action undertaken by a court on its own motion as opposed to an action or decision done in response to a party's request or argument. As such, the concept of "sua sponte" is an important exception to two basic principles of our adversary system of adjudication: (1) that the parties will control the litigation, and (2) that the decision maker will be neutral and passive. STEPHAN LANDSMAN, READINGS ON ADVERSARIAL JUSTICE: THE AMERICAN APPROACH TO ADJUDICATION 35-39 (1988); Jerold H. Israel, *Cornerstones of the Judicial Process*, KAN. J.L. & PUB. POL'Y, Spring 1993, at 5; Ellen E. Sward, *Values, Ideology and the Evolution of the Adversary System*, 64 IND. L.J. 301, 316-19 (1989).

The Idaho Supreme Court in *Deon v. H & J, INC.*, 339 P. 3d 550, Idaho (2014)

also recently stated:

This Court has had occasion to address the propriety of a tribunal sua sponte raising defenses or theories in the tort arena. In *Sales v. Peabody*, the Court recently had before it a dispute in which the district court raised sua sponte the affirmative defense of an intervening, superseding cause of injury in a tort case. 157 Idaho 195, 335 P.3d 40 (2014). There we held that it was error for the district court to raise this affirmative defense sua sponte and dispose of the case based on the defense, which had never been asserted by the defendant before the court raised it. *Id.* at 201, 335 P.3d at 46; see also *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 531, 887 P.2d 1034, 1038 (1994) (where we reversed the district court's grant of summary judgment, holding it was improper for the court to sua sponte raise the proximate causation issue).

The district court may not grant summary judgment on a ground raised sua sponte. *Sales v. Peabody*, Idaho Supreme Court (2014 Opinion No. 99); *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 531, 887 P.2d 1034, 1038 (1994). The Court

addressed the issue of the court's sua sponte ruling in *Massey v. ConAgra Foods, Inc.*, 156 Idaho 476, 328 P.2d 456 (2014) where the court held that a district court's sua sponte dismissal of a claim is in error when neither party raised the issue and no opportunity was given to argue the issue. *Id.* at 483, 328 P.3d at 463.

The District Court's sua sponte action to raise an affirmative defense on behalf of the Respondents and order that that Appellants are not eligible for consequential damages due to the immigration status is improper, violates due process and Equal Protections laws, is not supported by law and should be overturned.

When filing a motion for summary judgment, the moving party, must notify the opposing party of the particular grounds for the motion. When a court issues a decision sua sponte, they should follow the same procedures. The motion must "state with particularity the grounds therefore including the number of the applicable civil rule, if any, under which it is filed, and shall set forth the relief or order sought." Idaho Rule of Civil Procedure 7(b)(1). The Idaho Supreme Court, in referring to IRCP 7(b)(1) in *Patton v Patton*, 88 Idaho 288, 292 (Idaho 1965):

In *Steingut*, supra, it was stated that 'There should be strict compliance with the rules, otherwise they will be whittled away and become meaningless and unenforceable' Further, practice demands that the basis of the motion and the relief sought shall be clearly stated If this be done to the end that the other party may not assert surprise or prejudice, the requirement is met *Monjar v Higgins, D.C.*, 39 F Supp 633 (1941) And, where it fails to state with particularity, then it is not in conformity with the Rules *Trammell v Fidelity & Casualty Co of New York, D.C.*, 45 F.Supp. 366 (1942).

The Supreme Court in *Patton* reversed a custody order because the record of the trial court was vacant of any evidence to support the claims outlined in the complaints.

The Idaho Appellate Court stated in *Mason v. Tucker and Associates*, 125 Idaho 429,432. (Idaho App. 1994) stated:

... in *Hellickson v Jenkins*, 118 Idaho 273, 796 P 2d 150 (Ct App 1990), we held that the magistrate erred in considering evidence outside the pleadings on a motion under I R C P 12(b)(6) without expressly converting the motion to one for summary judgment under I R C P 56 and giving the parties a reasonable opportunity to present evidence pertinent to a summary judgment motion See also *Kelly v Hodges*, 119 Idaho 872, 876, 811 P 2d 48, 52 (Ct App 1991) (vacating summary judgment entered on counterclaim where the motion had requested judgment only on the plaintiffs complaint) We do not suggest that summary judgment may never be entered by a court sun sponte or on grounds other than those raised by the moving party. However, in such event, the party against whom the judgment will be entered must be given adequate advance notice and an opportunity to demonstrate why summary judgment should not be entered See WRIGHT, MILLER & KANE, IOA FEDERAL PRACTICE AND PROCEDURE § 2720 at 27-28

The District Court was not given adequate notice or opportunity to respond to prevent the orders herein. The Idaho Appellate court in *Fournier v Fournier*, 125 Idaho 789, 791-92 (Idaho App. 1994) upheld such statute and dismissed an order from a Magistrate that was upheld by the District Court because of the violation of IRCP 7(b)(1).

