



# Lame-Duck Session Crucial For Pending Immigration Bills

Alyssa Aquino

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The possibility of Republicans controlling the U.S. House of Representatives puts pressure on Democrats to make a hard push to pass immigration bills that have already passed the House, but stalled in the Senate.

While the full results of the midterm elections are unlikely to be settled until December, the Republicans appear to be circling a majority in the House. The Democrats will also not have enough seats to ease the passage of immigration legislation in the Senate over the next two years.

A defeat for the Democrats in either chamber ratchets up pressure during the lame-duck session for them, and the immigration advocates lobbying them, to pass proposals that are halfway to becoming law before they expire at the start of the next congressional term in January.

The Democrats' slim majority in the Senate over the past two years has presented challenges inherent to negotiating with the other side of the aisle. In the lame-duck session, lawmakers will also have to make a convincing case for why immigration policy should share the spotlight with other pressing matters, including the pending omnibus spending bill and the National Defense Authorization Act.

Here, Law360 takes a look at key immigration proposals and their chances of making it through the lame-duck session:

## The Dream Act

The chances of Republicans and Democrats coming to a consensus in less than two months is slim when it comes to creating a permanent solution for unauthorized noncitizens who know the U.S. as their only home after having grown up here.

The executive branch's Deferred Action for Childhood Arrivals program provides temporary deportation protections and the authorization to work and study in the U.S. for some, but faces opposition in court from a coalition of states claiming financial losses from the burden of supporting unauthorized noncitizens.

A permanent solution to end uncertainty for the so-called Dreamers can only come from Congress. Advocates have previously lobbied for the Development, Relief and Education for Alien Minors, or Dream Act, to be stripped clean of funding for immigration enforcement, border security or immigration detention. But after two decades of Republicans and Democrats deadlocking on the issue, and amid increasing migration across the southern border, with border officers noting a record 2.38 million encounters over the past year, such a clean bill is no longer realistic.

Any successful Dreamer legislation would have to involve the border, according to Diego Sánchez, the policy and strategy director at the Presidents' Alliance on Higher Education and Immigration.

"This won't be an all or nothing approach. ... We don't live in a world where a clean Dream Act is possible. We recognize that we need a bipartisan compromise," Sánchez said.

However, Akin Gump Strauss Hauer & Feld LLP's senior counsel Casey Christine Higgins, who previously advised former House Speaker Paul Ryan on trade and immigration matters, pointed out lawmakers could feasibly hash out a narrow compromise. DACA and the border are probably the most high-profile immigration issues for both parties, and lawmakers know they can't move on to addressing the country's legal immigration system without first doing something here, she said.

"Being able to take the first step on something meaningful on the border, as well as something on DACA, even if it means bringing people back to the table in a few years, is a good step forward to help show some competence that Congress can act on immigration policy," Higgins said.

#### The Farm Workforce Modernization Act

Congress' effort to revamp the H-2A visa program, which allows employers to temporarily hire migrant workers for agricultural work, passed the House in March 2021 with bipartisan support.

The program has been rife with reports of migrant worker abuse and heavily criticized by agricultural businesses as insufficient to meet their labor needs. However, some of the bill's measures to empower workers to fight unfair wages, unsafe accommodations and other labor law violations faces opposition from some lawmakers and industry representatives expressing concern over frivolous lawsuits and the cost of defending against them.

David Bier, the associate director of immigration studies at Cato Institute, said a severe labor shortage may convince lawmakers to reach a deal while they can, but "whether it's going to carry the day is far from certain."

Chuck Conner, CEO of the National Council of Farmer Cooperatives, said if the bill doesn't survive the lame-duck session, businesses would have to make a "very, very strong case" to get the bill through a Republican-controlled House.

"We need to be very, very nimble and prepared to go in any number of directions," he said. "If there's an effort in the lame duck session to solve some issues that have been out there for some decades ... we want to be a part of that."

### The Afghan Adjustment Act

The Human First Coalition, a nonprofit organization that works to provide humanitarian aid in Afghanistan, is gunning to include the Afghan Adjustment Act in the omnibus spending bill. The proposal would provide permanent immigration status to tens of thousands of Afghans who have fled the Taliban-controlled country and who pass an upgraded screening process.

If the measure is not included in the omnibus bill, the Human First Coalition has no hope the next Congress will pass the bill, its founder and president Safi Rauf said.

"There's not enough people invested in the AAA that they would put themselves on the line to get it through the finish line," he said.

The refugee groups and veterans organizations lobbying for Afghan immigration relief have had a hard time convincing enough Republican senators to back the Afghan Adjustment Act amid fierce criticism from Sen. Chuck Grassley, R-Iowa, on national security grounds.

Blake Chisam, a partner at Fragomen, Del Rey, Bernsen & Loewy LLP and a former senior counsel to the House Judiciary Committee's immigration panel, noted the AAA is just small enough to quickly move through the crowded lame-duck session.

However, he also pragmatically added that each lawmaker would have to vie to get attention to issues important to them, among several small requests from individual lawmakers.

"What often happens if you get one thing, and somebody wants another, and somebody wants another, and it gets too big, real quick," Chisam said. "There are some things that ought to be small enough, but there's more than a handful. How do you choose?"