DIVIDED NATION, SPLIT CIRCUITS:  
**KELLER V. CITY OF FREMONT DIVIDES CIRCUITS REGARDING PREEMPTION AND CONVOLUTES IMMIGRATION LAW**

I. INTRODUCTION

Immigration regulation is a polarizing topic for lawmakers in the United States.  
This issue is further exacerbated by the complexity of immigration law. 
Proponents of state and local immigration regulations cite discontent with the perceived lack of federal enforcement of immigration laws. 
In response, states and municipalities passed their own legislation to address the problem of illegal immigration. 
States and cities passed laws preventing persons without documentation from obtaining work and housing within their particular localities. 
However, the federal circuit courts are split as to whether these local regulations are preempted by federal immigration law.

In **Keller v. City of Fremont**, the United States Court of Appeals for the Eighth Circuit addressed the issue of federal preemption.  
The crux of the debate was a Fremont, Nebraska ordinance that effectively banned all immigrants without documentation from obtaining rental housing. 
The ordinance was the subject of heated debate that ignited the city. 
In **Keller**, the Eighth Circuit determined the housing ordinance was not preempted nor did it conflict with the federal scheme. 
Within a month, the United States Courts of Appeals for the Third

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7. 719 F.3d 931 (8th Cir. 2013).
9. Davey, supra note 5.
10. Id.
11. Keller II, 719 F.3d at 951.
and Fifth Circuits delivered decisions that directly contradicted the Eighth Circuit's opinion.\textsuperscript{12}

This Note will first discuss the ordinance at issue in *Keller* and the procedural history of its passage.\textsuperscript{13} Additionally, this Note will detail the decision of the Eighth Circuit.\textsuperscript{14} This Note will then provide an overview of the United States Supreme Court decisions regarding federal preemption of immigration laws.\textsuperscript{15} This Note will then discuss *Lozano v. City of Hazelton*,\textsuperscript{16} *Villas at Parkside Partners v. City of Farmers Branch*,\textsuperscript{17} and the ordinances overturned in those cases.\textsuperscript{18} Finally, this Note will juxtapose *Keller*, *Lozano*, and *Farmers Branch* and articulate reasons that the *Keller* court reached an erroneous decision on the housing ordinance.\textsuperscript{19}

II. FACTS AND HOLDING

June 21, 2010 marked a landmark change in Nebraska immigration regulations when voters in the City of Fremont backed Ordinance No. 5165\textsuperscript{20} (the "Fremont Ordinance"), a controversial statute addressed in *Keller v. City of Fremont*\textsuperscript{21} in the United States Court of Appeals for the Eighth Circuit.\textsuperscript{22} The stated purpose of the Fremont Ordinance itself was to prohibit the harboring of persons unlawfully residing in the country and to subsequently ban the hiring of such persons.\textsuperscript{23} The portions of the Fremont Ordinance that reference housing and harboring state that it is unlawful for any person or business entity to knowingly or recklessly harbor any person residing in the United States without lawful authorization.\textsuperscript{24} The method of en-

\textsuperscript{12} See *Supremes Deny Cert*, supra note 6 (referencing similar ordinances that had been struck down by lower courts). See also *Lozano I*, 724 F.3d at 314-18 (reasoning that housing restrictions for persons without documentation are both conflict and field preempted); Villas at Parkside Partners v. City of Farmers Branch, 726 F.3d 524, 537, 539 (5th Cir. 2013) (concluding that a similar ordinance was preempted by federal law and procedure).

\textsuperscript{13} See infra notes 21-67 and accompanying text.

\textsuperscript{14} See infra notes 21-67 and accompanying text.

\textsuperscript{15} See infra notes 68-107 and accompanying text.

\textsuperscript{16} 724 F.3d 297 (3d Cir. 2013).

\textsuperscript{17} 726 F.3d 524 (5th Cir. 2013).

\textsuperscript{18} See infra notes 108-66 and accompanying text.

\textsuperscript{19} See infra notes 167-236 and accompanying text.

\textsuperscript{20} Fremont, Neb., Ordinance 5165 (June 21, 2010) [hereinafter Fremont Ordinance].

\textsuperscript{21} 719 F.3d 931 (8th Cir. 2013).

\textsuperscript{22} *Keller II*, 719 F.3d 931, 937 (8th Cir. 2013) (citing City of Fremont v. Keller (*Keller I*), 853 F. Supp. 2d 959, 964 (D. Neb. 2012)).

\textsuperscript{23} *Keller I*, 853 F. Supp. 2d at 964.

\textsuperscript{24} Id. The Ordinance states,

It is unlawful for any person or business entity that owns a dwelling unit in the city to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United
suring this is to require that all persons who are at least eighteen years old obtain an occupancy license before entering into any contract to rent or lease a dwelling unit.25 The licensing procedure requires that applicants provide basic information, such as name, address, and date of birth, in addition to declaring their status as either a United States citizen or national.26 Individuals who are not citizens must provide an identification number assigned by the federal government that will enable the Fremont Police Department to ascertain the applicant's lawful status.27 The Fremont Ordinance then details a method for sanctioning landlords who do not comply with the licensing requirement.28 Specifically, landlords who violate the Fremont Ordinance will be fined $100 per day per unlawful tenant beginning forty-five days after a revocation license is served.29 Additionally, the Fremont Police Department is mandated to verify the status of all occupants who have not declared themselves to be citizens or United States nationals with the federal government.30

The final part of the Fremont Ordinance requires all employers seeking a city license, permit, contract, or grant to execute an affidavit affirming they do not knowingly employ any person without lawful work authorization.31 The Fremont Ordinance dictates that all of these employers, as well as all agencies of the city, register with the E-Verify program to validate each specific employee's authorization to work.32 Opponents of the Fremont Ordinance challenged the law be-

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25. Id.
26. Id.
27. Id. at 964-65.
28. Id. at 965.
29. Id.
30. Id.
31. Id.

[E]mployers seeking any license or permit from the City, any contract awarded by the City, or any grant or loan given by the City, must execute an affidavit to the effect that the business entity does not knowingly employ any person who is an unauthorized alien, and must provide documentation confirming that it has registered in the E-Verify Program.