Further, the decision cannot be based on arguments or facts not before the court. This court recently clarified in *Westby v. Schaefer and Mercy Medical Center*, Docket No. 40587, 2014 Opinion No. 121, page 10, that a court cannot base its decision on arguments not supported by affidavits or facts not before the court. The District Court's sua sponte order on the 21st of November 2013 and subsequent denial of the Verified Motion for Reconsideration denying Appellants' consequential damages (Record, 59-68) should be overturned.

iii. Due Process and Equal Protection

The Idaho Supreme Court in *Pentico v. State of Idaho* (2015 Opinion No. 63) stated:

To determine whether an individual's due process rights under the Fourteenth Amendment have been violated, courts must engage in a two-step analysis. *Bradbury v. Idaho Judicial Council*, 136 Idaho 63, 72-73, 28 P.3d 1006, 1015-16 (2001). The Court must first decide whether the individual's threatened interest is a liberty or property interest under the Fourteenth Amendment. *Id.* Only after a court finds a liberty or property interest will it reach the next step of analysis in which it determines what process is due. *Id.* The United States Supreme Court has held that the right to petition government for a redress of grievance is a liberty interest intimately connected to the First Amendment. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967).

The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. *Yick Wo v. Hopkins*, 118 US 356 - Supreme Court 1886.

In *Plyler v. Doe* 457 U.S. 202 (1982) the Supreme Court struck down a Texas statute denying free public education to illegal immigrants as a violation of the Equal Protection Clause of the Fourteenth Amendment because discrimination on the basis of illegal immigration status did not further a substantial state interest. The Court reasoned that illegal aliens and their children, though not citizens of the United States or Texas, are people "in any ordinary sense of the term" and, therefore, are afforded Fourteenth Amendment protections.

It is unquestioned that all residents, regardless of immigration status, even undocumented immigrants, enjoy the protections extended by the United States Constitution in civil and criminal proceedings. The Idaho Supreme Court ruled in *Sanchez v. Galey*,

112 Idaho 609 (1986) that Mr. Garcia is entitled to his lost wages and other consequential damages, despite his immigration status. In *Sanchez* the court upheld a jury verdict in a civil action that awarded an undocumented alien present and future wages based on his current income as a worker in Idaho, present and future medical, as well as pain and suffering. The court even went on to rule that remanding the case to the jury with instructions to consider even the possibility of the Plaintiff earning fewer wages due to a potential deportation “would invite mere speculation.” *Id* at 624.

The 9th Circuit appellate decision *Rivera et al., v. Nibco, Inc.*, upheld the Plaintiff’s right to seek damages and even seek to be reinstated with their previous employer even when his immigration status was at issue. 364 F.3d 1057 (9th Cir. 2004) (*cert. Denied*)(Mar. 7, 2005) The court in *Rivera* held that immigration status is not relevant because of the grave “chilling effect” it would have on parties in civil matters. *Id* at 1064. See also *Bevles Co., Inc. v. Teamsters Local 986*, 791 F.2d 1391 (9th Cir. 1986) (upholding arbitration awards granting back pay to undocumented employees); *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (9th Cir. 1989) (following *Felbro* regarding back pay availability); *EEOC v. Tortilleria “La Mejor,”* 758 F.Supp. 585 (E.D. Cal. 1991) (scope of Title VII not diminished by passage of IRCA).

Therefore, denying the Plaintiff access to consequential damages associated with the causes of action herein solely based on Mr. Garcia’s immigration status is contrary to established law including the Fourteenth Amendment of the U.S. Constitution, which applies to all people and not solely citizens. Such a denial is also contrary to Idaho and U.S. Supreme Court precedent as such would be also an Equal Protection and Due Process

violation. In *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S. Ct. 1064, 1070, 30 L. Ed. 220 (1886)

The fourteenth amendment to the constitution is not confined to the protection of citizens. It says: ‘Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’ These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by section 1977 of the Revised Statutes that ‘all persons within the jurisdiction of the United States shall have the same right, in every state and territory, to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.’ The questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States equally with those of the strangers and aliens who now invoke the jurisdiction of the court.

