President Trump is vowing to sign an executive order that would seek to end the right to U.S. citizenship for children born in the United States to noncitizens, a move that most legal experts say would run afoul of the Constitution and that was dismissed Tuesday by the House’s top Republican.

The action, which Trump previewed in a television clip broadcast Tuesday, would be the most aggressive by a president elected to office pledging to take a hard line on immigration, an issue he has revived in advance of next week’s midterm elections.

“We’re the only country in the world where a person comes in, has a baby, and the baby is essentially a citizen of the United States for 85 years with all of those benefits,” Trump said during an interview with Axios scheduled to air as part of a new HBO series starting this weekend. “It’s ridiculous. It’s ridiculous. And it has to end.”

In fact, more than 30 countries, including Canada and Mexico, have similar policies.

Leading Democrats and immigrants rights activists blasted Trump’s promise Tuesday. And House Speaker Paul D. Ryan (R-Wis.) also dismissed the idea during a radio interview, saying it is not consistent with the 14th Amendment of the Constitution.

“Well, you obviously cannot do that,” Ryan said on WVLK in Kentucky. “You cannot end birthright citizenship with an executive order.”

Ryan also said that Republicans did not like it when President Barack Obama changed immigration policy by executive action and that altering the Constitution would be a lengthy process.

Other Republicans said that while birthright citizenship for children of permanent residents is settled law, there is, as Senate Judiciary Committee Chairman Charles E. Grassley (Iowa) put it, “a debate among legal scholars about whether that right extends to the children of illegal immigrants.” Grassley added that the issue is one on which Congress, rather than the president, should take the lead.
Whether or not the contemplated move is legal, Trump seemed to welcome the controversy his comments ignited. The White House has been intent on stoking a debate over immigration as a way to motivate Trump’s base to turn out for the midterm elections, in which Republicans risk losing the House.

In recent weeks, Trump has also repeatedly called attention to a migrant caravan making its way toward the U.S.-Mexico border, invoking it as a symbol of what he sees as wrong with the U.S. immigration system and blaming Democrats for a lack of action.

Trump, who has long decried “anchor babies,” has sought occasionally for months to end birthright citizenship, telling advisers that many migrants are making the dangerous crossing into the United States only so their children can become citizens, according to a former White House official who discussed the matter with the president.

The president often tells aides to craft executive orders — even when his authority is legally dubious. Former White House counsel Donald McGahn and former staff secretary Rob Porter often battled with the president over the orders, telling him they would bring lawsuits, White House advisers said.

In the Axios interview, Trump said he has discussed ending birthright citizenship with his legal counsel and believes it can be accomplished with executive action. “It was always told to me that you needed a constitutional amendment. Guess what? You don’t,” Trump said.

When told that view is disputed, Trump asserted: “You can definitely do it with an act of Congress. But now they’re saying I can do it just with an executive order.”

“It’s in the process. It’ll happen with an executive order,” he added, without offering a time frame.

The president’s lawyers and top advisers have questioned whether such a plan is legal, but it has gotten vociferous support from Stephen Miller, Trump’s top immigration adviser, who often channels the president’s impulses.

Still, many White House officials — including Sarah Sanders, the press secretary — were startled when Trump promised such an order Monday evening in the Axios interview, according to current and former White House officials. The idea had not been under active consideration in recent days, the officials said. There were some discussions Tuesday in the West Wing about whether there is any legal standing to limit birthright citizenship. But most officials hope the issue “just goes away,” a White House official said.

“It was not part of some grand midterm plan,” the official said.

Congressional leaders and those involved in the midterms were not briefed on any plan before Trump announced it, GOP aides said.
The president has told a number of his political advisers that he wants to get immigration back into the news.

People close to the White House Counsel’s Office were taken aback by Trump’s comments about their own operation’s supposed guidance, since their leadership is in transition and major immigration initiatives have not been in the works, according to one person briefed on internal discussions.

New White House counsel Pat Cipollone is still transitioning to his post, and McGahn has been gone for weeks, with Emmet Flood, the interim leader of the counsel’s office, mostly focused on the special counsel probe, the person added.

The Justice Department declined to comment on the legality of what Trump vowed, referring questions to the White House.

Trump’s comments to Axios were cheered Tuesday by some fellow Republicans, including Sen. Lindsey O. Graham (S.C.), who has long sought to end birthright citizenship. “This policy is a magnet for illegal immigration, out of the mainstream of the developed world and needs to come to an end,” Graham said, adding that he would introduce legislation toward that goal.

Others, including House Minority Leader Nancy Pelosi (D-Calif.), called Trump’s promised move an attempt to divert attention from health care, which Democrats have sought to make the leading issue of the elections.

“President Trump’s new claim he can unilaterally end the Constitution’s guarantee of citizenship shows Republicans’ spiraling desperation to distract from their assault on Medicare, Medicaid and people with pre-existing conditions,” Pelosi said in a statement.

Omar Jadwat, director of the ACLU’s Immigrants’ Rights Project, said Trump was engaged in “a transparent and blatantly unconstitutional attempt to sow division and fan the flames of anti-immigrant hatred in the days ahead of the midterms.”

Trump’s proposal was also panned by Rep. Mike Coffman (Colo.), one of the most endangered House Republicans in the country. “I hate to break the news to President Trump, but the Supreme Court isn’t going to let him rewrite immigration law by executive fiat, nor should they,” Coffman said Tuesday night.

An executive order would be certain to spark a constitutional debate about the meaning of the 14th Amendment. It reads: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Legal scholars have widely interpreted that to mean that anyone born on U.S. soil automatically becomes a natural-born citizen.
Yet it is unclear how the current Supreme Court would view the issue, a point Vice President Pence underscored in an interview Monday morning with Politico.

“I think the president is looking at executive action,” Pence said during the live-streamed interview. “We want to look in the broadest way possible at American law that may be used as a magnet to draw people into our country.”

Pence dismissed critics who say Trump’s recent rhetoric on immigration is an election ploy. “It is not,” he said, adding, “Let’s recognize we have a crisis on our southern border.”

In the Axios interview, Trump incorrectly asserted that the United States is the only country that offers birthright citizenship.

NumbersUSA, a group that favors reduced immigration, has compiled a list that shows 33 nations grant citizenship to anyone born within their borders.

The list includes Canada, Mexico, Brazil, Argentina and most other countries in Central and South America. The United States and Canada are the only two “developed” countries, as defined by the International Monetary Fund, that have unrestricted birthright citizenship laws.

Trump announced his planned executive order as his administration prepared to take several other steps to address immigration in advance of the midterm elections.

Homeland Security and Pentagon officials said Monday that they will send 5,200 troops, military helicopters and giant spools of razor wire to the Mexican border in the coming days to brace for what Trump is calling an “invasion” of Central American migrants.

Among those criticizing Trump’s planned executive order ending birthright citizenship was conservative commentator Bill Kristol, editor at large of the Weekly Standard.

“The shrinking caravan of refugees isn’t a threat to the country or the constitutional order,” he wrote on Twitter. “A president who tries to end birthright citizenship by executive order is.”

A Pew Research Center poll taken shortly after Trump launched his presidential bid in 2015 found that 60 percent opposed changing the Constitution to prohibit the children of people who are not legal residents from becoming citizens. Thirty-seven percent favored changing the Constitution to end “birthright citizenship.”

*Robert Barnes, Scott Clement, Seung Min Kim, Sean Sullivan, Erica Werner, Robert Costa and Matt Zapotosky contributed to this report.*

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