32. Id. “All agencies of the City also must register with E-Verify, and use the program to verify each employee’s authorization for employment.” Id. “Every business entity employing one or more employees and performing work within the City must register with E-Verify within 60 days after the effective date of the Ordinance and use E-Verify to confirm the lawful employment status of each employee hired after such registration.” Id. E-Verify is an internet-based employment system that enables an employer to verify an employee’s work-authorization status with the federal government. Chamber of Commerce of the United States v. Whiting, 131 S. Ct. 1968, 1975 (2011).
cause it allegedly violated the Supremacy Clause\textsuperscript{33} by encroaching on the regulation of matters reserved for the federal government and interfering with federal laws and regulations.\textsuperscript{34} Opponents of the Fremont Ordinance argued that it was preempted on both field and conflict grounds.\textsuperscript{35}

The United States District Court for the District of Nebraska first addressed the mandated use of the E-Verify employment authorization program.\textsuperscript{36} Based on the precedent set by the United States Supreme Court in \textit{Chamber of Commerce of the United States v. Whiting},\textsuperscript{37} federal law did not preempt the employment provisions of the Fremont Ordinance.\textsuperscript{38} The district court drew parallels between the constitutionally valid Arizona law at issue in \textit{Whiting} and the Fremont Ordinance.\textsuperscript{39} The court determined that the section of the Fremont Ordinance regulating employment was a licensing law and therefore was not preempted.\textsuperscript{40} The Eighth Circuit affirmed the validity of these employment provisions.\textsuperscript{41}

The next issue addressed by the district court was the section regulating housing.\textsuperscript{42} Although Congress has never expressly preempted municipal legislation comparable to the Fremont Ordinance, the district court determined that federal law preempted the housing provisions under both field and conflict preemption.\textsuperscript{43} The district court noted that while the area of immigration regulation may be understood to be field preempted by Congress, states and municipalities have the authority to pass laws that are consistent with the federal objectives.\textsuperscript{44} It emphasized states’ rights to further their own legitimate interests with respect to persons unlawfully residing within

\begin{itemize}
\item \textsuperscript{33} U.S. \textit{Const.} art. VI, § 2.
\item \textsuperscript{34} \textit{Keller I}, 853 F. Supp. 2d at 968.
\item \textsuperscript{35} \textit{Id.}
\item \textsuperscript{36} \textit{Id.} at 970-71.
\item \textsuperscript{37} 131 S. Ct. 1968 (2011).
\item \textsuperscript{38} \textit{Keller I}, 853 F. Supp. 2d at 970-71 (citing \textit{Whiting}, 131 S. Ct. at 1973-85). The Supreme Court ruled that an Arizona law that mandated the use of E-Verify was not expressly preempted by the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. §§ 1324a–1324b, because the Arizona provision fell within the savings clause, which allowed the state to criminally sanction those in violation of hiring unauthorized persons "through licensing and similar laws." \textit{Id.} The Court reasoned that the Arizona law fell within in the confines of authority specifically reserved for the states and that the law merely sought to enforce that particular ban. \textit{Id.}
\item \textsuperscript{39} \textit{See id.} (explaining how the licensing provisions and the mechanisms for sanctioning employers of the federal law and the Fremont Ordinance were similar).
\item \textsuperscript{40} \textit{Id.} at 971.
\item \textsuperscript{41} \textit{Keller II}, 719 F.3d at 937.
\item \textsuperscript{42} \textit{Keller I}, 853 F. Supp. 2d at 971-73.
\item \textsuperscript{43} \textit{Id.}
\item \textsuperscript{44} \textit{Id.}
\end{itemize}
those states. However, the district court determined that the penalties of violating the Fremont Ordinance, which revoke licenses for occupancy and sanction landlords, would drive persons unlawfully residing in the United States from Fremont. According to the district court, this interfered with the federal scheme of removal established by the Immigration and Nationality Act ("INA") and the uniform application of the United States immigration laws.

On review, the United States Court of Appeals for the Eighth Circuit reversed the decision of the district court finding the housing provisions of the ordinance to be preempted by federal law. The appellate court noted that it would rely heavily on Arizona v. United States, a then recent United States Supreme Court decision. The appellate court then detailed the emphasis on federal preemption of immigration law and the reasoning behind the doctrine. The Eighth Circuit explained the Supreme Court's reasoning for invalidating certain provisions because they (1) inhibited the accomplishment and execution of congressional laws, (2) disrupted the balance created by Congress by its decision to not impose criminal penalties on persons who engage in authorized employment, and (3) encroached on the discretion established in the federal removal process. The appellate court rejected the argument that federal law preempted the Fremont Ordinance on the grounds that it expels persons from the city who are not lawfully residing in the United States.

The appellate court maintained that the Fremont Ordinance does not remove people from the city, nor does it have an effect that determines who should be admitted into the country. Further, it also does not have greater than marginal effects on the conditions under

45. See id. (citing Plyler v. Doe, 457 U.S. 202, 225 (1982)) (explaining that states have limited authority to deter persons from unlawfully entering the United States when those persons impact states' interests).
46. Id.
49. Keller II, 719 F.3d at 937.
51. Keller II, 719 F.3d at 939 (citing Arizona v. United States, 132 S. Ct. 2492 (2012)). The Supreme Court invalidated three provisions on preemption grounds of the Arizona law. Id. The provisions imposed state sanctions on persons without documentation willfully violating federal registration laws, provided criminal penalties on unauthorized persons working in Arizona, and allowed officers to make a warrantless arrest of a person they had probable cause to believe had committed any removable offense. Id.
52. Id.
53. Id. at 940.
54. Id. at 941.
55. Id.
which persons who have entered lawfully reside.\textsuperscript{56} There was additional emphasis placed on the notion that laws with an objective of deterring unlawful entrants from residing in particular cities do not reasonably amount to regulating immigration into the United States.\textsuperscript{57} The appellate court also stated that the potential effect of E-Verify expelling persons from the state did not constitute an impermissible regulation of immigration.\textsuperscript{58} Finally, the Eighth Circuit ruled out field preemption by asserting the rental provisions do not remove persons from the United States nor create a parallel removal process.\textsuperscript{59}

The appellate court then rejected a preemption argument regarding harboring when the court asserted that the federal law need not expressly permit local regulation of harboring.\textsuperscript{60} The court also stressed that field preemption only exists when Congress occupies a field with a framework of regulation so comprehensive and complete that Congress impliedly prohibits states from supplementing the federal scheme.\textsuperscript{61} The court analyzed the harboring provisions of the INA and determined that these did not amount to field preemption.\textsuperscript{62} Next, the court distinguished the Fremont Ordinance prohibiting harboring from the INA by asserting that the law does not aim to conflict with or enforce federal law, but rather the local provisions prohibit so-called harboring conduct that harms the City of Fremont's interests.\textsuperscript{63} The court quashed the final preemption argument by stressing that the Fremont Ordinance does not conflict with the federal removal scheme.\textsuperscript{64} The court again emphasized that the Fremont Ordinance does not in any way authorize police powers or the court to make any determination of who may or may not enter or remain in the country.\textsuperscript{65} The court ultimately determined that federal law did not preempt the rental provisions of the Fremont Ordinance.\textsuperscript{66}