iv. State Punishments due to Immigration Status is Improper

The power to expel aliens has long been recognized as an exclusively federal power. See *Fok Yung Yo v. United States*, 185 U.S. 296, 302, 22 S.Ct. 686, 688, 46 L.Ed. 917 (1902); *Fong Yue Ting v. United States*, 149 U.S. 698, 706–07, 13 S.Ct. 1016, 1019, 37 L.Ed. 905 (1893). The power to exclude and the related federal power to grant an alien permission to remain “exist as inherently inseparable from the conception of nationality.” See *United States v. Curtiss–Wright Exp. Corp.*, 299 U.S. 304, 318, 57 S.Ct. 216, 220, 81 L.Ed. 255 (1936). This is so because the federal government “is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties,” which includes the field of immigration. *Hines v. Davidowitz*, 312 U.S. 52, 62–63, 61 S.Ct. 399, 402, 85 L.Ed. 581 (1941); see also *Arizona*, 132 S.Ct. at 2506–07; *Chy Lung v. Freeman*, 92 U.S. 275, 279–80, 23 L.Ed. 550 (1876). In light of these principles, a state's or courts

decision to impose “distinct, unusual and extraordinary burdens and obligations upon aliens” may constitute an impermissible intrusion into the federal domain. *Hines*, 312 U.S. at 65–66, 61 S.Ct. at 403.

Congress has passed laws concerning immigration and established punishments for violations of those laws. Violating immigration law does not abrogate rights guaranteed to all people in the courthouse and access to the courts for redress of their damages. Individuals suspected or even convicted of other and much more serious crimes are not prohibited from bringing suit and being awarded appropriate damages and neither are illegal immigrants;

Congress, had it seen fit so to do, might have provided that an alien making an illegal entry into the country should be denied all civil rights, and the protection of the Fourteenth and Fifth Amendments. Congress has not so acted. It was content to make an illegal entry a mere misdemeanor punishable by imprisonment for a period not to exceed one year, or a fine of not more than \$1,000, or both fine and imprisonment (U.S.C. title 8, § 180(a) (8 U.S.C.A. § 180(a)). It is not for the court to add to these penalties by depriving him of his property, in this case the right to recover damages for the injury inflicted by defendant.

Martinez v. Fox Valley Bus Lines, 17 F. Supp. 576, 577 (N.D. Ill. 1936)

While political pressure to treat undocumented immigrants differently due to their immigration status is a reality; however the law does not allow state courts to enact any penalties upon plaintiffs due to their immigration status. The field of immigration regulation is completely preempted by the federal government. “[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *State v. Pando*, 921 P.2d 1285, 1287 (N.M. Ct. App. 1996)(quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1997)(citation omitted)). Immigration law is under federal control, and state participation in the field of immigration law is preempted. *State v. Arviso*, 993 P.2d 894 (Utah Ct. App. 1999)(invalidating a sentence stating, “Defendant

shall serve 90 days jail with release to INS for deportation. The prison sentence is suspended on condition the defendant not return to the United States,” holding the sentence unconstitutional under the preemption doctrine from the Supremacy Clause of the United States Constitution.)

Such participation encroaches on federal control in violation of the Supremacy Clause of the Constitution of the United States. “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. CONST. art. VI cl. 2.

Some judges have taken it upon themselves, to go so far as to banish criminal defendants from the state or country at sentencing and such was considered unconstitutional, an abuse of discretion, inconsistent with the federal statutory scheme and in violation of the Supremacy Clause of the United States Constitution. *U.S. v. Castillo-Burgos*, 501 F.2d 217, 219-220. Castillo-Burgos was ordered deported by the district court at the end of his prison term. The Ninth Circuit ruled this sentence exceeded the trial judge’s authority, vacated the sentence and remanded for resentencing. *Id.* at 219-220. See also *U.S. v. Hernandez*, 588 F.2d 346, 347 (2nd Cir. 1978). *U.S. v. Romeo*, 122 F.3d 941 (11th Cir. 1997); *United States v. Ramirez-Perez*, 166 F.3d 1106 (11th Cir. 1999). *U.S. v. Jalilian*, 896 F.2d 447, 447-48 (10th Cir. 1990). *State v. Arviso*, 993 P.2d 894 (Utah Ct. App. 1999). Courts have gone so far to say that State Courts was without authority to even “make findings as to Defendant’s deportability,” or immigration status, *State v. Pando*, 921 P.2d 1285, 1287 (N.M. Ct. App. 1996).

The sua sponte order stating that Appellants are ineligible for consequential damages due to the immigration status appears to be a punishment that is exclusively for the United States Federal Agencies and the State does not have any authority over such.

v. Public Policy

If the policy and practice is for the court to deny consequential damages in the civil arena to undocumented residents, the natural and probable unfortunate outcome would be the slippery slope to abuse and discrimination of the protected class of minorities living in Idaho.

