

# THE DAILY ORANGE

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## New York Attorney General files lawsuit defending DACA, accusing Trump of racial bias

By MADELEINE DAVISON

New York state Attorney General Eric Schneiderman announced last Wednesday that he filed a lawsuit in response to President Donald Trump administration's decision to rescind the Deferred Action for Childhood Arrivals program.

The lawsuit alleges that rescinding DACA will cost New York between \$55 million and \$84 million annually in lost state and local tax revenues from the state's approximately 42,000 DACA recipients.

The program — enacted by former President Barack Obama — allowed eligible undocumented immigrants, brought into the United States as children, to apply for work permits and relief from deportation.

“Immigration is the lifeblood of New York state. The Trump administration's decision to end DACA is cruel, inhumane, and devastating to the 42,000 New Yorkers who have been able to come out of the shadows and live a full life as a result of the program,” Schneiderman said in a press release announcing the lawsuit.

“(DACA recipients) deserve to stay here and keep contributing to our state and our nation,” he said.

Fourteen other states — including Illinois, Pennsylvania, North Carolina and Washington — are listed as plaintiffs in the lawsuit, as well as the District of Columbia.

The states argue the Trump administration's decision to end DACA infringes on recipients' Fifth Amendment rights to equal protection and due process. The decision was also “arbitrary and capricious,” in violation of the Administrative Procedure Act, the lawsuit alleged.

The equal protection argument is based on the fact 78 percent of DACA recipients are of Mexican heritage. The lawsuit argues that Trump was motivated by racial bias. It cites comments Trump made as a candidate in the 2016 presidential election about Mexico sending “rapists” and criminals to the U.S.

“(The plaintiffs) may be on to something,” Cyril Ghosh, assistant professor in the government and politics department at Wagner College, said in an email. “The court usually does not like it if a law does not have neutral applicability, or if it is motivated by animus toward one group. So this makes a great deal of sense.”

Some experts who analyzed the lawsuit drew parallels to the arguments used in other lawsuits filed against Trump's controversial “travel ban.” Those arguments relied in part on Trump's comments about banning Muslims from the country to argue the ban violated travelers' equal protection rights under the Constitution.

“It appears that they are sort of repackaging that argument as well with regard to (Trump's) decision to end DACA by saying that he is really animated by racial animus against the group that would be mostly affected, which would be Latinos and Mexicans, in particular,” said Rick Su, a professor in the University of Buffalo's School of Law. Su specializes in immigration and local government law.

Su and some other experts said they believe arguments in the DACA lawsuit are not as strong as those used in the travel ban lawsuits.

“The connection between discriminatory statements made by the Trump administration and the DACA program’s rescission is not as close as in the travel ban case now pending before the Supreme Court,” said Stephen Yale-Loehr, professor of immigration law practice at Cornell Law School, in an email.

On the other hand, Yale-Loehr said, the plaintiffs’ argument that the Trump administration violated the Administrative Procedure Act has some precedent in legal challenges to past presidents’ actions.

A court struck down an Obama-era effort similar to DACA, but for undocumented parents of children who are U.S. citizens, Yale-Loehr said, because it failed to comply with APA requirements.

Should a court decide New York has a “plausible claim” in the lawsuit, it could issue an injunction that would put the Trump Administration’s decision on hold for several months, Su said.

It also is possible other states will decide to sue to end DACA, as Texas and others previously did before Trump announced the decision to rescind the program. This, Su said, could lead to a set of parallel and contradictory court decisions.

“It’s very possible that you have an opinion at the lower court level that says Trump cannot withdraw DACA and another decision at the trial court level that says Trump cannot enforce DACA because it’s unconstitutional,” Su said.

Ultimately, Yale-Loehr added, this lawsuit faces a “tough battle” in courts.

“It will be interesting to see how a court rules,” he said.