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MAIL-ORDER BRIDES: GILDED PROSTITUTION[†] AND THE LEGAL RESPONSE

Eddy Meng*

This Note explores the international mail-order bride industry where women from Asia and other developing countries are trafficked to men in Western industrialized countries. The author discusses the commonalities between the mail-order bride traffic and other forms of sexual exploitation, as well as the cultural and historical forces and the gender, ethnic, and class subordination which together fuel the demand for Asian Pacific mail-order brides. In the United States, the potential for exploitation is made greater in that immigrant brides face a threat of deportation during the first two years of residence via immigration laws. Given the inequalities between consumer-husbands and immigrant brides, the author argues that the threat of deportation acts like a two-year warranty for the consumer-husband that his mail-order bride will remain in the marriage. The author then places the current immigration sanctions in the context of past immigration policies targeting Asian Pacific women. The author concludes with an agenda for reform which takes aim at both immigration policies and those who escape scrutiny under the current legal scheme: bridal agencies and consumer-husbands. But given the complex and transnational dynamics driving the mail-order bride traffic, the author notes that meaningful reform must proceed beyond domestic legal efforts to stem the traffic itself.

Fiction: In the award-winning children's book *Sarah, Plain and Tall*,¹ Sarah Wheaton of Maine answers a newspaper advertisement placed by farmer Jacob Witting for a bride. She agrees to join Mr. Witting and his two children for a month. Sarah's cat gets along with the Wittings' dogs; she finds that she likes farm animals; and she enjoys taking care of the family. The story ends happily with the promise of a marriage.

[†] The term "gilded prostitute" was first coined by journalist William T. Stead in reference to transatlantic marriages between American women and British aristocrats after the American Civil War. See MAUREEN E. MONTGOMERY, 'GILDED PROSTITUTION': STATUS, MONEY AND TRANSATLANTIC MARRIAGES 1870-1914, at 1, 10 (1989). Stead was familiar with the issues surrounding prostitution, having exposed child prostitution in London brothels in 1885. See KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 24-27 (1979).

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1. PATRICIA MACLACHLAN, *SARAH, PLAIN AND TALL* (1985).

Reality: In Seattle, a pregnant Filipina mail-order bride was shot to death by her husband, who she claimed had previously beat her.² In the coastal village of Vega, Australia, two mail-order brides from the Philippines were found gassed to death in a remote farmhouse. Authorities believe the two women were killed by their husbands in a murder-suicide pact. These women are just two of eleven officially acknowledged cases in the last few years in which Filipina women have gone to Australia to marry and have been murdered by their Australian husbands.³

Mail-order brides are an inseparable part of North American history, having played a role in the settlement of Canada and the United States since colonial times.⁴ More recently, mail-order brides have been the subject of children's books,⁵ feature films,⁶ Broadway musicals,⁷ and the butt of jokes on television.⁸ In reality, the mail-order bride phenomenon is an international industry that trafficks women from developing countries—most frequently from Asia—to men in industrialized countries, driven by a complex web of gender, class, and ethnic subordination that transcends international borders. The United States has responded to the traffic in mail-order brides through its immigration laws: during the first two years of marriage, mail-order brides who marry American citizens face the risk of deportation. This response, however, only has worsened the situation. The legal scheme neither prohibits nor regulates the practice of purchasing wives. Rather, it places legal sanctions solely on those least able to bear them—the immigrant women themselves—while ignoring the men who purchase the women or the agencies that

2. *Man Held in Fatal Shooting of Wife, Her Friend in Court*, L.A. TIMES, Mar. 3, 1995, at A4.

3. Kalinga Seneviratne, *Australia: Filipino Mail-Order Brides End Up Being Murdered*, Inter Press Service, July 10, 1991, available in LEXIS, News Library, Inpres File. In Honolulu, Hawaii, the body of a Filipina mail-order bride was found stuffed in a dustbin. Christopher Hanson, *Mail-Order Bride Business Booms in Backlash to U.S. Feminism*, Reuters N. Eur. Service, Apr. 27, 1987, available in LEXIS, News Library, Reuna File.

4. See *infra* notes 11–12, 14–15 and accompanying text.

5. E.g., MACLACHLAN, *supra* note 1.

6. E.g., THE PIANO (Miramax 1992).

7. E.g., FRANK LOESSER, THE MOST HAPPY FELLA (1956).

8. On a recent episode of the television situation comedy *Frasier*, the character of Frasier Crane's father remarked, after hearing that surgery for his daughter-in-law would cost \$ 25,000, that "[f]or an extra five grand, you can get a whole new wife from the Philippines." *Filipino Officials not Laughing at TV's 'Frasier'*, CHI. TRIB., Dec. 2, 1994, at 21.

profit from the traffic. Thus, in the mail-order bride context, the American legal response actually acts as a tool with which consumer-husbands can maintain control over their purchased brides.⁹

This Note examines the international traffic in Asian Pacific¹⁰ women as mail-order brides and the United States' legal response to it. Part I explores the modern mail-order bride business, a lucrative industry driven not only by desperate conditions in developing countries but also by a demand for the sexual labor of Asian Pacific women in industrialized nations. Part II examines the United States' legal response, which is to grant immigrant brides conditional permanent resident status. This conditional permanent resident status places immigrant women at risk of deportation during the first two years of marriage, pending an assessment of the "viability" of their marital relations. Part III first demonstrates that the existing immigration scheme is designed to protect the interests of the consumer-husband and also creates conditions akin to sexual slavery. Next, Part III analyzes the myth that the mail-order bride industry is a legitimate business and argues that the industry actually is driven by transnational inequalities rooted in gender, class, and ethnicity. Part III also demonstrates that the eroticization of Asian Pacific women has roots in nineteenth-century America and continues today to drive the demand for sexual labor of Asian Pacific women, and that American immigration policies historically have played a role in the traffic of Asian Pacific women, and have long sought to exclude or deport Asian Pacific women on the basis of marital relations. Finally, Part IV proposes an agenda for reform composed of legal challenges to conditional permanent resident status, possible legislative reforms, and, perhaps

9. See JACL Women's Concerns Comm., Japanese American Citizens League, Mail-Order Asian Women Catalogues: Report 5 (Spring 1985) [hereinafter JACL Report] (unpublished report, on file with the *University of Michigan Journal of Law Reform*).