On May 5, 2014, the Supreme Court of the United States denied the petition for writ of certiorari and the Fremont Ordinance is still in effect.\textsuperscript{67}

\textsuperscript{56} Id. (citing DeCanas v. Bica, 424 U.S. 351, 356 (1976)).
\textsuperscript{57} Id.
\textsuperscript{58} Id. at 942 (citing Whiting, 131 S. Ct. at 1987).
\textsuperscript{59} Id.
\textsuperscript{60} Id. at 943.
\textsuperscript{61} Id. (citing Arizona, 132 S. Ct. at 2501).
\textsuperscript{62} Id. at 943.
\textsuperscript{63} Id.
\textsuperscript{64} Id. at 944-45.
\textsuperscript{65} Id.
\textsuperscript{66} Id. at 945.
\textsuperscript{67} Keller II, 719 F.3d 931 (8th Cir. 2013), cert. denied, 134 S. Ct. 2140 (2014).
III. BACKGROUND

A. States Push for the Right to Regulate

1. Immigration and Labor: States Gain Grounds with Employment Restrictions

In *Chamber of Commerce of the United States v. Whiting*, the legal dispute between state rights and federal regulation of immigration ignited. Tensions had been rising regarding states passing their own local immigration ordinances as a manifestation of discontent with the perceived lack of enforcement of federal immigration laws. However, the courts had not specifically addressed the issue of immigration preemption in its relation to federalism for twenty-nine years. From 2007-2008, Arizona passed the Legal Arizona Workers Act of 2007, (“LAWA”). The law decreed that the state can revoke or suspend the licenses of state employers if employers knowingly or intentionally hire persons without legal work authorization. Additionally, all employers in Arizona must use E-Verify to ascertain the work eligibility of each employee. The United States Supreme Court determined that the licensing provision fell within a saving’s clause of the Immigration Reform and Control Act (“IRCA”) and therefore federal law did not preempt it.

The Court first addressed the federalism issue by affirming that the authority to regulate immigration is undeniably a federal power, while simultaneously emphasizing that states may exercise broad police power to regulate employment. The Court compared LAWA with

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68. 131 S. Ct. 1968 (2011).
70. See Davey, supra note 5 (discussing mixed citizen reactions to local authorities passing an immigration regulation in response to frustrations with federal enforcement).
73. Id.
75. Whiting, 131 S. Ct. at 1975.
77. Whiting, 131 S. Ct. at 1975.
78. Id. at 1974 (citing DeCanas v. Bica, 424 U.S. 351, 353, 359 (1976)). Though the power to regulate immigration belongs to the Federal Government, States also have the right to regulate employment relationships within their boundaries. Id.
the IRCA employment provisions, which also prohibit persons from knowingly or intentionally hiring persons without proper work authorization and that sanction employers who violate the provision.\(^79\) One argument asserted that the IRCA expressly preempted states from sanctioning employers who hired persons without authorization apart from licensing or comparable laws.\(^80\) The Court determined, however, that the final phrase of the law constituted a savings clause that granted states the authority to impose such sanctions.\(^81\) Technically, the Arizona law constituted a licensing law because it entailed the revocation of employment licenses.\(^82\)

The Court then addressed the issue of implied preemption.\(^83\) The Chamber of Commerce argued that LAWA conflicted with the federal law and was therefore impliedly preempted.\(^84\) The Court rejected this argument by asserting that Arizona exercised the power to impose sanctions deemed permissible by licensing laws described by the savings clause.\(^85\) Additionally, the Court dismissed the argument that the Arizona law impermissibly disrupted the balance created by Congress when it weighed many policy considerations in creating the employment scheme.\(^86\) The Court reasoned that an essential part of Congress’s balancing was to allocate authority to states.\(^87\) Finally, the Court affirmed LAWA as lawful under the rationale that the State only sought to implement the ban created by the IRCA.\(^88\)

2. Reaching Too Far into the Federal Realm

Shortly after Whiting, the United States Supreme Court considered a case regarding another Arizona immigration bill, commonly known as S.B. 1070.\(^89\) S.B. 1070, officially named the Support Our Law Enforcement and Safe Neighborhoods Act,\(^90\) was passed in

\(^79\) Id. at 1975-76.
\(^81\) Whiting, 131 S. Ct. at 1977-78. Specifically, the language of the statute stated that States may sanction employers who violated the employment requirements, “through licensing or similar laws.” Id. The Court determined this constituted a savings clause under which the Arizona law could permissibly operate with the federal scheme. Id.
\(^82\) Id. at 1978-79.
\(^83\) Id. at 1981-85.
\(^84\) Id. at 1981.
\(^85\) Id. at 1984-85.
\(^86\) Id. at 1983. The Chamber of Commerce argued that Congress carefully balanced the interests of employers in passing legislation that would add burdens to business owners with the need for immigration regulations and penalties. Id.
\(^87\) Id. at 1984.
\(^88\) Id. at 1985.
2010. The decision in Arizona v. United States applied federal preemption when three out of four provisions were invalidated. The Court primarily stressed the federal government’s broad authority to regulate immigration and emphasized the importance of a uniform scheme tying immigration and foreign policy relations.

The Court then clarified federal preemption occurrences with regard to states’ rights. The Court explained and defined the three ways in which state laws can be invalidated under preemption grounds: express preemption, field preemption, and conflict preemption. The court defined express preemption as Congress’s express assertion of its authority to exclusively regulate a field. The court defined field preemption as occurring when Congress comprehensively regulates an area so that there is no room for state law to supplement the federal scheme. Finally, the Court defined conflict preemption as occurring when simultaneous adherence with federal and state law is impossible or when the state law impedes the enforcement or purpose of a federal law.

Using preemption as its primary method of analysis, the Court evaluated the four separate parts of the Arizona law. The provision of the law that required persons to carry an alien registration document and punished its violation was held to be preempted on the grounds that the federal government had entirely occupied the field of registration. The Court reasoned that because the registration regulations are so pervasive and comprehensive, states may not intrude upon them. The second provision at issue criminalized a person without work authorization applying for, soliciting, and/or performing work as an employee. The Court determined federal law preempted this because it conflicted with the careful balance Congress

