STATE OF NEBRASKA

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#09004

NO.
STATE OF NEBRASKA
OFFICIAL
FEB 3 2009
DEPT. OF JUSTICE

SUBJECT: Whether the Board of Parole is Authorized to Place a Special Condition on the Parole of Inmates with Immigration Detainers that the Inmates/Parolees be Returned to the Custody of the Nebraska Department of Correctional Services Should They Not be Deported Pursuant to the Detainer

REQUESTED BY: Esther L. Casmer, Chair
Nebraska Board of Parole

WRITTEN BY: Jon Bruning, Attorney General
Ryan C. Gilbride, Assistant Attorney General

Immigration detainers are issued by the United States Department of Homeland Security (DHS). 8 C.F.R. § 287.7. Immigration Detainers advise the Nebraska Department of Correctional Services (DCS) when DHS seeks custody of a DCS inmate. The detainers request that DCS advise DHS of the pending release of an inmate, in order for DHS to arrange to assume custody.

The Board of Parole has the authority to grant paroles under such conditions as may be prescribed by law pursuant to Article IV § 13 of the State of Nebraska Constitution. The Board further has the authority to fix the conditions of parole pursuant to Neb. Rev. Stat. § 83-192 (1) (b).

Neb. Rev. Stat. § 83-1,125 (3) states that the Board may parole an offender who is eligible for release to a detainer. If an offender is paroled to such a detainer, the Board may provide, as a condition of release, that if the charge or charges on which the detainer is based are dismissed, or are satisfied after conviction and sentence, prior to the expiration of the offender's parole term, the authority to whose warrant or detainer the offender is released shall return the offender to serve the remainder of the parole term or such part as the Board may determine.

It is our determination that the Board has the authority to place conditions on the parole of inmates with Immigration Detainers. If the Board elects to parole such an inmate, the Board has the statutory authority to require, as a condition of the parole, that the inmate/parolee be returned to DCS in the event the inmate/parolee is not deported, or in the event the inmate/parolee is arrested in the United States after deportation, prior to the expiration of the parole term.

Sincerely yours,

JON BRUNING
Attorney General

Ryan C. Gilbride
Assistant Attorney General

Approved by:

Attorney General

20-001-02/20