Denying consequential damages to individuals due to the immigration status would also lead to discovery disputes in each case regarding the immigration status of the injured parties and would require the courts to make legal findings of immigration status. See *State v. Pando*, 921 P.2d 1285, 1287 (N.M. Ct. App. 1996).

The court in *Rivera* held that immigration status is not relevant and found the protective order granted by the lower court was justified because of the grave “chilling effect that the disclosure of plaintiffs’ immigration status could have on their ability to effectuate their rights.” Further, “[W]hile documented workers face the possibility of retaliatory discharge for an assertion of their labor and civil rights, undocumented workers confront the harsher reality that, in addition to possible discharge, their employer will likely report them to the INS and they will be subjected to deportation proceedings or criminal prosecution.” *Id* at 1064. The Supreme Court declined to review the decision upholding an order limiting employers’ inquiries into plaintiffs’ immigration status. Additionally, compelled disclosure of immigration status hurts documented workers:

Even documented workers may be chilled by the type of discovery at issue here. Documented workers may fear that their immigration status would

be changed, or that their status would reveal the immigration problems of their family or friends; similarly, new legal residents or citizens may feel intimidated by the prospect of having their immigration history examined in a public proceeding. Any of these individuals, failing to understand the relationship between their litigation and immigration status, might choose to forego civil rights litigation.

Rivera v. NIBCO, Inc., 364 F.3d 1057, 1064-65 (9th Cir. 2004)

The National Labor Relations Board in *Rivera*, at 1064, expressed identical concerns when, in connection with a complaint of unfair labor practices, the employer's counsel inquired into employees' length of residence in the United States, places of education, previous employment, and also subpoenaed their passports, "green cards," and employment authorization cards. In finding that this "intimidation of witnesses" constituted an unfair labor practice, the Board concluded that:

The only excuse which counsel could proffer [for the subpoenas] was that he wanted to test the credibility of all those witnesses by calling into question whether they signed their proper names on their pretrial affidavits . . . He offered no other evidence tending to show that any one of them, other than Figueroa, was working or testifying under an assumed name. His pretext for seeking these documents for this purpose was a transparent fiction.

. . . [T]he effect upon the General Counsel's witnesses of this wholly irrelevant probe into their immigration status which [the administrative law judge] observed at the hearing ranged from unsettling to devastating and certainly affected their ability to testify.

Further, the consequences of disallowing benefits would have disastrous effect in Idaho. Senator Craig has specifically reported that up to 85% of farm labor workers in Idaho are undocumented in 2006. *See* http://craig.senate.gov/i_agjobs.cfm (December 21, 2006) Prominent and regular news reports, including the PewResearchCenter, report that unauthorized immigrants living in the United States grew during the last decade from 8.4 million in 2000 to 11.1 million in 2011. <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/> (July 30, 2013).

In the monograph entitled “Illegal Immigration in Idaho” author Idaho State Sen. Michael Jorgensen states “According to the Pew Hispanic Research Center, Idaho was home to 25,000-45,000 illegal aliens in 2005. ... Over half of the illegal aliens in the state live in this Idaho County.” Idaho State Sen. Michael Jorgensen, *Illegal Immigration In Idaho*, page 1. Attached hereto as Addendum 1. The report of a study conducted by the Pew Hispanic Center, released in January of 2011, reported that the number of illegal immigrants in the US labor force was approximately 8 million, representing 5% of workers in the US. Addendum 2. See, also, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009* published by the United States Department of Homeland Security,

vi. The District Court should have recused itself.

IRCP 40(d)(2) allows for the disqualification when a judge has been biased or prejudiced for or against a party. The District Court’s sua sponte raising of the affirmative defense for the Respondents and making a legal finding that Appellants are not eligible for consequential damages reflects a decision made before the evidence and arguments were presented to the court. The Idaho Supreme Court in *Akers v. White Construction, Inc* (2014 Opinion No. 5) cited *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 424, 283 P.3d 728, 741 (2012), and allowed for the appointment of a new District Judge to provide a much needed fresh perspective and eliminate any concern of bias on remand even though there was not a finding that he District Judd did not err in refusing to disqualify himself to eliminate any concerns.

b. The District Court erred as a matter of law and abuse its discretion when the Court sua sponte denied Appellants’ consequential damages, Appellants’ costs, Interest pursuant to IC 28-

22-104, and the Courts refusal to allow Plaintiffs to amend their complaint to include punitive damages.