91. Arizona, 132 S. Ct. at 2497.
92. 132 S. Ct. 2492 (2012).
93. Sacks, supra note 1.
94. Arizona, 132 S. Ct. at 2498.
95. Id. at 2501 (citing Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).
96. Id. at 2500-01.
97. Id. (citing Rice, 331 U.S. at 230) (explaining that both pervasive regulation and dominant federal interests invoke field preemption).
98. Id.
99. Id.
100. Id.
101. Id. at 2502 (comparing Section 3 of S.B. 1070, which criminalizes the failure to carry documents verifying immigration registration, with Hines v. Davidowitz, 312 U.S. 52 (1941), wherein the complete registration scheme for immigrants created by Congress prevented the State of Pennsylvania from enacting its own registration regulations).
102. Id.
103. Id. at 2503.
created with the employment provisions of the IRCA.\textsuperscript{104} The third provision, Section 6 of S.B. 1070, was determined to be preempted for inhibiting the federal removal process.\textsuperscript{105} Section 6 gave officers the authority to make warrantless arrests of persons they had probable cause to infer had committed a removable offense.\textsuperscript{106} However, this process was inconsistent with the arrest and removal procedures detailed by the federal government: procedures that were carefully constructed to ensure a uniform scheme with discretionary powers and that included foreign policy considerations.\textsuperscript{107}

B. IMPERMISSIBLE LOCAL RESTRICTIONS ARE REIGNED IN

After the decisions in \textit{Chamber of Commerce of the United States v. Whiting}\textsuperscript{108} and \textit{Arizona v. United States},\textsuperscript{109} courts that had addressed similar ordinances at the appellate level had to reassess their initial decisions.\textsuperscript{110} In \textit{Lozano v. City of Hazelton},\textsuperscript{111} the United States Court of Appeals for the Third Circuit considered the decisions in \textit{Whiting} and \textit{Arizona} while evaluating ordinances similar to the ordinance passed by the city of Fremont.\textsuperscript{112} The city of Hazelton, Pennsylvania passed a series of ordinances between 2006 and 2007 regarding immigration regulation.\textsuperscript{113} The first ordinance, titled the Illegal Immigration Relief Act Ordinance\textsuperscript{114} ("IIRAO"), was designed to prohibit the employment of persons without work authorization.\textsuperscript{115} Similar to the Keller\textsuperscript{116} ordinance, the IIRAO stated that anyone who knowingly recruits, hires, or continues to employ persons without work authorization will have their business permit suspended.\textsuperscript{117} The

\begin{thebibliography}{117}
\bibitem{104} \textit{Id.} at 2505.
\bibitem{105} \textit{Id.}
\bibitem{106} \textit{Id.}
\bibitem{107} \textit{Id.} at 2506-07.
\bibitem{108} 131 S. Ct. 1968 (2011).
\bibitem{109} 132 S. Ct. 2492 (2012).
\bibitem{110} \textit{See Lozano III,} 724 F.3d 297, 300 (3d Cir. 2013) (reconsidering its own analysis of whether federal immigration law preempted the state law addressing immigrants without documentation). \textit{See also Villas at Parkside Partners v. City of Farmers Branch, Tex.,} 726 F.3d 524, 528 (5th Cir. 2013) (stating that \textit{Arizona} instructs the court’s analysis of a local ordinance deterring the unlawful presence of persons without documentation).
\bibitem{111} 724 F.3d 297 (3d Cir. 2013).
\bibitem{112} \textit{Compare Lozano III,} 724 F.3d at 300-01 (evaluating local ordinances that require legal immigration status to enter into a lease and require occupancy licenses prior to entering into a lease), \textit{with Keller II,} 719 F.3d 931, 938 (8th Cir. 2013) (addressing a local ordinance requiring rental licenses predicated upon lawful immigration status).
\bibitem{113} \textit{Lozano III,} 724 F.3d at 300-01.
\bibitem{114} Hazelton, Pa., Ordinance 2006-18 (July 13, 2006) [hereinafter \textit{Ordinance 2006-18}].
\bibitem{115} \textit{Lozano III,} 724 F.3d at 301.
\bibitem{116} 719 F.3d 931 (8th Cir. 2013).
\bibitem{117} \textit{Lozano III,} 724 F.3d at 301.
\end{thebibliography}
IIRAO also mandated that certain businesses and city agencies use the E-Verify program. Section 5A of the IIRAO made it unlawful for any person or business entity to knowingly or recklessly harbor a person who is residing in the country unlawfully. The city then passed a supplemental ordinance, the Rental Registration Ordinance (“RO”), mandating that all persons over the age of eighteen obtain an occupancy permit to rent. Before obtaining this permit, applicants must provide proof of their citizenship or legal residency.

Individuals scrutinized the IIRAO and RO and numerous plaintiffs challenged the ordinances in court. The United States Court of Appeals for the Third Circuit decided the employment provisions were preempted on conflict grounds and the rental provisions were both conflict and field preempted. After the United States Supreme Court decided Whiting, the Court granted the writ of certiorari for Lozano v. City of Hazelton and vacated and remanded the initial decision for further consideration.

Upon remand, the Third Circuit again concluded that federal law preempted the employment and rental provisions. The court explained that unlike the employment provisions upheld in Whiting, the IIRAO was overly broad and extended much farther than the Immigration Reform and Control Act (“IRCA”) in its scope. In contrast, the ordinance addressed in Whiting, the Legal Arizona Workers Act of 2007 (“LAWA”), fell squarely within the confines of the savings clause because it carefully followed the IRCA. The reach of the employment provisions of the IIRAO is extremely different from that

118. Id.
119. Id.
121. Lozano III, 724 F.3d at 301.
122. Id.
123. Id.
124. Id. at 302 (citing Lozano I, 620 F.3d 170, 219, 224 (3d Cir. 2010) (stating the employment provisions were conflict preempted by federal law and stating the housing provisions were both field and conflict preempted), vacated, 131 S. Ct. 2958 (2011) (mem.).
125. 620 F.3d 170 (3d Cir. 2010).
127. Lozano III, 724 F.3d at 300.
129. Lozano III, 724 F.3d at 306 (explaining that the restrictions in the ordinance apply to a greater range of actions and employers than the federal law).
131. Lozano III, 724 F.3d at 308. See Chamber of Commerce of the United States v. Whiting, 131 S. Ct. 1968, 1973 (2011) (concluding that Arizona’s licensing provisions were within the savings clause of the IRCA, 8 U.S.C § 1324a(h)(2), and therefore not preempted by federal law).
of LAWA and IRCA.\textsuperscript{132} LAWA closely tracked the IRCA’s employment provisions in pertinent aspects, whereas the IIRAO greatly expanded upon them.\textsuperscript{133} Further, the court determined the IIRAO was conflict preempted because the lack of procedural protections constituted greater burdens on employers and therefore undermined the federal objectives in the IRCA.\textsuperscript{134}

The court then determined that federal law field preempted the housing provisions of the IIRAO.\textsuperscript{135} The court stated that the housing provisions constituted an attempt to regulate residency, unconvincingly hidden as rental regulations.\textsuperscript{136} The housing provisions impermissibly regulated an immigrant’s residency by barring persons without documentation from renting, a power exclusively granted to the federal government.\textsuperscript{137} Additionally, the ordinance intended to control entry or expulsion from the city even though the law did not physically result in removal.\textsuperscript{138} Finally, the court determined that federal harboring laws field preempted the ordinance because the extensive federal regulation clearly implied Congress’s intent to occupy the entire field.\textsuperscript{139}

The court also determined that the housing provisions were conflict preempted because the housing provisions interfered with the federal government’s discretion in the removal process, which implicated federal foreign policy considerations.\textsuperscript{140} Because the ordinances barred one of the only viable housing options for persons without documentation, the housing provisions essentially removed persons from the city.\textsuperscript{141} The court determined that the housing provisions constituted an attempt for Hazelton to create its own immigration law, which was deemed impermissible in Arizona.\textsuperscript{142} The Third Circuit

\textsuperscript{132} Lozano III, 724 F.3d at 306-08. See generally Ordinance 2006-18, supra note 114 (defining business entities to include self-employed individuals, corporations, contractors, or subcontractors and defining work as any activity that provides compensation).

