

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.

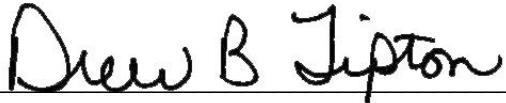
2. The relationship between *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005), and *Demore v. Kim*, 538 U.S. 510, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003), including whether there is “some stronger indication” from Congress that “shall” under 8 U.S.C. §§ 1226(c) and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