10. Although brides from other developing countries also supply the international market, see *infra* note 29, this Note will focus on Asian Pacific brides, who still dominate the market. The dynamics of sexual exploitation, which are rooted in gender, class, and ethnicity, as discussed *infra* Part III.C.2, drive the mail-order bride industry both for Asian Pacific and non-Asian Pacific brides. For example, even though East European women comprise one segment of the mail-order market, the practice is not "ethnicity-neutral": Russian, Polish, and other East European women are at the bottom of the hierarchy in Europe.

more importantly, efforts to target the procurers and consumers in order to halt the traffic in mail-order brides.

I. THE MAIL-ORDER BRIDE INDUSTRY

The mail-order bride phenomenon is not new. Among the earliest North American mail-order brides were seventeenth century "*les filles du roy*," or French women who came to what is now Quebec to marry French soldiers.¹¹ From 1663 to 1673, nearly 1000 French women emigrated as mail-order brides, and almost all of the French-speaking Quebecois today are believed to be their descendants.¹² In the United States, Japanese and Korean laborers in Hawaii married "picture brides" at the turn of the twentieth century,¹³ and, in the Irish settlements of New York City, lonely men wrote to their homeland for brides.¹⁴ Mail-order brides also played a role in colonizing Australia.¹⁵

But the dynamics have changed. Today, the mail-order bride industry is booming.¹⁶ The industry is transnational, involving

11. See Anne Gillespie Lewis, *Quebecois' Origins Sound Like Fairy Tale*, STAR TRIB. (Montreal), Apr. 26, 1992, at 1G.

12. *Id.*

13. Sucheta Mazumdar, *General Introduction: A Woman-Centered Perspective on Asian American History*, in MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN 1, 6-7 (Asian Women United of Cal. ed., 1989) [hereinafter MAKING WAVES]. Picture-bride marriages arose out of the arranged marriage custom prevalent in Japan at the turn of the twentieth century. *Id.* The term "picture bride" refers to the practice of exchanging photographs before the customary meeting between prospective spouses, especially when the parties were separated by great distances. Emma Gee, *Issei Women*, in ASIAN AND PACIFIC AMERICAN EXPERIENCES: WOMEN'S PERSPECTIVES 66, 67-68 (Nobuya Tsuchida ed., 1982) [hereinafter WOMEN'S PERSPECTIVES]. "Picture brides" became the wives of a majority of Japanese male laborers in America at the turn of the twentieth century. *Id.* at 67. For an account of the experiences of the first generation of Japanese picture-brides, see *id.* at 68-73. For narratives about Korean picture-brides, see Alice Chai, *Korean Women in Hawaii, 1903-1945*, in WOMEN'S PERSPECTIVES, *supra*, at 75, 77-84.

14. Venny Villapando, *The Business of Selling Mail-Order Brides*, in MAKING WAVES, *supra* note 13, at 318, 318.

15. *Id.*

16. Deanna Hodgin, *'Mail-Order' Brides Marry Pain to Get Green Cards*, WASH. TIMES, Apr. 16, 1991, at E1; see also FADZILAH M. COOKE, AUSTRALIAN-FILIPINO MARRIAGES IN THE 1980S. THE MYTH AND THE REALITY 1 (Centre for the Study of Australian-Asian Relations, Australia-Asia Papers No. 37, 1986) (describing a "mushrooming" mail-order bride business in Australia); Kathleen Callo, *Philippine Mail-Order Brides are Booming Export*, Reuter Libr. Rep., Sept. 23, 1987, available in LEXIS, News Library, Reuwlid File (reporting a boom in the export of Filipina brides); Nao

procurers who recruit women from developing countries and marriage agencies in industrialized countries that print catalogs to solicit potential husbands. There are no definite numbers, but by all estimates there was a dramatic increase in the number of mail-order marriages beginning in the late 1970s. For example, "in 1970, only 34 Asians were issued fiancée-petitioned visas [for entry into the United States]; while in 1983, the figure jumped dramatically to 3,428."¹⁷ Seven thousand Filipinas were married to Australian, American, and European men in 1984 alone.¹⁸ Australia saw an increase from 490 Filipina brides in 1979 to 2100 in 1986.¹⁹ As many as 20,000 mail-order brides were brought into Japan from 1986 to 1991.²⁰ In the United States, there were over 200 "international matchmaking" businesses as of 1992,²¹ up from an estimated 100 such agencies in 1986.²² The mail-order bride business also is lucrative. For instance, the California-based American Asian Worldwide Service "report[ed] an annual gross income of \$250,000."²³ Rainbow Ridge Consultants of Seattle, Washington grossed \$400,000 in 1985.²⁴

Nakanishi, *Trade in Women Flourishing in Germany*, Reuter Libr. Rep., Oct. 26, 1992, available in LEXIS, News Library, Reuwlid File (reporting an "ever-growing" mail-order bride industry in Germany).

17. Villapando, *supra* note 14, at 321 (citing Raymond A. Joseph, *American Men Find Asian Brides Fill the Unliberated Bill: Mail Order Firms Help Them Look for the Ideal Women They Didn't Find at Home*, WALL ST. J., Jan. 25, 1984, at A1).

18. *Id.* (referring to a report by the Gannett News Service). One writer reports a 100% annual increase in the number of brides exported from the Philippines. ELIZABETH UY EVIOTA, *THE POLITICAL ECONOMY OF GENDER: WOMEN AND THE SEXUAL DIVISION OF LABOUR IN THE PHILIPPINES* 140 (1992).

19. Callo, *supra* note 16. This finding of an increase in the number of mail-order brides in Australia is consistent with other reports. For example, Australia has seen a 270% increase in mail-order bride transactions between 1981 and 1992. UY EVIOTA, *supra* note 18, at 140.

20. Suvendrini Kakuchi, *Japan: Landmark Court Ruling Upholds Rights of "Mail-Order Brides"*, Inter Press Service, Feb. 21, 1991, available in LEXIS, News Library, Inpres File.

21. Melinda Henneberger, *Well, the Ukraine Girls Really Knock Them Out*, N.Y. TIMES, Nov. 15, 1992, § 4, at 6.

22. See Lisa Belkin, *The Mail-Order Marriage Business*, N.Y. TIMES, May 11, 1986, § 6 (Magazine), at 28.

23. See Villapando, *supra* note 14, at 321.

24. See Belkin, *supra* note 22, at 55.

A. The Modern Mail-Order Bride

I am Sarah Wheaton from Maine as you will see from my letter. . . . I am plain and tall.