\textsuperscript{133} Lozano III, 724 F.3d at 308.

\textsuperscript{134} Id. at 312-13. Specifically, the court took issue with the lack of an affirmative defense to employers who use the I-9 process to attempt to comply with federal objectives. Id. at 310-11.

\textsuperscript{135} Id. at 315-16.

\textsuperscript{136} Id.

\textsuperscript{137} Id.

\textsuperscript{138} Id.

\textsuperscript{139} Id. at 316-17 (citing GA Latino Alliance for Human Rights v. Governor of Georgia, 691 F.3d 1250, 1263-65 (11th Cir. 2012)). In GA Latino Alliance, the United States Court of Appeals for the Eleventh Circuit determined federal law entirely occupied the field regulating the entry, movement, and residency. GA Latino Alliance, 691 F.3d at 1263-65.

\textsuperscript{140} Lozano III, 724 F.3d at 319-20 (citing Arizona v. United States, 132 S. Ct. 2492, 2499 (2012)).

\textsuperscript{141} Id. at 317.

\textsuperscript{142} Id. at 318 (quoting Arizona, 132 S. Ct. at 2506).
also expressed concern for overburdening the lives of persons residing unlawfully in the United States and undermining the federal enforcement policies.\textsuperscript{143} Additionally, the housing provisions did not constitute concurrent enforcement of federal law, but rather encroached upon it through defining “harboring” to include landlord-tenant relationships.\textsuperscript{144} Further, the housing provisions requiring a permit were also preempted under federal registration laws.\textsuperscript{145} The fines for not obtaining an occupancy license and disclosing one’s immigration status were essentially a registration requirement for immigrants in the city.\textsuperscript{146}

The city of Farmers Branch joined the faction of municipalities passing local immigration laws when the citizens passed Ordinance 2952\textsuperscript{147} (“FBO”) in 2008.\textsuperscript{148} In Villas at Parkside Partners v. City of Farmers Branch, Texas,\textsuperscript{149} the FBO required persons to obtain occupancy licenses for rental housing.\textsuperscript{150} It also mandated that the building inspectors verify the lawful presence of applicants who did not declare United States citizenship.\textsuperscript{151} There were subsequent civil and criminal sanctions for both landlords and occupants that violated the licensing provisions.\textsuperscript{152} The United States Court of the Appeals for the Fifth Circuit initially affirmed the district court judgment that the ordinance was preempted; however, review was necessary in light of the United States Supreme Court’s decision in Arizona.\textsuperscript{153} Upon remand, the Fifth Circuit again affirmed the district court’s determinations of preemption.\textsuperscript{154} Specifically, the ordinance disrupted the immigration framework by giving local officials the authority to detain persons based on their immigration status without federal supervi-
sion.\textsuperscript{155} Moreover, this was the reasoning used by the Supreme Court to vitiate the legality of the detention laws in \textit{Arizona}, and the Fifth Circuit expressed concern about the local ordinance encroaching national foreign policy objectives.\textsuperscript{156}

The Fifth Circuit rejected the city’s argument that it merely enforced a federal law concurrently.\textsuperscript{157} The court stated that when two sanctions address the same activity, conflict inevitably results.\textsuperscript{158} Additionally, the federal harboring law that it purported to enforce is much narrower and the city ordinance greatly expanded the activities deemed to constitute harboring.\textsuperscript{159} Unlike the IRCA, which makes it a felony for landlords to knowingly or recklessly shield, conceal, or harbor persons unlawfully residing in the United States from detection, the FBO did not specify the mens rea required for the crime.\textsuperscript{160} The court noted that merely renting to a person did not constitute shielding or harboring persons from federal detection under the IRCA.\textsuperscript{161} The court also demonstrated a conflict regarding federal removal processes because mere unlawful presence was typically not a removable offense under the IRCA, and by criminalizing and facilitating removal, the FBO undermined federal discretion in removal proceedings.\textsuperscript{162} Moreover, the FBO’s lack of specificity in defining categories of lawful presence was inconsistent with the federal scheme and created a broad reach.\textsuperscript{163} Finally, the prosecution of persons based on their immigration status conflicted with the Supreme Court’s ruling invalidating a portion of S.B. 1070, which allowed for the arrest of persons suspected of being unlawfully present, because it would enable the state to advance its own immigration policy and enforcement.\textsuperscript{164}

The Fifth Circuit emphasized that local officials can only act in a limited scope under the federal scheme to ascertain immigration status and arrest for federal removal purposes; the FBO bolstered this

\begin{enumerate}
\item \textsuperscript{155} \textit{Id.} at 529 (citing \textit{Arizona}, 132 S. Ct. at 2509).
\item \textsuperscript{156} \textit{Id.}
\item \textsuperscript{157} \textit{Id.} at 529-30 (explaining how the FBO differs from the harboring statute of IRCA by negating the mens rea requirement and defining renting to constitute harboring).
\item \textsuperscript{158} \textit{Id.}
\item \textsuperscript{159} \textit{Id.}
\item \textsuperscript{160} \textit{Compare} 8 U.S.C. § 1324(a)(1)(A)(iii) (2012) (stating “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law,” to “conceal[ ], harbor[ ], or shield[ ] from detection . . . such alien in any place, including any building” is a felony), \textit{with Ordinance 2952 supra} note 147 (criminalizing renting apartments to persons without law status regardless of landlords knowledge).
\item \textsuperscript{161} \textit{Farmers Branch}, 726 F.3d at 529-30.
\item \textsuperscript{162} \textit{Id.}
\item \textsuperscript{163} \textit{Id.} at 532-33.
\item \textsuperscript{164} \textit{Id.} at 534-36.
\end{enumerate}
narrowly construed authority. The court then invalidated the severability portions of the law, determining that, without the criminal and civil sanctions, the licensing scheme admittedly conferred no public benefit and its only purpose was to determine the status of non-citizen renters.