The District Court's Order and final judgment entered on the 6th of May 2015 (Record 144-152) included a sua sponte decision denying Appellants' demands sought in the Complaint including for a Jury Trial, pre-judgment interest on the amount due at the rate provided in Idaho Code 28-22-104, costs, etc. was improper and should be overturned. At a minimum the court should have granted interest on the money owed as such as easily ascertainable and due immediately upon the breach. The order failed to account for filing fees, service fees, and other costs. Appellants incorporate herein the arguments made above regarding the impropriety of sua sponte decisions.

i. The District Court's sua sponte decision denying relief under Idaho Code 48-601 was improper.

The decision regarding damages failed to account for the Causes of Action, including, but not limited to Appellants' Third Cause of Action, a violation of Idaho Code 48-603C under Idaho Code 48-601. Idaho Code 48-601 et sec. protects consumers against unfair and deceptive acts and practices in the conduct of trade or commerce and to provide efficient and economical procedures to secure such protections. Idaho Code 48-602(7) states that the Consumer Protection Act applies to Respondents' services, work, labor or other act or practice provided or performed by the Respondent. Respondents violated Idaho Code 48-603C, as his actions above, before and after entering into the contract, were unconscionable in the conduct of his trade. Idaho Code 48-603c((1)(a-d) apply to the Appellants as they knew of the vulnerable state of a young man in jail and a mother needing him released who had limited language abilities in English, Respondents knew of the vulnerability of the Appellants, and the acts would

outrage and offend the public conscience. Respondents further violated Idaho Code 48-603(13) for failing to deliver to the Appellants the signed contract to date the copy of the contract and documents signed by Appellants. Respondents further violated Idaho Code 48-603(9), (13), (17), and or (18) when he misled the Appellants regarding his services, withdrawing the bond, and for blaming the Sherriff for the reason for the delay.

Idaho Code 48-608(1) allows the greater of the actual damages or \$1,000 which is larger and section (4) also allows costs and “reasonable attorney’s fees to the plaintiff if he prevails”; however, the District Court failed to address such in the order and judgment.

ii. The District Court’s second order denying consequential damages was improper as it was based upon inaccurate factual conclusions.

The District court order denying again consequential damages was based upon the incorrect finding of fact by the court that the Respondents revoked the bond “**after** finding that an ICE hold had been placed of Mr. Garcia...” [emphasis added] (Record, 148-149). Such ruling was contrary to the evidence which stated the bond was placed and revoked on the 15th and the ICE hold was not placed until the 17th of October 2012 (Record 109-130, paragraph 20) (Record, 135 – 143, paragraph 17). (Hearing, 6: 4-6) (Hearing, 12:6-20) (Hearing, 13:6-10) (Record 109-130, paragraphs 10-17) (Record, 135-143, paragraphs 12-18).

The evidence presented reflects that the damages sought by Appellants were allowed under Idaho law and denied without opportunity to review or argue. "The damages for which compensation is sought need not have been precisely and specifically foreseeable", but only "such as were reasonably foreseeable and within the contemplation of the parties at the time they made the contract." *Suitts v. First Sec. Bank of Idaho, N.A.*, 110 Idaho 15, 22 (1985). Therefore a party cannot contract with a person then disclaim

the majority of damages available in a breach of contract because of the immigration status of the person he contracted with.

Just as a party cannot negligently injure an illegal alien or legal permanent resident and avoid paying the full range of appropriate damages, the Respondents in the instant case cannot avoid the full range of appropriate damages when he breaches a contract. By disallowing the prospect of recovering normal consequential damages for breach of contract based solely on Appellants' immigration status, this Court risks violating Federal Constitutional Rights granted to all persons under the laws outlined above including the Fourteenth Amendment. This ruling intrudes upon Congress' domain by taking it upon itself to add additional punishments to those who violate immigration law. Further, the Idaho Supreme Court has already allowed a party, despite his immigration status, to receive normal civil recoveries in a personal injury case. In *Sanchez v. Galey*, Bennett Creek accepted the benefits of the labors of an illegal alien and it was anomalous for defendant to complain about his being compensated on the basis of the wages he was receiving. *Sanchez v. Galey*, 733 P. 2d 1234, Idaho Supreme Court 1986. See also *Patino v. Grigg & Anderson Farms*, 542 P. 2d 1170, Idaho Supreme Court 1975.

Any speculation by the court that an immigration hold would have been placed even if the bond had not been revoked is improper as Jose Luis would have been released before the immigration hold could have been placed. Further, even if the speculation that an immigration hold would have been placed before Mr. Garcia was released, the 247 immigration hold pursuant to Federal Regulation 8 CFR 287.7, only lasts for 48 hours

and Mr. Garcia would have only suffered 48 hours of incarceration until after bond was paid or his criminal case was resolved.