—Sarah, *Plain and Tall*²⁵

*If you like 'em tall, Alice is 5'9", Filipina \$4.*²⁶

Many of the modern mail-order brides come from developing countries, particularly from South and Southeast Asia: the Philippines,²⁷ Thailand, Sri Lanka, India, Taiwan, Macao, South Korea, Hong Kong, and China.²⁸ Brides from Eastern Europe recently have become more common.²⁹ Procuring agencies recruit women according to their physical appearance³⁰ generally seeking attributes such as youth³¹ and virginity.³²

25. MACLACHLAN, *supra* note 1, at 9, 15.

26. Villapando, *supra* note 14, at 320 (quoting a typical entry in a Rainbow Ridge Consultants' publication). For the stated amount, customers could purchase Alice's address and personal data. *Id.*

27. Michelle J. Anderson, Note, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1408 & n.44 (1993) (stating that Filipinas comprise the great majority of mail-order brides in many catalogs).

28. See Birgit Schmidt am Bursch, *Sex Touring, International Match-making & International Trafficking of Women under International Law*, Address at the *Michigan Journal of Gender & Law* Symposium, Prostitution: From Academia to Activism (Oct. 30, 1992) [hereinafter Schmidt am Bursch Address] (videotape and author's notes of Address on file with the *University of Michigan Journal of Law Reform*).

29. See Eleanor Randolph, *From Russia, With Love*, WASH. POST, Aug. 23, 1992, at F1; see also Henneberger, *supra* note 21 (stating that women from the former Soviet Union dominate the current mail-order bride traffic).

30. See Randolph, *supra* note 29. As the Nahodka Marriage Agency in Moscow ("Nahodka" means "windfall" or "godsend") bluntly puts it, some women are turned away because they are "too ugly." *Id.* The Moscovite agency sometimes will make exceptions to their 40-year-old age limit if the woman is "still attractive and has some other dignities." *Id.* at F4. The publisher for *Island Girls*, an Ottawa catalogue, said: "I go by the old *Playboy* principle where if you're not pretty you're relegated to the back pages [of the catalog] with a name and address only." Brad Evenson, *Island Girls: Ottawa Catalogue Advertises Mail-Order Brides for Canadians*, OTTAWA CITIZEN, Mar. 16, 1992, at A1.

31. Brides can be as young as 15 years old. See Belkin, *supra* note 22, at 52. But few are over 40 because they have been found to be unmarketable. See Randolph, *supra* note 29, at F4.

32. Villapando, *supra* note 14, at 324. The Philippine consulate in Australia has received numerous inquiries for catalogs of "available virgins." Ramon Isberto, *Philippines Trying to Stem "Wife Trafficking" to Australia*, Inter Press Service, May 21, 1993, available in LEXIS, News Library, Inpres File.

One questionnaire used by American Asian Worldwide Service asks: "Do you wear make-up?" "Which underwear do you like to wear?" "Have you experienced pre-marital sex?"³³ Another queries whether a candidate has "physical defects or has flat, medium or full breasts,"³⁴ and proceeds to ask, "What kind of lover are you? Affectionate, shy and submissive, passionate, inhibited, uninhibited[?]"³⁵

Many factors cause women in developing countries to become mail-order brides but, the foremost is poverty.³⁶ As one author wrote about women in the Philippines, "the plain facts of unemployment, inflation, malnutrition, and militarization permeate their everyday lives."³⁷ Economics, however, is not the only reason for becoming a mail-order bride: social and other embedded cultural practices—sometimes working in conjunction with economic factors—also encourage women to enter into the trade.³⁸ For instance, because of the preferential inheritance to sons in agricultural regions of the Philippines, young women tend to migrate to the cities.³⁹ Combined with the great social pressure on women to marry before they reach age thirty⁴⁰ and the high ratio of women to men in certain

33. Belkin, *supra* note 22, at 55 (quoting questions from an eight page form used by American Asian Worldwide Service).

34. Gary Libman, *Lonely American Males Looking to the Orient for Mail-Order Brides*, L.A. TIMES, Sept. 14, 1986, pt. VI, at 1, 16.

35. *Id.* (quoting a "personality evaluation" used by American Asian Worldwide Service).

36. See JACL Report, *supra* note 9, at 4; see also DELIA D. AGUILAR, THE FEMINIST CHALLENGE: INITIAL WORKING PRINCIPLES TOWARD RECONCEPTUALIZING THE FEMINIST MOVEMENT IN THE PHILIPPINES 8 (1988) (observing that the "raw material" for the mail-order bride traffic is a lack of employment opportunities for Asian Pacific women in their home countries); Villapando, *supra* note 14, at 322-23 (attributing the success of the mail-order bride industry in part to the economic deprivation of Asian Pacific women in developing nations). For a discussion of poverty driving Filipinas to seek jobs abroad, see Reena Shah, *A Nation for Sale: Filipinos Look Abroad for the 'Better Life'*, ST. PETERSBURG TIMES, Nov. 15, 1988, at 1-A. John Broussard, who holds a sociology doctorate but now runs the Rainbow Ridge mail-order bridal agency, confirmed that women from relatively poor countries are likely to seek financial security through marriage to a well-off man. Libman, *supra* note 34, at 17.

37. AGUILAR, *supra* note 36, at 4-5.

38. See COOKE, *supra* note 16, at 7 (citing economic, cultural, and colonial influences).

39. UY EVIOTA, *supra* note 18, at 141.

40. COOKE, *supra* note 16, at 30. "The pressure to be married, especially for women around the age of 30 is great because society regards the condition of spinsterhood as one of pathos. The status of old maid, *matandang dalaga*, is undesirable as it figuratively means someone whose womanhood is partially fulfilled . . ." *Id.*

urban areas,⁴¹ this factor may provide further incentive for Filipinas to seek marriage abroad. Moreover, there is a tradition of exporting Filipinas abroad, particularly as domestic workers, in order to support the rest of the family.⁴² A study has revealed that some Filipina mail-order brides anticipated that their marriages to foreign men would enable them to support their families in the Philippines or to sponsor them for immigration.⁴³ Some potential brides also seem to be particularly attracted to Western men.⁴⁴

The consumer-husband is usually Caucasian, typically American, Australian, Canadian,⁴⁵ or from a Western European

41. See UY EVIOTA, *supra* note 18, at 141 (noting a female predominance in the sex ratio in Manila).

42. Seth Mydans, *Manila Frets Over Export of Its Women*, N.Y. TIMES, May 12, 1988, at A9. Such women have been called the "heroes" of the Filipino economy, "whose remittances . . . have become a reliable and sizable contribution to the nation's welfare." *Id.* Similarly, low-income families sometimes encourage their daughters to become mail-order brides in order to give the entire family a chance to emigrate. See Debbie Singh, *Fiji-Women: Marriages with Australians Less Than Heavenly*, Inter Press Service, Sept. 19, 1994, available in LEXIS, News Library, Inpres File.

