

**Summary Notes for Telephonic Briefing
DACA at the Supreme Court:
Implications for Students and Higher Education**

Wednesday, November 13, 2019

11:30am | 9:30 am pst

1. Introductions and Welcome (Jose)

2. Brief Introductions of Speakers (Jose)

- a. Juan Hinojos Zapien, ASU student, TheDream.US Scholar, CHCI Intern
- b. Ishan Bhabha, Partner, Jenner & Block
- c. Professor Shoba Sivaprasad Wadhia, Center for Immigrants' Rights Clinic, Penn State University
- d. Dr. Donna Carroll, President, Dominican University
- e. Dr. Elsa M. Núñez, President, Eastern Connecticut State University
- f. Jose Magana-Salgado, Director of Policy and Communication, Presidents' Alliance

3. Remarks from DACA Recipient (Juan)

- a. Juan is a CHCI intern in Rep. Nanette Barragan's office and aspires to run for office one day. TheDream.US scholarship made it possible for Juan to attend Arizona State University, particularly after Arizona passed legislation reducing access to higher ed. for undocumented students.
- b. Juan attended yesterday's oral arguments, camping out for two days and was one of 60 who entered the Supreme Court. Juan advocates for legislation action that provides permanent protections to the undocumented population.

4. DACA and the Supreme Court (Ishan)

Ishan first laid out the legal issues and policy contexts that brought us to yesterday's hearing.

- a. Federal District and Appellate Litigation & Preliminary Injunctions
 - i. The three cases in CA, NY and DC were consolidated into one case that was heard yesterday before the Supreme Court.
 - ii. Two main substantive arguments:
 1. 1) Constitutional argument, which has now been mostly abandoned.
 2. 2) Administrative Procedure Act (APA) argument: When the government rescinded DACA, did they do it in accordance with the APA and is that rescission reviewable?
 - iii. DHS released multiple memos to try and justify the policy rationale for rescinding DACA, including subsequent memoranda with additional policy grounds to try and pass muster under the APA.
- b. Legal Arguments by Plaintiffs and Summary of Other Arguments

- i. Reviewability Issue: Is rescission of DACA something courts can review or is this solely for the Executive's discretion?
 - 1. Court will likely find the DACA case as reviewable.
- ii. Merits of Case:
 - 1. 1) Were the administration's explanations (e.g. the various memos)) for DACA rescission valid enough?
 - a. Argument: No, because the cost/benefit analysis was not considered in the memos; the reliance interest was not sufficiently discussed, particularly in light of all of the *amicus* briefs, which discussed the negative impacts if DACA were to be ended.
 - 2. 2) Is DACA legal at all?
 - a. Is this new population that was created by Executive Order to be decided under the Immigration and Nationality Act (INA) or APA?
- iii. Chief Justice Roberts is possibly leaning towards DACA is unlawful based on the questions asked at yesterday's oral arguments.
- c. Potential Outcomes
 - i. With a caveat to be wary of any predictions, Ishan offered his thoughts on how different Justices may decide on the legal questions, and concluded: The Court will likely find DACA unlawful.
 - ii. While many have predicted that a decision will be issued in June at the end of the session, there are reasons to be prepared for a decision to come as early as February 2020. So, institutions and advocates should push individuals to renew if they have a year or less of DACA.

5. Legal Implications for Students and Campuses

After offering insightful reflections on the oral arguments and case from the perspective of an immigration lawyer, Shoba turned to what it means for impacted students.

- a. Ways for campuses to help DACA students:
 - i. Mental health assistance for students not limited to just DACA students given mixed status families.
 - ii. Monetary assistance with renewal fees, attorney fees and legal screening for other potential forms of relief.
 - iii. Decoupling scholarship requirements to no longer include DACA in preparation for a negative court decision. Also redefine employment and non-employment to be more inclusionary.
 - iv. Ensure licensure for DACAmented or formerly DACAmented people.

1. Example: Deans from every law school in one state wrote a letter to the state bar in support of undocumented students eligibility to take the bar. Shoba also referenced a [report](#) her Center helped produce on the needs of DACAmented law students.
- b. Creation and Implementation of DACA
 - i. Rights of DACA recipients
 1. Ability to work and attend school.
 2. Due process rights and other constitutional rights
 - ii. Limitations of DACA
 1. Include the ability to apply for a green card, or to sponsor family members.
 2. Legislative action is needed to provide permanent protections. Campuses can emphasize the purgatory that DACA students will be in.

6. How Can Presidents and Campuses Prepare? (Presidents Carroll and Núñez)

- a. Each president shared their personal and institutional approach to supporting Dreamer/DACA students on their campuses
 - i. President Carroll shared that Dominican University enrolled and supported undocumented students for 20 years, and provides financial aid, with an average annual grant of \$28k. Dominican also announced itself as a Sanctuary campus as a way to show support to students.
 - ii. Illinois governor and the RISE Act has provided in-state scholarships for undocumented students. Financial aid is foundational to support college bound undocumented students.
 - iii. Additionally, bilingual services including strong community partner relationships for mental health and community agencies for legal support is provided through the university.
 - iv. Eastern Connecticut State University has over 200 undocumented students. The heart of support for students is to be there. President Núñez encouraged presidents to come forward and announce that you are in the front lines in support of your undocumented student's on campus.
 - v. Both presidents noted that finding funding for undocumented students is critical, and will be even more so if DACA is rescinded. DACA students are often going to school, working many hours, supporting other family members.

- vi. In Connecticut, they worked to securing in-state tuition, financial aid, and state licensure policies so that undocumented students can access state licensure.
- b. Issues they are considering in preparing for different outcomes
 - i. Reimagining student work/career advising anticipating a negative DACA outcome.
 - ii. Identifying funding for tuition, fees and housing.
 - iii. Mental health counseling and career support to assist post-graduation and if work authorization is ended.

7. The Role of Advocacy (Jose)

- a. Keeping the urgency of Dream legislation alive
 - i. Currently, the Senate has taken no action but a negative Supreme Court decision will reactivate legislative activity. We will be tracking opportunities to engage closely.
- b. Mention of other issues on the radar, including the impact REAL ID
 - i. There is a coalition of folks actively looking into what impact the REAL ID implementation (in October 2020) will have on the DACA and undocumented community, especially in terms of travel and access to licenses.

8. Q&A (Miriam)

- a. Question for Ishan on case nuances and outcomes:
 - i. There are two ways in which the court can rule on merits of DACA:
 - 1) DACA is found unlawful meaning no future president can reinstate it. So if new Democratic President is elected in 2020, they would not be able to reinstate DACA with executive power.
 - 2) The Court rules that the administration's underlying policy rationale was sufficient to end DACA and allows the administration to end DACA.
- b. Question for the two Presidents: Who has been in charge for tracking your undocumented students to ensure they have resources and how have you protected their privacy?
 - i. Dominican: The point of contact is in Student Affairs. There is no tracking within the financial aid or admissions offices. We are very transparent with our undocumented students, and how we can support them. Since Dominican is a Sanctuary campus, this has also helped build trust on campus.
 - ii. ECSU: Only one person is the point person for undocumented students. We strive to have very little in writing, so no lists or databases to access. Under FOIA laws, people may be able to get information, which can lead to adverse consequences.

- iii. Miriam also noted that sensitive student information, including immigration status, is protected under FERPA, and so while there is understandable concern about identifying and tracking undocumented students, it can also be necessary to do so in order to best support students. Miriam referred to an [Immigrants Rising webinar](#) and [fact sheet](#) on protecting undocumented student data.