Even if the speculation was correct that the immigration hold was placed and he was not released in 48 hours, Jose Luis would have been taken, processed, and likely eligible for an immigration bond several months earlier and not remained in custody during the processing of the criminal cases. However, as the Respondents here revoked the bond, Appellant was only given the option to be released after he plead guilty, causing additional coercion in resolving the matter so that he could be released.

Plaintiffs may sue on the contract and seek damages based on her expectation interest under the contract. Damages based on expectation interest may be measured by "the loss in the value to [her] of [Unigard's] performance caused by its failure or deficiency, plus any loss, including incidental or consequential, caused by the breach." Restatement (Second) Contracts, § 347 (1981). In an action on a contract, consequential damages are available if such damages were foreseeable, or within the contemplation of the parties, at the time the contract was formed. *Hadley v. Baxendale*, 9 Exch. 341, 156 Eng.Rep. 145 (1854); McCormick, Damage §§ 137, 138 (1935); *Lamb v. J.T. Robinson*, 101 Idaho 703, 620 P.2d (1980); *J.B. Traylor v. Henkels & McCoy, Inc.*, 99 Idaho 560, 585 P.2d 970 (1978); *Nora v. Safeco Ins. Co.*, 99 Idaho 60, 577 1023*1023 P.2d 347 (1978) (McFadden, J., dissenting). Any damages resulting from breach of the covenant of good faith and fair dealing would be recoverable to the extent that the party in breach had reason to foresee that such loss would be the probable result of the breach at the time the contract was made. A foreseeable loss is one which follows from the breach of a contract in the ordinary course of events, or even if not in the ordinary course of events a

loss which the party in breach had reason to know would result from a breach of the covenant. Restatement (Second) *Contracts* § 351 (1981). *White v. Unigard Mut. Ins. Co.*, 730 P. 2d 1014, Idaho Supreme Court 1986.

An injured party may be entitled to consequential damages for breach of the implied covenant of good faith if "there is something in that contract that suggests that they were within the contemplation of the parties and are proved with reasonable certainty." *Brown's Tie & Lumber Co. v. Chicago Title Co.*, 115 Idaho 56, 61, 764 P.2d 423, 428 (1988).

Two questions are posed when attempting to determine whether or not damages are allowed in a breach of contract, (1) were the damages the result of accident or an unusual combination of circumstances which could not reasonably be anticipated? (2) Did the party sought to be charged have control of these circumstances? *Olson v. Quality-Pak Company*, 93 Idaho 607 (Idaho 1970). The normal measure of damages for delay in constructing a building would be the rental value of the building for the period of delay. 5 Corbin on Contracts, § 1092 (1964); 13 Am.Jur.2d, Building and Construction Contracts, § 76. *Olson v. Quality-Pak Company*, 93 Idaho 607 (Idaho 1970).

It was foreseeable to Respondent that if he did not post the bond or revoked it without informing the family that an ICE hold would be placed and that Jose Luis would remain in custody. It was foreseeable that if a bail bondsmen revokes a bond and retains the funds given to him that as a direct result of his breach of contract a plaintiff will remain incarcerated and unable to work and enjoy the companionship of family and friends. The affidavits and evidence before the court also indicate that the Respondents knew of Jose Luis's immigration status and the need to post bond immediately. Rather

than perform his duties under the contract Respondents chose to breach it despite knowing what the disastrous result to the Appellants would be. Indeed it seems to logically follow that Respondents' intent was to see that such results did occur so as to be able to take advantage of the situation by retaining the benefit of the bargain without performance.

iii. The Court abused its discretion and should have allowed punitive damages.

The District court order refusing to allow the Appellants to amend their complaint was also based upon the incorrect finding of fact by the court that the Respondents revoked the bond “**after** finding that an ICE hold had been placed of Mr. Garcia...” [emphasis added] (Record, 148-149). Such ruling was contrary to the evidence which stated the bond was placed and revoked on the 15th and the ICE hold was not placed until the 17th of October 2012 (Record 109-130, paragraph 20) (Record, 135 – 143, paragraph 17). (Hearing, 6: 4-6) (Hearing, 12:6-20) (Hearing, 13:6-10) (Record 109-130, paragraphs 10-17) (Record, 135-143, paragraphs 12-18).

The court does not review the motion to include Punitive Damages against a standard of whether the court would award punitive damages, but instead, whether there is a reasonable probability that a jury could award such damages based upon the legal standard applicable here. *Gunter v. Murphy's Lounge, LLC*, 141 Idaho 16, 29, 105 P.3d 676, 689 (2005).

