

ENTERED

March 02, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

The STATE OF TEXAS; and the	§
STATE OF LOUISIANA,	§
 	§
Plaintiffs,	§
 	§
v.	§
 	§
The UNITED STATES OF AMERICA;	§
ALEJANDRO MAYORKAS, Secretary	§
of The United States Department of	§
Homeland Security, in his official	§
capacity; UNITED STATES	§
DEPARTMENT OF HOMELAND	§
SECURITY; TROY MILLER, Senior	§
Official Performing the Duties of the	§
Commissioner of U.S. Customs	§
and Border Protection, in his official	§
capacity; U.S. CUSTOMS AND BORDER	§
PROTECTION; TAE JOHNSON, Acting	§
Director of U.S. Immigration and	§
Customs Enforcement, in his official	§
capacity; U.S. IMMIGRATION AND	§
CUSTOMS ENFORCEMENT; TRACY	§
RENAUD, Senior Official Performing the	§
Duties of the Director of the U.S.	§
Citizenship and Immigration Services,	§
in her official capacity; and U.S.	§
CITIZENSHIP AND IMMIGRATION	§
SERVICES,	§
 	§
Defendants.	§

Civil Action No. 6:21-CV-00016

ORDER

In addition to any and all issues the Parties see fit to address in their post-trial briefing, the Court asks that they address the following:

1. For the purpose of Final Agency Action under the Administrative Procedure Act, whether the challenged action either determines rights or obligations or produces legal consequences.

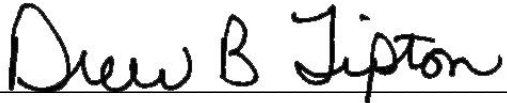
2. The relationship between *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005), and *Demore v. Kim*, 538 U.S. 510, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003), including whether there is “some stronger indication” from Congress that “shall” under 8 U.S.C. §§ 1226(c) and 1231(a)(2) means must.

3. The difference, if any, between “custody” and “detention” under 8 U.S.C. §§ 1226 and 1231 and how that impacts the present case.

4. Whether and how the challenged guidance is contrary to law under the APA if “shall” in 8 U.S.C. §§ 1226 and 1231 is mandatory.

It is SO ORDERED.

Signed on March 2, 2022.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE