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FEDERAL JUDGE IN BROOKLYN CRITICIZES TRUMP AND SESSIONS IN DACA HEARING

U.S. District Judge Nicholas Garaufis calls president's previous comments on Latinos 'incendiary,' as he considers how much to weigh them in court decision

By Nicole Hong
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A Brooklyn federal judge criticized President Donald Trump's comments about Latino immigrants as "vicious" and "extremely volatile" during court arguments Tuesday over whether to stop the Trump administration from rescinding protections for undocumented immigrants who entered the U.S. as children.

Throughout the 90-minute hearing, U.S. District Judge Nicholas Garaufis, an appointee of President Bill Clinton, repeatedly denounced Mr. Trump's previous comments about Latinos, saying they were "incendiary" and often "completely erroneous."

In the country's history, "this is not ordinary," Judge Garaufis said. "It's not what we see from our leaders."

The plaintiffs who sued the Trump administration, including 16 states, have argued the decision to terminate the Deferred Action for Childhood Arrivals program was driven by animus toward Latinos, which could violate equal protection under the U.S. Constitution. They are seeking an injunction that would keep DACA in place.

In their brief, the plaintiffs cited several anti-Latino statements made by Mr. Trump, such as his remarks about Mexicans when his presidential campaign was announced.

Stephen Pezzi, a lawyer for the Justice Department, said a win for the plaintiffs on the equal protection argument could prevent agencies under the Trump administration from imposing any future policy with a disproportionate impact on Latinos. He said the administration rescinded DACA because of the litigation threat from conservative states and the determination that the program was illegal.

A spokeswoman for the White House didn't immediately respond to a request for comment.

Last week, Mr. Trump proposed a path to citizenship for the 1.8 million undocumented immigrants brought to the U.S. as children, many of whom were protected under DACA from deportation, if lawmakers agree to fund expanded border security and other changes. So far, no deal has been reached.

Judge Garaufis appeared to struggle with how much to weigh Mr. Trump's prior comments in determining whether to temporarily block the unwinding of DACA, saying he couldn't ignore them.

"I'm not sure what the answer is," Judge Garaufis said.

Colleen Melody, a lawyer with the Washington state attorney general's office, questioned whether DACA would have been rescinded if it affected children from Norway, referring to Mr. Trump's comments about wanting more immigrants from Norway.

Judge Garaufis said he recently visited Norway and "most of the people I ran into were white."

In a similar case, a San Francisco federal judge earlier this month issued a nationwide injunction temporarily halting the end of DACA and ordered the Trump administration to consider DACA renewal applications. The plaintiffs in Brooklyn say they need a broader injunction to allow for the processing of new DACA applicants.

The Justice Department has appealed the San Francisco ruling both to the Ninth U.S. Circuit Court of Appeals and directly to the Supreme Court. The justices could say as early as mid-February whether they will hear the case.

Judge Garaufis on Tuesday also criticized statements by Attorney General Jeff Sessions about the role of the judiciary.

In a speech to the Heritage Foundation last year, Mr. Sessions cited a comment from Judge Garaufis at a hearing in the same case in which he said the government "can't come into court to espouse a position that is heartless." Mr. Sessions said comments like this are "highly offensive and disrespectful" of the legislative and executive branches.

Getting visibly angry, Judge Garaufis said of Mr. Sessions, "He seems to think the courts cannot have an opinion."

A spokesman for the Justice Department didn't immediately respond to a request for comment.

Among the attendees of Tuesday's hearing were Eric Schneiderman, the New York state attorney general who's leading the lawsuit, and Chad Readler, the acting assistant attorney general for the Justice Department's civil division.