Punitive damages may be awarded for breach of contract where the conduct is outrageous, similar to crime, an intentional tort or carried out with reckless indifference for the rights of others. See *Jones v. Panhandle Distribs.*, 792 P.2d 315 (Idaho1990); *Yacht Club Sales & Serv. v. First Nat'l Bank*, 623 P.2d 464 (Idaho 1980), overruled in

part by *Cheney v. Palos Verdes Inv. Corp.*, 665 P.2d 661 (Idaho 1983), supra. *CF. Hoglan v. First Sec. Bank, N.A.*, 819 P.2d 100 (Idaho 1991) (jury awarded punitive damages where conduct did not evidence a harmful state of mind). The award of punitive damages in the context of a contractual relationship requires conduct that is unreasonable and irrational in the business context, or that breaches a duty to act in good faith, or that shows a lack of professional regard for the consequences of the breach of the contractual agreement. *Luzar v. W. Sur. Co.*, 692 P.2d 337 (Idaho 1984). Other factors may play a determinative role in deciding whether there is substantial evidence of an extreme deviation from standards of reasonable conduct: (1) the presence of expert testimony; (2) whether the unreasonable conduct actually caused harm to the plaintiff; (3) whether there is a special relationship between the parties; (4) proof of a continuing course of oppressive conduct; and (5) proof of the actor's knowledge of the likely consequences of the conduct. See *Cuddy Mountain Concrete, Inc. v. Citadel Constr., Inc.*, 824 P.2d 151 (Idaho Ct. App. 1992).

The Idaho Supreme Court recently modified and clarified in *Hennefer v. Blaine County School Dist. #61*, 2015 Opinion No. 33 that an objective, "should-have-known" standard is the appropriate standard of recklessness.

Though the actor must make a conscious choice as to his or her course of action, the actor need not subjectively be actually aware of the risk or the high probability that harm will result. It is sufficient for a finding of recklessness that the actor makes the choice as to his or her course of conduct under circumstances where the risk and high probability of harm are objectively foreseeable. Although the School cites several cases and statutes that apply a more subjective standard for recklessness, none of these sources directly address the use of the term "reckless" within the context of Idaho Code section 6-1603. Therefore, we find no reason to deviate from the directly applicable authority supporting the more objective approach.

The Supreme Court of Idaho stated in *Brown v Mathews*, 118 Idaho 830 (Idaho 1990), when damages are sought for breach of a contractual relationship, whether through express contract or implied contract, there can be recovery for emotional distress and general damages suffered by the Plaintiffs if the conduct of a defendant has been sufficiently outrageous and established in the realm of punitive damages.

Once the plaintiff has established a reasonable likelihood of proving clear and convincing evidence of oppressive, fraudulent, malicious or outrageous conduct by the Defendant, "[t]he court *shall* allow the motion to amend the pleadings." Idaho Code 6-1604 (emphasis added).

The Honorable District Judge G. Richard Bevan, provided the following outline relating to the process to amend Plaintiffs' complaint that is sought herein:

A motion to amend to add a punitive damages claim pursuant to I.C. § 6-1604 requires that this court weigh the plaintiff's evidence in exercising its discretion. This court does not review the motion against a standard of whether it would award punitive damages, but instead, whether there is a reasonable probability that a jury could award such damages based upon the legal standard applicable here. *Gunter v. Murphy's Lounge, LLC*, 141 Idaho 16, 29, 105 P.3d 676, 689 (2005).

In reviewing the record, the court grants all inferences in favor of the plaintiff, as it would on a motion for directed verdict. *See Hansen-Rice, Inc. v. Celotex Corp.*, 414 F.Supp.2d 970, 979 (D. Idaho 2006) (In considering a motion to amend to add a claim for punitive damages under I.C. §6-1604, the court grants all inferences in favor of the plaintiff); *Hardenbrook v. United Parcel Services Co.*, 2009 WL 3530735 (D. Idaho 2009) (The plaintiffs' assertions in the motion to amend to add a claim for punitive damages are "accepted by the court as true"); *Cf. Vendelin v. Costco*, 140 Idaho at 430, 95 P.3d at 48 (In determining whether a directed verdict should have been granted as to a claim for punitive damages, the court must determine whether there was sufficient evidence to justify submitting the claim to the jury, viewing as true all adverse evidence and drawing every legitimate inference in favor of the party opposing the motion for a directed verdict.) Thus, the court views the plaintiff's evidence as true, with all inferences taken in behalf of that evidence.

...