43. See COOKE, *supra* note 16, at 20, 28-29. This study concerned a group of Filipinas who married Australian men, 30% of whom emigrated as mail-order brides. *Id.* at 1.

44. One Filipina bride explained that feeling lonely, having few friends, and initially experiencing nightmares is a small price to pay: "there is a better life [in the United States]. American men are sincere and loving when it comes to marriage. I want to have a baby with blue eyes." See Belkin, *supra* note 22, at 52. Some Chinese brides prefer "tall, considerate, white-skinned men." Nick Cater, *Women Look West for the Perfect Match*, S. CHINA MORNING POST, Dec. 11, 1994, at 8.

Cooke contends that the Philippines' colonial history causes some women to be receptive to marriages with foreign men. See COOKE, *supra* note 16, at 19. As she puts it, one result of colonialism is the "moulding of a consciousness that was outward looking, receptive to foreign inputs (especially American or western models)." *Id.* at 29. "Among some women, this appreciation of foreign models may be translated into a high regard for foreign men . . ." *Id.*; see also Shah, *supra* note 36, at 12-A.

[T]he colonization of the Philippine psyche appears complete. Since independence, Filipinos have buoyed their country's hope for the future on the overgenerous offerings of the U.S. State Department and Hollywood. . . .

Several times every day in Filipino homes, the Marlboro man touches his hat and gallops into the sunset after flinging the seductive invitation, "Come to Marlboro country." The mesmerized audiences respond with long lines outside foreign embassies. The island on which a Filipino chieftain slew Magellan is today a scouting ground for tourists shopping for mail-order brides.

Id.

45. Villapando, *supra* note 14, at 318; see also COOKE, *supra* note 16, at i (Australian consumers); Libman, *supra* note 34, at 1 (American consumers); Paul Watson, *Mail-Order Bride Firms Flourish in Canada*, TORONTO STAR, Nov. 9, 1991, at A1 (Canadian consumers).

country,⁴⁶ although Japanese consumer-husbands also are prevalent.⁴⁷ In the United States, the consumer-husband tends to be middle-aged, well-educated, and financially-sound.⁴⁸ While most of the consumer-husbands are Caucasian, there are also a number of Asian Pacific American men who purchase wives from their home countries.⁴⁹ The men tend to be older than the women they purchase.⁵⁰ According to one study, many of these men disdain and resent the women's liberation movement.⁵¹

B. The Mail-Order Transaction

Bridal agencies generally recruit potential brides from economically-troubled countries,⁵² contacting women through

46. Joe Joseph, *Myth of the Meek Mail-Order Bride*, THE TIMES (London), Mar. 17, 1994, at 14 (British consumers); Schmidt am Bursch Address, *supra* note 28 (German consumers).

47. See Kakuchi, *supra* note 20 (reporting that 20,000 mail-order brides were brought into Japan between 1985 and 1990).

48. Villapando, *supra* note 14, at 319. Sociologist Davor Jedlicka conducted perhaps the only sociological survey on the consumer-husbands of mail-order brides and found that consumer-husbands are "above-average in education, income, [and] occupation . . . 63% [of the men surveyed] earned more than \$20,000 annually, more than half completed two or more years of college and 42% worked as managers or professionals." Libman, *supra* note 34, at 14 (internal quote marks omitted).

49. "Chinese language newspapers in the United States abound with advertisements for mail-order brides." James Leung, *Many Mail-Order Brides Find Intimidation, Abuse: Marriages Made in China for U.S. Citizenship*, S.F. CHRON., Sept. 4, 1990, at A9.

50. "There is one clear trend . . . : Matchmaking is a game played by older men, and much younger women." Charles Mitchell, *Russian Women Jockey for Love, American Style Coveting U.S. Men for Romance—and Money*, THE RECORD (Bergen County, New Jersey), Nov. 24, 1994, at A54.

51. Sociologist Davor Jedlicka explained that "[t]he men see the women's liberation movement as the cause of their problems." See Belkin, *supra* note 22, at 51. One happy customer enthused that his Filipina bride was like his "grandmother's generation." Hanson, *supra* note 3; see also Anderson, *supra* note 27, at 1408 n.48.

These men typically view the women's movement as the reason they cannot maintain satisfactory relationships with women Promotional material for one mail-order bride catalog boasts [that] . . . "Filipinas are more caring, loving, devoted to their husband and children, understanding, and responsible than American women They have much more concern for the family unit and are against the idea of divorce."

Id. (citations omitted).

52. Anderson, *supra* note 27, at 1407-08. In China, one bridal agency is reportedly state-owned. See Cater, *supra* note 44, at 8.

newspaper advertisements.⁵³ The agencies then photograph and market the potential brides through catalogs with subscription fees ranging from \$35 to \$430.⁵⁴ Others charge a fee for each address requested by customers.⁵⁵ The agencies advertise their catalogs in publications ranging from *Penthouse* to *Rolling Stone*.⁵⁶

The catalogs are part *Playboy* and part Sears Roebuck,⁵⁷ displaying women in full-body photographs along with "vital statistics." A Toronto Star reporter described one of these photographs:

17-year-old Armie Abellanosa [a Filipina] is playing coquette for the camera. She's twisting her midnight black hair round a finger, her head cocked to the right with a sweet, sexy smile.

