RUBEN GALLEGO
ARIZONA

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United States Senate
WASHINGTON, DC 20510

May 28, 2026

The Honorable Orice Williams Brown
Acting Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Acting Comptroller General Brown:

I write to request a legal determination as to how the Congressional Review Act (CRA) applies to the agency action identified below.

On May 21, 2026, U.S. Citizenship and Immigration Services (USCIS) issued a policy memorandum (PM-602-0199) with guidance concerning the adjudication of adjustment of status applications under section 245 of the Immigration and Nationality Act (INA).[1] The guidance states that adjustment of status applications, where consular processing is available to the applicant based on the immigrant category in which they seek adjustment, is an "extraordinary discretionary relief" and considered an "act of administrative grace".

The CRA adopts the broadest definition of "rule" contained in the Administrative Procedure Act (APA), which is broader than the category of rules subject to the APA's notice-and-comment rulemaking procedures.[2] In relevant part, the CRA defines a "rule" as follows:

> *the whole or part of an agency statement of general…applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.*

Excluded from this definition, however, are: (1) rules of particular applicability; (2) rules "relating to agency management or personnel"; and (3) rules of "agency organization, procedure, or practice that do[] not substantially affect the rights or obligations of non-agency parties."[3]

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[1] U.S. Citizenship and Immigration Services, *Adjustment of Status is a Matter of Discretion and Administrative Grace, and an Extraordinary Relief that Permits Applicants to Dispense with the Ordinary Consular Visa Process*, PM-602-0199, May 21, 2026, https://www.uscis.gov/sites/default/files/document/memos/PM-602-0199-AdjustmentOfStatusAndDiscretion-20260521.pdf.
[2] Maeve P. Carey and Christopher M. Davis, *The Congressional Review Act (CRA): Frequently Asked Questions*, Congressional Research Service, R43992, Nov. 12, 2021, https://crs.gov/Reports/R43992.
[3] 5 U.S.C. § 804(3).

Based upon this broad definition, the Government Accountability Office (GAO) has pointed out that "agency pronouncements may be rules within…the CRA, even if they are not subject to notice and comment rulemaking requirements [under the APA]."[4]

USCIS' policy memorandum appears to meet the CRA's definition of a rule as it is (1) an agency statement of general applicability that has future effect, and (2) is designed to implement, interpret, or prescribe law or policy.

First, the USCIS policy memorandum's impact is prospective in nature and generally applicable to noncitizens seeking to adjust their status to that of a lawful permanent resident within the U.S. Second, the memorandum is designed to implement, interpret, or prescribe law or policy. According to GAO, an agency's actions are considered such when the agency "changes regulatory requirements or official policy, or when it alters how the agency will exercise its discretion, among other things."[5] In contrast, "a statement by an agency that simply restates an established interpretation 'tread[s] no new ground' and 'le[aves] the world just as it found it, and thus cannot be fairly described as implementing, interpreting, or prescribing law or policy.'"[6]

While the USCIS policy memorandum frames the guidance as the latter, it more appropriately aligns with the former because it changes policy by altering how the agency will exercise its discretion. For decades, administrations have implemented the adjustment of status provision by granting lawful permanent resident status to most applicants who meet the eligibility criteria; since 1980, over half of all legal permanent residents obtained their status inside the U.S.[7] However, in a departure from longstanding precedent, the new guidance appears designed to create a new presumption against granting adjustment of status to noncitizens by incorrectly framing such relief as "extraordinary." In essence, it aims to require these applicants to seek legal permanent residency through consular processing rather than through the routine adjustment of status pathway—contrary to congressional intent. The new guidance would impact potentially hundreds of thousands of noncitizens and their families in the U.S. per year—representing a major change in policy and therefore satisfying the CRA's definition of a rule.

The second reason the USCIS memorandum meets the CRA's definition of a rule is because it interprets law, and the interpretation is incorrect. In 1952, Congress created the adjustment of status provision under section 245 of the INA specifically because it was causing significant hardship to Americans and their families to leave the country solely to obtain a visa. Since then, Congress has repeatedly *expanded* the use of adjustment of status—reflecting the fact that it was intended as a routine pathway to citizenship rather than one reserved for extraordinary cases.[8] In

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[4] U.S. Government Accountability Office, *Decision on the Matter of Vetterra, LLC*, B-417991, Dec. 29, 2019, https://www.gao.gov/assets/b-417991.pdf.

