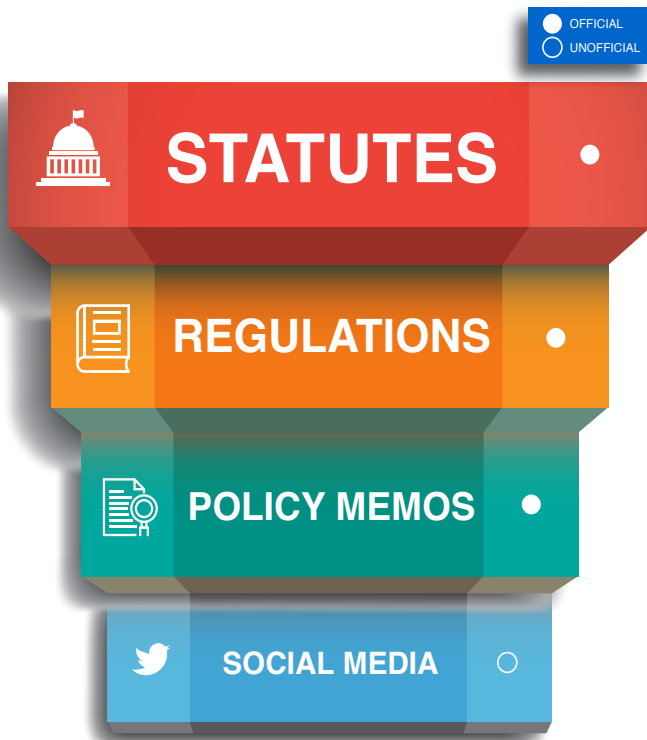




STATUTES vs. REGULATIONS vs. MEMOS vs. SOCIAL MEDIA IN IMMIGRATION LAW

How do we determine what is law, what is the government’s interpretation or application of a law, or what is just the government’s opinion? Consider the source.



■ **STATUTES: Laws Passed by a Legislature, Usually by Congress**

Statutes are binding law and can create new rights or obligations. The Immigration and Nationality Act is a statute. Statutes may be challenged in court if they are unconstitutional, either as written or as applied by the government.

■ **REGULATIONS: Rules Setting Forth How the Government Will Apply Relevant Statutes**

Regulations have the force of law. The government must follow the Administrative Procedure Act (APA) when making regulations. When a regulation is implemented, it is published in the Federal Register and given a section in the Code of Federal Regulations (CFR). Each federal agency is covered in a different chapter of the CFR. Most immigration regulations are found in chapters 8 (Department of Homeland Security), 20 (Department of Labor), and 22 (Department of State) of the CFR. Regulations may be challenged if the government did not follow the APA. Regulations also may be challenged if they go beyond the scope of the statute (ultra vires), or if they are unconstitutional, either as written or as applied by the government.

■ **POLICY MEMOS: Announcements from a Government Agency That Set Its Policies and Provide Guidance as to How the Agency Will Apply Relevant Statutes and Regulations**

Policy memos usually are vetted through the agency’s office of legal counsel and go through multiple rounds of review and revision before they are released to the public. Statutes and regulations are the boundaries for the government’s policies, and the government cannot make new laws or create new rights or obligations through memos. While memos do not have the force of law, a court will give the agency wide deference in setting its policies. Policy memos may be challenged if they go beyond the scope of the relevant statutes and regulations (ultra vires), or if they are unconstitutional, either as written or as applied by the government.

■ **SOCIAL MEDIA: In Recent Years, the Government Has Made Numerous Policy Announcements on Social Media**

Unlike statutes and regulations, social media posts do not have the force of law. Unlike policy memos, government social media posts do not appear to go through a thorough vetting process. Government policies announced via social media cannot go beyond the scope of the related statutes and regulations, and the government cannot make new laws or create new rights or obligations via such posts. Policies announced on social media may be challenged in court if they go beyond the scope of the relevant statutes and regulations (ultra vires), or if they are unconstitutional, either as written or as applied by the government. Occasionally, agencies make announcements, such as office closures, via social media and do expect these messages to be accepted as official announcements.

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR IMMIGRATION ATTORNEY OR YOU CAN FIND AN IMMIGRATION ATTORNEY AT <https://www.ailalawyer.org/>.