Her T-shirt is cut short to show off a bit of her tiny waist, a strategic flash of young flesh to entice foreign men.⁵⁸

Below her photograph, the caption reads: "5-foot, four inches, 100 pounds."⁵⁹ The Siam Introduction agency also uses videos to sell its "products."⁶⁰

Gender and ethnic stereotypes of Asian Pacific women as submissive, exotic, and erotic run rampant in marketing materials which hawk Asian Pacific brides as sex partners who double as domestic servants. One catalog reads:

Congratulations, you have taken the first step towards discovery of an eternal treasure that will happen when you find your number one Asian lady whose main objective in life is to please her husband. The enthusiasm shown and the pleasure they derive in accomplishing this goal is [sic]

53. See Belkin, *supra* note 22, at 52.

54. Libman, *supra* note 34, at 15-16; see also Belkin, *supra* note 22, at 73 (reporting that per annum fees for one service range from \$50 to \$500). Individual catalogs run between \$5 and \$59. Henneberger, *supra* note 21, at E6.

55. See, e.g., Mitchell, *supra* note 50, at A54 (reporting that Scanna International, based in Pittsford, New York, charges \$10 per address, or \$300 for 50 addresses).

56. See Belkin, *supra* note 22, at 73. The women sometimes are required to pay a fee to the marriage agencies. See Randolph, *supra* note 29, at F1.

57. Villapando, *supra* note 14, at 320.

58. Watson, *supra* note 45, at A7.

59. *Id.*

60. See Joseph, *supra* note 46, at 14.

almost embarrassing We wouldn't be at all surprised if you entertained thoughts of polygamy.⁶¹

Other agencies praise their products in a similar fashion:

- "faithful, devoted, unspoiled and loving";⁶²
- "raised to be servants for men Derives her basic satisfaction from serving and pleasing her husband";⁶³
- "[m]ost, if not all are very feminine . . . and virgins!";⁶⁴
- "docile, exotic and available as bed partners and domestic help at the same time";⁶⁵
- "passionate lovemaking guaranteed";⁶⁶
- "[w]here else would you find a girl who'll clean your toenails with a toothbrush?";⁶⁷ and
- "[t]wo Million Submissive Doll-Like Women for Sale."⁶⁸

Consumers of Asian Pacific mail-order brides are looking for a cook, housekeeper, or sexual partner.⁶⁹ Satisfied customers supplied the following testimonials:

- One former Navy soldier who spent time in the Far East during World War II and who purchased a bride revealed that "I do favor an Asian woman There, women are truer, more loyal and have a mystical air or attitude or whatever the proper word is";⁷⁰
- a 5-foot, 8-inch, 300 pound customer noted: "Asian countries make fine superior products [a]nd I prefer a fine superior lady for my wife";⁷¹

61. Hanson, *supra* note 3. One consumer-husband not only entertained such thoughts, but was charged with bigamy and false imprisonment in California when he purchased two mail-order brides. *Man With 2 Mail-Order Brides Accused of Assault*, ORLANDO SENTINEL TRIB., Jan. 22, 1991, at A10.

62. Villapando, *supra* note 14, at 324.

63. *Id.*

64. *Id.*

65. Callo, *supra* note 16. East European women are described as "also good for agricultural work." Nakanishi, *supra* note 16. As one writer put it, "if they are very, very lucky, [the women] can expect to cook and slave and clean and love for life some middle-aged loser in an industrial town in the West." Randolph, *supra* note 29, at F1.

66. AGUILAR, *supra* note 36, at 8.

67. *Id.*

68. *Id.* at 7.

69. See Singh, *supra* note 42.

70. Belkin, *supra* note 22, at 49.

71. Michael Small, *For Men Who Want an Old-Fashioned Girl, The Latest Wedding March is Here Comes the Asian Mail-Order Bride*, PEOPLE, Sept. 16, 1985, at 127, 129.

- a middle-aged divorcé noted: "My first wife [an American] . . . wouldn't cook or clean," and the second "had—whaddayacallit?—premenstrual syndrome But now I have a *woman*. She ties my shoes for me every morning";⁷² and
- a twice-divorced college professor claimed: "It's not subservience, but she'll lay her life down on the line for me."⁷³

Once a consumer-husband selects potential brides from the catalogs, the "courting" process begins. He first pays a fee to the agency for the bride's address⁷⁴ and then conducts a mass mailing to "woo" all the women in whom he is interested.⁷⁵ One mail-order courtship looked like this:

[H]e sent \$120 to [Pacific Overtures] . . . and within weeks received a magazine with pictures and vital statistics of more than 200 Asian Women

[He] selected more than 90 women . . . and sent them a letter telling [them] about himself. He was, he wrote, born and raised in Tennessee, his job as a quality-control technician . . . earned him about \$28,000 a year, he was sterile and he was looking for a wife

. . . .

He sent a number of gifts [to a woman]—a necklace, a watch, a camera, a nail-care kit, a robe, six pairs of panties and six bras

Once the wedding date was set, the couple began to exchange steamy letters about how they would spend their wedding night. He asked her to mail him nude pictures of herself⁷⁶

72. *Id.*

73. *Id.*

74. *See supra* notes 54–55 and accompanying text.

75. Anderson, *supra* note 27, at 1409. One agency, the Asian Connection, offers advice to their customers on several different strategies for approaching their potential brides and disseminates this advice in its 52-page booklet, "a sort of textbook for the socially inept." Watson, *supra* note 45, at A7. For "popular modern girls, the beautiful or intelligent with many suitors or past experience in love," the agency recommends a "hero-type courtship." *Id.* Then there is the "slave-type courtship: used for conservative, shy types or those who come from rural areas, or women who never had any boyfriend [sic] or suitor." *Id.* But when "all else fails," the Asian Connection advises its clients to use a "beast type" courtship, employing "speed and force." *Id.*

76. Belkin, *supra* note 22, at 52.

Agencies usually charge anywhere from \$1000⁷⁷ to \$3500 for a bridal "package."⁷⁸ Typically, after narrowing down his choices from the first mass mailings, the consumer-husband visits potential brides in their home countries. If a meeting goes well and the parties decide to marry, the consumer-husband will apply for a fiancée visa,⁷⁹ which allows his bride to come to the United States but which expires in ninety days unless she marries. Many men insist on having sex during this period, without ever promising to marry. Because the bride must marry in order to stay in the host country when the tourist visa expires, she may face intense pressure to submit to the consumer-husband's demands.⁸⁰ This ninety day period is essentially a trial period, during which the consumer-husband can "return" the bride if he is not satisfied—by refusing to marry her and having her deported.