IV. ANALYSIS

The court in Keller delivered an opinion that greatly confused an already convoluted area of law. First, this Analysis will argue that the Keller decision inappropriately relied on the fact that the Chamber of Commerce of the United States v. Whiting decision abrogated the initial Lozano v. City of Hazelton and Villas at Parkside Partners v. City of Farmers Branch decisions and determined that states could require valid immigration status for employment. Then, this Analysis will argue that the court missed valid arguments illustrating that federal law field preempted the Fremont Ordinance. The Analysis will also illustrate how the Keller decision directly conflicted with and misinterpreted conflict preemption. Finally, it will show that the United States Court of Appeals for the Eighth Circuit overlooked the importance of preemption in regards to foreign policy emphasized in the Arizona v. United States decision.

165. Id. at 535.
166. Id. at 538.
167. 719 F.3d 931 (8th Cir. 2013).
170. 620 F.3d 170 (3d Cir. 2010).
171. 675 F.3d 802 (5th Cir.2012).
172. See infra notes 177-85 and accompanying text.
173. See infra notes 186-96 and accompanying text.
174. See infra notes 197-205 and accompanying text.
175. 132 S. Ct. 2492 (2012).
176. See infra notes 206-21 and accompanying text. See generally Arizona v. United States, 132 S. Ct. 2492, 2498-2505 (2012) ("[It is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate States"); see also Keller II, 719 F. 3d, 931, 959 (8th Cir. 2013) (Bight, J., dissenting) (asserting that the ordinance does constitute removal and these decisions be made with one voice).
A. Relying on Abrogation

The Eighth Circuit in Keller\textsuperscript{177} cited the Chamber of Commerce of the United States v. Whiting\textsuperscript{178} decision as dismissing the Lozano v. City of Hazelton\textsuperscript{179} and Villas at Parkside Partners v. City of Farmers Branch\textsuperscript{180} decisions, which determined immigration related federal law preempted employment and housing provisions.\textsuperscript{181} When the United States Supreme Court remanded the Lozano decision, it did so to ensure consistency regarding its recent decision in Whiting.\textsuperscript{182} The Keller court appeared to interpret this to mean that the reasoning applied in Third and Fifth Circuits, that vitiated the similar ordinances, was invalid.\textsuperscript{183} Then the Keller court preemptively issued its opinion assuming that the Lozano and Farmers Branch ordinances would be upheld in the subsequent decisions; this did not happen.\textsuperscript{184} The Lozano and Farmers Branch courts affirmed their rulings that the ordinances were still unconstitutional applying reasoning consistent with the Whiting decision.\textsuperscript{185}

B. Missing the Field Preemption Argument: Attempts to Regulate

When the Keller\textsuperscript{186} court distinguished the Fremont Ordinance\textsuperscript{187} from federal immigration laws, it overlooked the importance of foreign policy considerations and the complicated federal scheme that field preempts state ability to regulate immigration.\textsuperscript{188} The Keller court

\textsuperscript{177} 719 F.3d 931 (8th Cir. 2013).
\textsuperscript{178} 131 S. Ct. 1968 (2011).
\textsuperscript{179} 620 F.3d 170 (3d Cir. 2010).
\textsuperscript{180} 675 F.3d 802 (5th Cir. 2012).
\textsuperscript{181} See Keller II, 719 F.3d 931, 942 (8th Cir. 2013) (explaining disagreement with now-vacated sister circuits).
\textsuperscript{182} Lozano II, 131 S. Ct. 2958 (2011) (mem.).
\textsuperscript{183} See Keller II, 719 F.3d at 942 (rejecting the conclusions of the sister circuits that the ordinance does not remove persons from the city with little explanation).
\textsuperscript{184} Compare Keller II, 719 F.3d at 942 (explaining on June 28, 2013 that the rental provisions do not remove persons from the City, nor create a local removal process, thus conflicting with federal immigration laws), with Lozano III, 724 F.3d 297, 317 (3d Cir. 2013) (asserting on July 26, 2013, "In Lozano II, we concluded that the housing provisions are also conflict pre-empted because they interfere with the federal government’s discretion in, and control over, the removal process. . . . [T]he subsequent decisions of the Supreme Court have not undermined our reasoning.")., and Villas at Parkside Partners v. City of Farmers Branch, 726 F.3d 524, 535-36 (5th Cir. 2013) (determining on July 22, 2013 that the Farmers Branch Ordinance interferes with the removal process in giving local officials the authority to arrest and detain persons who fail obtain an occupancy permit because the crime is predicated on their immigration status).
\textsuperscript{185} Lozano III, 724 F.3d at 300; Farmers Branch, 726 F.3d at 526.
\textsuperscript{186} 719 F.3d 931 (8th Cir. 2013).
\textsuperscript{187} Fremont Ordinance, supra note 20.
\textsuperscript{188} Compare Keller II, 719 F.3d 931, 942 (8th Cir. 2013) ("Laws designed to deter . . . unlawfully present aliens from residing within a particular locality are not tanta-
incorrectly rejected the argument that the complex federal scheme of removal field preempted the Fremont Ordinance.\textsuperscript{189} The United States Court of Appeals for the Eighth Circuit inaccurately reasoned that the Fremont Ordinance does not remove persons from Fremont, therefore not intruding upon the federal scheme.\textsuperscript{190} For example, the ordinance would prevent the recent 200 undocumented persons placed in Nebraska at the discretion of the federal government from obtaining housing in Fremont.\textsuperscript{191} This would drive them to other localities or states.\textsuperscript{192} However, if other towns in Nebraska follow suit and pass similar ordinances, this could impede federal removal in the removal of undocumented persons and harm other states.\textsuperscript{193} When one state adopts a law that imposes great burden on persons without documentation, its attempt to regulate immigration will inevitably impact

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\textsuperscript{189} Keller I, 853 F. Supp. 2d at 941 (explaining that opponents of the Fremont Ordinance construed “field preemption” too broadly and that the ordinance does not affect the exclusive removal power), \textit{with Lozano III}, 724 F.3d 297, 315-16 (3d. Cir. 2013) (reasoning that the exclusive power of the federal government to regulate residence field preempts an identical ordinance because, “although Hazelton’s housing provisions do not control actual physical entry into, or expulsion from, Hazelton or the United States, ‘in essence, that is precisely what they attempt to do’”).

\textsuperscript{190} Keller II, 719 F.3d at 954 (Bright, J., dissenting) (explaining the revocation of the occupancy license will force persons without documentation to leave Fremont).