[5] U.S. Government Accountability Office, *U.S. Department of State, Bureau of Educational and Cultural Affairs—Applicability of the Congressional Review Act to Guidance Directive 2024-04*, B-337392, Aug. 12, 2025, https://www.gao.gov/products/b-337392.

[6] Golden & Zimmerman, LLC v. Domenech, 599 F.3d 426, 432 (4th Cir. 2010) (alterations in original) (quoting Independent Equipment Dealers Ass'n v. EPA, 372 F.3d 420, 428 (D.C. Cir. 2004)).

[7] David J. Bier, "DHS Quits Granting Green Cards—Almost Entirely," *Cato Institute*, May 22, 2026, https://www.cato.org/blog/dhs-quits-granting-green-cards-almost-entirely.

[8] *Id*.

fact, USCIS' own policy manual reaffirms this interpretation, stating that Congress "created the adjustment of status provision [to] enable certain aliens physically present in the United States to become [lawful permanent residents] without incurring the expense and inconvenience of traveling abroad to obtain an immigrant visa."[9] Moreover, in the INA Congress enumerated the specific criteria that render an applicant eligible or ineligible to adjust status.[10] If Congress intended for consular processing to be the preferred process—as the USCIS memorandum suggests—it would have made that preference explicit.

In addition, USCIS' policy memorandum does not meet the exclusions of the CRA definition of a rule. First, the memo is of general applicability, so the first exclusion does not apply. Second, it does not primarily relate to agency management or personnel. On the third point—whether it substantially affects the rights or obligations of non-agency parties—the question, according to GAO, is whether the agency action has "a substantial impact on the regulated community such that [it is] a substantive rather than a procedural rule for purposes of CRA."[11] The guidance in question does not fall into this category of exclusion because it substantially alters the individual rights of the affected noncitizens for several reasons.

First, contrary to adjustment of status decisions made by USCIS officers, visa decisions made by consular officers are generally not subject to administrative or judicial review. This means applicants who would normally be eligible to apply to adjust status in the U.S. and to appeal an adverse decision by USCIS would have little to no recourse in the event of a denial by a consular officer. Second, over 2.7 million unauthorized noncitizens currently in the U.S. are married to a U.S. citizen.[12] Many of these noncitizens are eligible to apply to adjust status from within the U.S., yet the policy memorandum would render them ineligible for permanent residency abroad due to the three- and ten-year bars on re-entry for noncitizens who have previously been in the country illegally. Third, the USCIS policy guidance would require many individuals who are eligible to apply for permanent residency from abroad to depart their families and jobs in the U.S.—often for years due to processing backlogs and annual per-country caps. Moreover, due to an indefinite travel and visa processing pause for 39 countries that remains in effect,[13] many of these noncitizens from the affected countries would be effectively barred from returning to the U.S. until the pause is lifted even if they were approved for permanent residency by a consular officer.

In light of these facts, we write to GAO for a legal opinion on whether the USCIS policy memorandum in question satisfies the definition of a "rule" under the CRA. We appreciate your prompt attention to this request.

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[9] U.S. Citizenship and Immigration Services, *Policy Manual*, Volume 7, Part A, Chapter 1, https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-1.

[10] 8 U.S.C. § 245.

[11] U.S. Government Accountability Office, *Tongass National Forest Land and Resource Management Plan Amendment* 2017-10, B-238859, October 23, 2017, https://www.gao.gov/products/b-238859.

[12] Migration Policy Institute, *Profile of the Unauthorized Population: United States*, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US.

[13] Ximena Bustillo, "Immigrants from Travel Ban Countries Wait in Limbo in U.S.," *NPR*, Apr. 28, 2026, https://www.npr.org/2026/04/28/nx-s1-5775869/trump-travel-ban-pause-limbo-professionals.

Sincerely,

Ruben Gallego
United States Senator