Instead of shopping via centerfolds, other consumer-husbands chose to embark on "bridal tours," where bridal agencies arrange for the men to travel to developing countries to meet a group of potential brides.⁸¹ The competition among potential brides at these bridal tours is keen, making some "do almost anything to snag a man."⁸² A two-week bridal tour to Moscow costs about \$4500, with the agency collecting about \$3000 if the visit results in marriage.⁸³

II. THE UNITED STATES' LEGAL RESPONSE: DEPORT THE BRIDE

The United States' response to the traffic of mail-order brides has been through immigration law. Once the immigrant

77. Callo, *supra* note 16.

78. Nakanishi, *supra* note 16. In Germany, one agency charges \$3500 for a wife, her clothing, and a guarantee to exchange her if the consumer is not pleased. *Id.*

79. See Jon McKenna, *How to Find Women 'Who Would Marry Dear Old Dad,'* ATLANTA BUS. CHRON., Mar. 26, 1990, at 3A, 18A; see also Belkin, *supra* note 22, at 51 (detailing the courtship process in the Philippines).

80. See Schmidt am Bursch Address, *supra* note 28.

81. See Randolph, *supra* note 29, at F4.

82. *Id.* At one bridal tour organized by a Russian agency, 20 American men had hundreds of "suplicants" from whom to choose. *Id.*

83. *Id.* Another agency charges \$7000. See Mitchell, *supra* note 50. A trip to Mexico costs \$1250. Mark Smith, *40 Brides for 6 Bachelors: How to Find Miss Right on the First Try*, HOUSTON CHRON., Feb. 13, 1994, at 6. That this seems to be another version of sex tourism is discussed *infra* Part III.

bride marries and enters the country, she faces a two-year period as a conditional permanent resident. If she leaves the marriage during this period, she risks deportation from the United States.

*A. Spousal Preference in Immigration:
A Recipe for Marriage Fraud*

1. Marital Status and Immigration Preference—An alien's marital status affects her ability both to enter and remain in the United States. Congress restricts the number of aliens permitted to immigrate to the United States.⁸⁴ The Immigration and Naturalization Service (INS) grants immigration visas according to a preference system with several categories of eligibility,⁸⁵ and those who do not qualify for preference are subject to numerical caps.⁸⁶ Spouses and other "immediate relatives" of United States citizens are altogether exempt from direct numerical limitations,⁸⁷ and spouses of permanent residents receive preference over most other groups.⁸⁸ Congress justifies such preferential treatment of spouses and other immediate relatives on the ground that they preserve family unity and promote family relationships by preventing family members from having to endure the hardship of remaining separated while waiting to gain entry.⁸⁹

84. Generally, those allowed to immigrate to the United States fall into three categories: (1) family-sponsorship, (2) employment-based immigration, and (3) "diversity" immigration. 8 U.S.C. § 1151(a) (1988 & Supp. V 1993).

85. These include preferences for those with "extraordinary" ability such as artists or athletes, *id.* § 1153(b)(1)(A), outstanding academicians, *id.* § 1153(b)(1)(B), executives and managers, *id.* § 1153(b)(1)(C), and other skilled workers and professionals. *Id.* § 1153(b)(3); *see also id.* § 1153(b)(4)–(6) (specifying additional immigration requirements for different classes of immigrants). For a discussion of "diversity"-based immigration, *see id.* § 1153(c).

86. Numerical quotas generally are set forth in *id.* § 1151(a)(3), and are further delineated in *id.* § 1152.

87. *Id.* § 1151(b)(2)(A)(i). Children and parents are also immediate relatives for the purposes of exemption from numerical quotas. *Id.*

88. *Id.* § 1153(a)(2). Other relatives of United States citizens and permanent residents also receive certain preferences. *See id.* § 1151(a)(1).

89. Joe A. Tucker, *Assimilation to the United States: A Study of the Adjustment of Status and Immigration Marriage Fraud Statutes*, 7 YALE L. & POL'Y REV. 20, 23 (1989) ("Family reunification is the [Immigration and Nationality Act's] primary admission criterion, and avoiding the separation of nuclear families its highest priority."). For a historical treatment of family reunification in American immigration

2. *The Immigration and Naturalization Service's "Viability" Standard: Before 1986*—Because marriage by an immigrant to a resident alien or citizen provides a way to bypass long waiting periods and immigration caps, the INS historically has been concerned with marriage fraud.⁹⁰ An early response by the INS was to require that a marriage between a citizen and an immigrant spouse be "bona fide" before granting permanent resident status to the immigrant spouse.⁹¹ A series of subsequent cases questioned whether using such "viability" standards to deny adjustment to, and to commence deportation proceedings against, aliens without express statutory authority from Congress satisfied procedural due process requirements.⁹²

law, see E.P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 1798-1965, at 505-20 (1981). Family reunification also has been recognized as an international human right. See Francis A. Gabor, *Reflections on the Freedom of Movement in Light of the Dismantled "Iron Curtain,"* 65 TUL. L. REV. 849, 868 (1991). But some countries, such as Australia, Canada, and New Zealand, do not use a family-centered immigration policy. *Id.* at 869.

90. See Nancy K. Richins, Comment, *The Marriage Viability Requirement: Is It Viable?*, 18 SAN DIEGO L. REV. 89, 93-94 (1980).

91. *In re Lew*, 11 I. & N. Dec. 148 (1965), was one of the first immigration cases in which the viability of the marriage at issue. There, the Board of Immigration Appeal denied an alien's application to have her immigrant status adjusted to permanent resident, and granted the husband an interlocutory decree of divorce. *Id.* The Board of Immigration Appeal reasoned that Congressional interest in preserving the family unit supported a policy of conferring immigration benefits only to bona fide marriages. *Id.* at 149. The bona fide marriage requirement subsequently developed to require that a marriage be viable. See generally, Richins, *supra* note 90, at 92-98 (discussing federal courts' limited approval of INS-imposed viability standards).

92. *E.g.*, *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). In *Bark*, the Court of Appeals for the Ninth Circuit reversed a Board of Immigration Appeal denial of status adjustment. In dictum, the court cautioned that the marriage viability requirement "contains no federal dictate," and added that any attempt to regulate a couple's lifestyle "would raise serious constitutional questions." *Id.* at 1201 (citations omitted); accord *Whetstone v. INS*, 561 F.2d 1303, 1307 (9th Cir. 1977).