\textsuperscript{191} See \textit{Anderson Cooper 360: Nebraska Governor Responds to Government Housing Undocumented Immigrants in His State} (CNN television broadcast July 14, 2014) (interviewing Governor Dave Heineman of Nebraska regarding the placement of undocumented persons in the state). Governor Dave Heineman expressed frustration learning that over 200 undocumented children were moved to Nebraska without being informed. \textit{Id.} He expressed concern regarding the cost the undocumented persons will have on the state. \textit{Id.} Further, he expressed outrage that the federal government refuses to disclose the whereabouts and information about the children. \textit{Id.}

\textsuperscript{192} Keller II, 719 F.3d at 954 (Bright, J., dissenting).

\textsuperscript{193} \textit{Compare Nebraska City's Immigration Ordinance Could Set Precedent for Other Municipalities}, \textit{Fox News Latino} (May 6, 2014), http://latino.foxnews.com/latino/politics/2014/05/06/nebraska-city-immigration-ordinance-could-set-precedent-for-other/ (“It is beyond question that every city in the Eighth Circuit has the ability to adopt the Fremont Ordinance, word for word.” (quoting Kris Kobach, the Kansas Secretary of State)) and Keller II, 719 F.3d at 942 (“We are unwilling to speculate whether other state and local governments would adopt similar measures, whether those measures would survive non-preemption challenges, and the impact of any such trend on federal immigration policies.”), \textit{with Keller II}, 719 F.3d at 959 (Bright, J., dissenting) (quoting \textit{Mathews v. Diaz}, 426 U.S. 87, 84 (1976), “[I]t is the business of the political branches of the Federal Government, rather than that of either the States or the Federal Judiciary, to regulate the conditions of entry or residence of aliens.” Any action by a state or locality to remove undocumented persons interferes with the exclusive power of the federal government over removal.”).
other states. 194 This undermines federal authority in its management of immigration crises. 195 Finally, the Keller court also inappropriately dismissed field preemption claims with respect to registration. 196

C. CONFLICT PREEMPTION: INTERFERENCE WITH THE FEDERAL REMOVAL SCHEME

The United States Court of Appeals for the Third Circuit in Lozano v. City of Hazelton 197 determined that federal law conflict preempted an identical ordinance because it interfered with removal processes. 198 Specifically, because the Hazelton Ordinance 199 restricted unlawful entrants from obtaining one of their only housing options, this was tantamount to removal. 200 The ordinance in Lozano conflicted with the federal scheme in which mere unlawful presence is not grounds for removal until the federal government exercised many discretionary and procedural protections. 201 The approach in Lozano is consistent with the reasoning applied by the United States Court of Appeals for the Fifth Circuit in Villas at Parkside Partners v. City of Farmers Branch, 202 which also deemed a similar housing ordinance to be conflict preempted for interfering with the federal scheme. 203 The reasoning of the Third and Fifth Circuits directly conflicts with the


195. See id. at 959-60 (reasoning that the Fremont Ordinance should be preempted as an obstacle to federal objectives).

196. Compare id. at 943 (majority opinion) (explaining that the occupancy licensing scheme does not constitute an immigration registration law), with Lozano III, 724 F.3d at 322 (stating, “The rental registration scheme of the RO standing alone operates as a requirement that a subset of Hazelton’s population—those residing in rental housing—register their immigration status with the City. It is beyond dispute that states and localities may not intrude in the field of alien registration”).

197. 724 F.3d 297 (3d Cir. 2013).

198. Compare Lozano III, 724 F.3d 297, 317 (3d. Cir. 2013) (stating that the housing provisions of the Illegal Immigration Relief Act Ordinance (“IIRAO”) and the Rental Ordinance (“RO”) interfered with the federal discretion in removal), with Keller II, 719 F.3d at 942 (reasoning that the housing provisions of the Fremont Ordinance do not remove or expel persons from the city and are therefore not in conflict with the federal scheme) and Keller II, 719 F.3d at 955 (Bright, J., dissenting) (stating that the Lozano and Keller ordinances are nearly identical).

199. Ordinance 2006-18, supra note 114.

200. Lozano III, 724 F.3d. at 317.

201. Keller II, 719 F.3d at 956 (Bright, J., dissenting).

202. 726 F.3d 524 (5th Cir. 2013).

203. See Villas at Parkside Partners v. City of Farmers Branch, 726 F.3d 524, 529-536 (5th Cir. 2013) (determining that ordinances barring rental housing to undocumented persons to be federally preempted). See also Lozano III, 724 F.3d at 317 (stating that the housing provisions of the IIRAO and the RO interfered with the federal discretion in removal).
Fremont Ordinance, which denies housing solely of the basis of a person's immigration status. The denial of an occupancy permit would force a person to seek other means of housing outside of the City of Fremont, essentially removing them from the city and interfering with federal authority in this matter.

In Keller, the Eighth Circuit overlooked Arizona v. United States regarding conflict preemption, which reasoned that even if a state law does not physically expel individuals from the states, it still conflicts with the federal scheme if it creates an obstacle to federal enforcement and removal discretion. The Keller court, however, determined that the prohibition on renting to persons without documentation does not physically expel people from the country, city, or state. It reasoned that because the ordinance itself does not directly remove individuals, it is not in conflict with federal removal processes. However, the United States Supreme Court invalidated a law that allowed state officials to arrest persons they suspected of being removable. The Court illustrated that even though the law at issue in Arizona did not directly remove persons from the United States, its proximity to the removal process resulted in conflict. The dissent in Keller articulated that the housing provision has an even closer proximity to removal. The Fremont Ordinance similarly conflicted with the federal scheme by indirectly removing persons without documentation through eliminating any realistic housing options.

The Eighth Circuit's reasoning in Keller is inconsistent with the exclusive authority given to the federal government to regulate immigration with respect to field preemption, because the court failed to

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204. Keller II, 719 F.3d at 955-56 (Bright, J., dissenting).
205. See id. at 959 (explaining how the Fremont Ordinance forces undocumented persons from the city and requires them to attain housing elsewhere, an act that interferes with the federal government's exclusive removal power).
207. Compare Arizona v. United States, 132 S. Ct. 2492, 2506-07 (2012) (asserting that state law allowing officers to arrest on suspicion of removability inhibits the federal removal scheme), with Keller II, 719 F.3d at 959 (Bright, J., dissenting) (applying the same rationale as Arizona to explain how the Keller ordinances inhibit federal enforcement of the law).
208. Keller II, 719 F.3d at 942 (majority opinion).
209. Id. at 944.
211. Id. at 2506 (stating, "By authorizing state officers to decide whether an alien should be detained for being removable, § 6 violates the principle that the removal process is entrusted to the discretion of the Federal Government.").
212. Keller II, 719 F.3d at 959 (Bright, J., dissenting).
213. See id. (stating, "[T]he Fremont [O]rdinance seeks to make life so difficult for undocumented persons that they must retreat. The Ordinance leaves undocumented persons with no realistic way to attain housing.").
fully consider the foreign policy considerations implicated by removing and displacing persons without documentation. In *Arizona v. United States*, the Supreme Court explained that immigration laws involve policy assessments that invoke international relations. The Court further explained that returning persons to their home countries may be inappropriate when realities of the foreign state include war, political persecution, imprisonment, or other potentially harmful circumstances. Assessing these risks is a discretionary function of the federal government’s foreign policy with these countries. The Eighth Circuit’s decision that states and municipalities may adopt laws such as the Fremont Ordinance increased the burden placed on the federal government to find temporarily placement for foreign nationals. In adopting the ordinance, Fremont did not consider the realities of the immigrant’s country of origin, nor balance those realities with the federal government’s interest in removal.