In actions seeking to recover punitive damages, "the claimant must prove,

by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted." I.C. § 6-1604(1). At this juncture, the plaintiff's evidence must be substantial, but not unquestioned. "The 'substantial evidence' test does not require the evidence be uncontradicted. It requires only that the evidence be of sufficient quantity and probative value that reasonable minds could conclude that a verdict in favor of the party against whom the motion is made is proper." *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416,430-431,95 P.3d 34, 48-49 (2004) (citing *Gen. Auto Parts Co., v. Genuine Parts Co.*, 132 Idaho 849, 855, 979 P.2d 1207, 1213 (1999))...As noted by the Court in *Vendelin*, "[t]o support a motion to add punitive damages under I.C. §6-1604, [the moving party is] required to establish a reasonable likelihood [they] could prove by a preponderance of the evidence that [the defendant] acted oppressively, fraudulently . . . maliciously or outrageously." 140 Idaho at 423, 95 P.3d at 41.

An award of punitive damages in this case would also satisfy the two purposes of punitive damages as expressed by the Idaho Legislature and the Idaho Supreme Court. "[A]n award of punitive damages serves the dual function of deterrence and expressing society's outrage." *Curtis v. Firth*, 123 Idaho 598, 609, 850 P.2d 749, 760 (1993). "Punitive damages' ... serve the public policies of punishing a defendant for outrageous conduct and of deterring future like conduct." I.C. § 6-1601(9).

Permitting a prayer for punitive damages will also serve as a deterrent to others by demonstrating that such breaches are serious. In a previous case in which this Court upheld a request to amend to include punitive damages the Court noted "There is merit in the observation by counsel for the Linscotts in their brief that "[t]he company has everything to gain by fighting a bad fight and nothing to lose but interest on its just obligation." *Linscott v. Ranier Natl. Life Ins. Co.*, 606 P.2d 958 (1980) The District Court's ruling incentivizes purposeful breaches of contract by making the worst case scenario a simple return of its obligation, giving the Respondent everything to gain and nothing to lose by engaging in deceptive and intentionally harmful business practices.

Regardless of ones political position on the issue of immigration, the lower courts ruling only serves to incentivize knowingly taking advantage of vulnerable clients. It is also noteworthy that in this action the Plaintiffs were not even awarded interest on the retained sum. *Linscott v. Ranier Natl. Life Ins. Co.*, 606 P.2d 958 (1980)

V. REQUEST FOR COSTS AND ATTORNEY FEES

Appellants sent a demand letter under I.C. § 12-120(1) more than ten days before filing suit (Record, 4-13, Exhibit A). Appellants were awarded attorneys fees as they prevailed in front of the District Court, therefore they should also be granted attorneys fees on appeal. This Court has held previously that “both subsections (1) and (3) of Idaho Code § 12-120 mandate an award of attorney fees to the prevailing party on appeal as well as at trial.” *Cox, v. Mulligan*, 142 Idaho 356 (2005). Appellants also request attorneys fees and costs on appeal under I.C. § 48-608(5) and IRCP 54(d)(1)(B) as the prevailing party under the Idaho Consumer Protection Act. Finally, Appellants request attorneys fees under I.R.C.P. 54(d)(1)(B).

VI. CONCLUSION

The Respondents revoked the bond before any ICE hold was placed and misled the Appellants for the reason for the delay preventing Appellants from posting bond or hiring another bondsman. Respondents did so knowing that the likely result would be that his client would be incarcerated and later deported. Respondent’s stall and deception, all the while retaining the money paid to him, resulted in deportation of the Appellant with the hope there would be no one left to pursue the return of the benefit and payments Respondents received. After default Respondents was simply asked to return the money to the Respondents along with a small amount of attorney's fees. The District

Court failed to grant Appellants their consequential damages based on immigration status and failed to allow Appellants to pursue punitive damages freed. This freed Respondents from any accountability. The Respondents' knowing breach caused irreparable and severe harm to the Appellants leaves such breaches as the most fiscally advantageous. Accordingly, Appellants ask this Court to reverse the decisions of the District Court concerning consequential, punitive damages, costs, damages under Idaho Code 48-601 et sec, and remand the case back to determine the appropriate amount of damages.

DATED this 1 day of February 2016.

Hammond Law Office, PA



Richard L. Hammond
Attorney for the Appellants


CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of February 2016 I delivered a true and correct copy of the foregoing APPELLANTS' BRIEF to the following via U.S. Mail:

Absolute Bail Bonds, LLC
and Walter Almaraz

220 N 5th St W
Homedale, ID 83628
And
416 W Montana Ave
Homedale, ID 83628

Respondents – Pro Se

By: 
Richard L. Hammond