Subsequently, the district court for the District of Columbia expressly held that the INS had no statutory authority to use marriage viability as a factor in deciding petitions for adjustment of status. *Chan v. Bell*, 464 F. Supp. 125, 127-28 (D.D.C. 1978). The court in *Chan* stated that Congress explicitly directed the INS to grant "immediate relative status" to the alien spouse of an American citizen "without any reference whatever to marriage viability." *Id.* at 128. The court continued:

[I]n the absence of clear congressional direction—*e.g.*, statutory language . . . together with a precise definition of viability—that standard is untenable. The [INS] clearly could not, consistently with due process of law, be regarded as vested with both the authority to establish the vague and elusive concept of marriage viability and the enormous power to regulate and enforce that concept in actual practice.

Thwarted in the courts, in 1985 the INS requested that Congress provide such statutory authority for a viability standard.⁹³ The INS took advantage of an outcry from the popular media in the mid-1980s on sham marriage rings, marriage fraud, and mail-order brides.⁹⁴ Eventually, using a highly speculative⁹⁵ yet influential study⁹⁶ on marriage fraud,

Id. at 129–30. *But see* Menezes v. INS, 601 F.2d 1028 (9th Cir. 1979) (holding that the INS has discretion to deny an application for adjustment of immigration status if it finds that the marriage has deteriorated). For a detailed discussion of this series of cases, see Richins, *supra* note 90, at 94–99.

93. Then-INS Commissioner Alan Nelson asked lawmakers for, among other things, the following: (1) a statutory definition of viability, (2) a two-year conditional residency requirement as part of the definition of viability, (3) shifting the burden to the applicant to show that the marriage was not fraudulent, and (4) making applicants deportable if the marriage is determined to be fraudulent. *Immigration Marriage Fraud: Hearing of Fraudulent Marriage and Fiance Arrangements to Obtain Permanent Resident Immigration Status Before the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. 18–20 (1986) [hereinafter *Senate Hearings*] (statement of Alan C. Nelson, Commissioner, INS).

94. *See, e.g.,* Note, *The Constitutionality of INS Sham Marriage Investigation Policy*, 99 HARV. L. REV. 1238, 1241 n.20, 1254 n.97 (1986) [hereinafter *Investigation Policy*] (citing *Nightline: Marriage Fraud/Remembering Samantha* (ABC television broadcast, Aug. 26, 1985) (interview with Sen. Alan Simpson); *60 Minutes: Do You Take This Alien?* (CBS television broadcast, Sept. 22, 1985)). One commentator noted that in the immigration context, “[a]s in any political setting, extensive media exposure influences the tone of legislative consideration and can often predispose the legislature to act without adequate consideration of the issues.” Tucker, *supra* note 89, at 29.

95. Then-INS Commissioner Alan C. Nelson testified before Congress that 30% of marriages between foreign nationals and United States citizens or legal permanent residents are fraudulent. *Senate Hearings, supra* note 93, at 35. The 30% figure is unreliable for a number of reasons: the petitions used in the study were not selected randomly; the petitions only spanned a one- to two-month period; the sample size was too small (only one-twentieth of one percent); and the conclusions were based on the “personal judgments” of the INS investigators. 65 INTERPRETER RELEASES 25, 27 (1988). Moreover, there is no correlation between the 30% estimate and the actual 4.6% denial rate reported during the same period. *Id.* “Likewise, various members of Congress and other policymakers resorted to hyperbole to persuade the public of the necessity” for restrictive immigration policies. *See* Tucker, *supra* note 89, at 28–29. Professor Tucker noted that proponents of restrictive immigration legislation often supported their arguments with highly speculative numbers. *Id.* As of 1993, the INS put the rate of marriage fraud closer to eight percent. *See* Anderson, *supra* note 27, at 1411 n.60.

96. The 30% figure discussed *supra* note 95 was cited in both the House of Representatives and Senate reports accompanying IMFA. S. REP. NO. 491, 99th Cong., 2d Sess. 2 (1986); H.R. REP. NO. 906, 99th Cong., 2d Sess. 6 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5978, 5978. Also influential was a General Accounting Office report which looked at other countries’ immigration policies and then suggested that conditional status was an effective means of controlling marriage fraud. *See* Tucker, *supra* note 89, at 31 n.36 (citing GENERAL ACCOUNTING OFFICE, IMMIGRATION MARRIAGE FRAUD: CONTROLS IN MOST COUNTRIES SURVEYED STRONGER THAN IN U.S., NO. GAO, GGD-86-104BR (1986)).

Congress passed the Immigration Marriage Fraud Amendments of 1986 (IMFA).⁹⁷ With IMFA, the INS received clear statutory authority to promulgate rules and procedures regarding the use of a marriage viability standard to combat marriage fraud.

B. Conditional Permanent Resident Status

IMFA created conditional permanent resident (CPR) status as a means of dealing with marriage fraud. An alien who enters the United States by marrying a permanent resident or citizen receives this conditional status.⁹⁸ To remove this conditional status, a CPR must petition the INS prior to the second anniversary of being granted that status.⁹⁹ The purpose of the petitioning process is to allow the INS to determine whether the CPR's marriage was entered into for the purpose of evading immigration laws.¹⁰⁰ If the INS determines that her marriage was not fraudulent, the conditional status is converted to permanent resident status.¹⁰¹ If the marriage is found to be fraudulent, however, the CPR loses lawful status and will be subject to deportation.¹⁰²

1. *The Petition to Remove Conditional Status*—Because of various amendments, IMFA contains a complicated set of procedures by which a CPR may petition for removal of the conditional status. Depending on the CPR's marital status at the time of petition, the CPR may need to file a joint-petition with her spouse, apply for waiver of the joint-petition requirement, or possibly self-petition for removal of conditional status.

If the CPR is still married to her spouse at the time of petition for removal of conditional status, the couple must file a joint-petition for removal shortly before the end of the

97. Pub. L. No. 99-639, 100 Stat. 3537 (1986) (codified as amended at 8 U.S.C. § 1186a and scattered sections of 8 U.S.C. (1988 & Supp. V 1993)).