V. CONCLUSION

The controversial ordinance that became the subject of *Keller* was upheld and the United States Court of Appeals for the Eighth Circuit determined it did not conflict with federal immigration law. The court relied upon the *Chamber of Commerce of the United States v. Whiting* decision, which abrogated other federal circuit court de-

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214. Compare *Keller II*, 719 F.3d at 944 (rejecting arguments that the housing bar removes persons from the city and subsequently conflicts with the national scheme), with *Arizona*, 132 S. Ct. at 2448-500 (explaining the importance of Federal control over immigration regulation and highlighting the importance foreign policy in federal control of removal discretion and process), and *Keller II*, 719 F.3d at 958-59 (Bright, J., dissenting) (analogizing the Fremont Ordinance to the law in *Arizona* and explaining that the ordinance removed and excluded persons without documentation).


217. *Id*. at 2499.

218. *Id*.


220. Compare *Arizona*, 132 S. Ct. at 2498 (asserting governments must be able to communicate with one national sovereign as opposed to the individual states), with *Keller II*, 719 F.3d at 959 (Bright, J., dissenting) (stating the Fremont Ordinance will unnecessarily burden persons without documentation and restrict rental housing). See also, Cooper, *supra* note 191 (describing the federal government placing undocumented individuals in Nebraska in response to the immigration crisis).

221. Compare *Keller II*, 719 F.3d at 941 (majority opinion) (stating, “Laws designed to deter, or even prohibit, unlawfully present aliens from residing within a particular locality are not tantamount to immigration laws establishing who may enter or remain in the country.”), with *Losano III*, 724 F.3d at 318 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 65-66 (1941) (asserting that rental provisions pose extraordinary burdens on persons without documentation and therefore impermissibly encroach upon federal authority).

222. 719 F.3d 931 (8th Cir. 2013).

cisions that deemed similar employment and housing provisions unconstitutional, in order to illustrate that Fremont Ordinance was not federally preempted. The court hastily dismissed field preemption arguments, consequently undermining the complexity and pervasiveness of federal regulation of immigrant removal and registration. The Keller court erroneously determined that federal immigration law did not preempt the housing restrictions. The court undermined the importance of foreign policy implications of removal discretion set forth in Arizona v. United States and also misinterpreted conflict preemption.

The United States Court of Appeals for the Eighth Circuit's decision in Keller undermined the significance of foreign policy in the federal preemption of immigration law. The importance of the federal government's exclusive control of immigration is based, in part, on the complications arising between immigration and foreign relations. With the federal government and the executive branch being chiefly in charge of all foreign policy relations, it is easy to assert federal dominance over immigration regulation because the areas are related. However, many argue that the states are disproportionately impacted by persons without documentation. This argument has received enhanced validity in border-states that are currently overwhelmed with the influx of undocumented persons at the United States-Mexico border.

224. Keller II, 719 F.3d 931, 942 (8th Cir. 2013).
225. See supra notes 186-96 and accompanying text.
226. See supra notes 197-205 and accompanying text.
228. See supra notes 206-21 and accompanying text.
229. See Keller II, 719 F.3d at 958 (Bright, J., dissenting) (stating that decisions concerning removability invoke foreign policy implications). See also Arizona v. United States, 132 S. Ct. 2492, 2498-99 (2012) (emphasizing foreign policy implications in the federal control over the regulation and placement of immigrants in addition to the removal processes).
230. Arizona, 132 S. Ct. at 2498-99 (detailing the delicate balance between immigration enforcement maintaining healthy relations with the immigrants' countries of origin).
231. See James North, How the U.S.'s Foreign Policy Created an Immigrant Refugee Crisis on Its Own Southern Border, The Nation (July 9, 2014), http://www.thenation .com/article/180575/how-us-foreign-policy-created-immigrant-refugee-crisis-its-own-southern-border/ (criticizing the United States' various foreign policy decisions in Latin American that have allegedly contributed to the immigration crisis). Specifically, the article targets a coup d'état in 2009 in Honduras where the military overthrew the democratically elected president. Id. The Obama administration accepted the coup government despite pro-democracy protests all over Latin America. Id. Hondurans have since faced a repressive government and state sponsored violence driving people north to the United States seeking refuge. Id.
232. See Davey, supra note 5 ("[A]dvocates argued that federal authorities had failed to enforce their own immigration restrictions, leaving places like Fremont—with a small but growing Hispanic population—to take care of such matters themselves.").
Though the states’ frustration over lack of control may be valid, the potential consequences to foreign policy necessitate the federal government’s exclusive power to manage the situation. The international community has watched as both the legislative and executive branches of the federal government have been increasingly pressured to take action.

This decision reflects the national divide between advocates of state authority to regulate immigration and proponents of exclusive federal control of immigration. Comprehensive immigration reform has been the subject of recent political debate with both sides of the spectrum advocating for a major overhaul of the federal system. This case complicates the issue of preemption by splitting the federal circuits and effectively banning persons without documentation from certain municipalities, while allowing them in others. As other municipalities follow, it is apparent that either the federal scheme needs to be reworked to pacify the discontent among municipalities or the United States Supreme Court needs to resolve the federal circuit split. Due to the foreign policy implications, the potential for racial discrimination, and the overall complexities of immigration and its national importance, regulation is best left to the federal government.

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233. See Julie Hirshfeld Davis and Michael D. Shear, 57,000 Reasons Immigration Overhaul May Be Stalled for Now, N.Y. TIMES (July 14, 2014), http://www.nytimes.com/2014/07/17/us/politics/border-crisis-casts-shadow-over-obamas-immigration-plan.html?module=search&mabReward=relbias%3Ar%2C%7Br%22%21%22%3A%22%7D explaining a dramatic influx in children migrating to the United States from Central America. Recent polls estimate that roughly 57,000 children emigrated up from Central America in the past months and are currently being held on the border. Id. Many see this as a refugee crisis and the federal government is still contemplating which direct actions to take. Id.


235. Id.