98. 8 U.S.C. §§ 1186a(a)(1), 1186(a)(g) (1988).

99. 8 C.F.R. § 216.2(a) (1994).

100. *Id.* § 216.3(b).

101. *Id.* § 216.4(a)(6).

102. *Id.* Failure to apply for removal of CPR status also results in the automatic termination of the alien's lawful status and subjects her to deportation. *Id.*

two-year period.¹⁰³ The INS then reviews the petition and may interview the couple to determine whether the marriage was for the purpose of evading immigration laws.¹⁰⁴ As evidence of a viable marriage, the INS considers joint ownership of property or joint tenancy of a common residence, commingling of finances, the birth of children, or affidavits from third parties having knowledge of the "bona fides" of the marriage.¹⁰⁵

The Violent Crime Control and Law Enforcement Act of 1994 amended IMFA to allow married CPRs to self-petition for removal of conditional status under certain circumstances.¹⁰⁶ In order to remove her conditional status based on a self-petition, a CPR must still be married and show that: (1) she is "a person of good moral character"; (2) the marriage with her spouse "was entered into in good faith"; (3) she or her child was "battered by or has been the subject of extreme cruelty perpetrated by [her] spouse"; and (4) deportation would result in "extreme hardship" to her or her child.¹⁰⁷

103. *Id.* § 216.4(a)(1) (providing that the couple must apply within 90 days before the end of the two year period).

104. *Id.* § 216.4(b)(1).

105. *Id.* § 216.4(a)(5).

106. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (to be codified at 8 U.S.C. § 1154(a)(i)(H)). The relevant provisions are contained in Title IV, Subtitle G, "Protections for Battered Immigrant Women and Children." *Id.* §§ 40701-40703, 108 Stat. 1953-55. Prior to the 1994 amendment, a battered CPR still had to file a joint-petition for removal of her conditional status with her abusive spouse unless she applied for a hardship waiver of the joint-filing requirement. 8 U.S.C. § 1186a(c)(1)(4) (1988 & Supp. V 1993); 8 C.F.R. § 216.5(a)(3) (1994). A hardship waiver requires that the alien spouse show: (1) deportation would result in "extreme hardship"; (2) "the qualifying marriage was entered into in good faith"; (3) the marriage was terminated for reasons other than the death of the spouse; and (4) she or her child was the subject of "batter[y]" or "extreme cruelty" by the spouse. 8 U.S.C. § 1186a(c)(4) (Supp. V 1993). Critics charged that this created a "license to abuse" immigrant women because the INS rarely granted a waiver of the joint-petitioning requirement, thus creating incentives for battered CPRs to stay with their abusive spouses in order to obtain legal status. *See generally* Anderson, *supra* note 27, at 1416-22 (arguing that the system gives husbands too much control, requires an excessive standard of proof, and ignores the barriers battered women face).

107. Pub. L. No. 103-322, § 40701, 108 Stat. 1953 (to be codified at 8 U.S.C. § 1154(a)(1)(A)(iii)). The domestic violence provision was added by the 1990 amendments. Immigration Act of 1990, Pub. L. No. 101-649, § 701, 104 Stat. 5085 (codified as amended at 8 U.S.C. § 1186a(c)(4) (Supp. V 1993)).

As of early 1995, the INS had yet to promulgate rules relating to the self-petition process, or to definitions of "battery or extreme cruelty," "good faith," or "extreme hardship." It is conceivable that these definitions will be similar to, if not the same as, the definitions presently existing for divorced or separated CPRs. If such is the case, there may be procedural due process issues, as discussed *infra* Part IV.A.2.

A divorced CPR or an estranged CPR separated from her spouse, may apply for a waiver of the joint-petition requirement.¹⁰⁸ In order to remove her conditional status and avoid deportation, the CPR must establish that: (1) deportation would result in "extreme hardship"¹⁰⁹; (2) the marriage was entered into in "good faith"¹¹⁰; or (3) during the marriage the applicant or her child was battered or subjected to extreme cruelty by the spouse or parent.¹¹¹

The 1994 amendment to IMFA allowing some battered CPRs to self-petition also imposed requirements that vary depending on the CPR's marital status. For battered CPRs who are still married, the CPR must show not only battery but also good moral character, good faith *and* extreme hardship.¹¹² By contrast, CPRs who are no longer married can apply for a waiver of the joint-petition requirement by showing battery *or* good faith *or* extreme hardship.¹¹³ This variance creates a dilemma for battered CPRs: she can remain in an abusive marriage and try to self-petition, or she can leave her abusive spouse and apply for removal of CPR status based on a different set of standards.¹¹⁴

2. *The Interview Process*—As if it were not complicated enough to complete the proper petition and navigate through sometimes contradictory evidentiary standards, the IMFA review process adds yet another hurdle: intrusive interviews. IMFA mandates that the INS interview the CPR and her

108. 8 C.F.R. §§ 216.4(a), 216.5(a) (1994).

109. 8 U.S.C. § 1186a(c)(4)(A) (Supp. V 1993); 8 C.F.R. § 216.5(a)(1) (1994). To establish "extreme hardship," the CPR bears the burden of demonstrating that she will suffer hardship beyond the degree normally associated with any deportation. In considering "extreme hardship," the INS will consider only factors that arose subsequent to the CPR's entry into the United States. 8 C.F.R. § 216.5(e)(1) (1994).

110. 8 U.S.C. § 1186a(c)(4)(B) (Supp. V 1993); 8 C.F.R. § 216.5(a)(2) (1994). For the divorced or separated CPR applying for a waiver of the joint petition requirement, INS regulations allow the director to decide whether a marriage was entered into in good faith by considering such "evidence" as commingling of finances, cohabitation, and birth of children. 8 C.F.R. § 216.5(e)(2) (1994).

111. 8 U.S.C. § 1186a(c)(4)(C) (Supp. V 1993); 8 C.F.R. § 216.5(a)(3) (1994). INS regulations define battery and extreme cruelty to include "any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence." 8 C.F.R. § 216.5(e)(3)(i) (1994).

112. *See supra* notes 106–07 and accompanying text.

113. *See supra* notes 108–11 and accompanying text.

114. This variance raises privacy and equal protection issues, discussed *infra* Part IV.A.1, 3.

spouse,¹¹⁵ if applicable, in considering the petition to remove conditional status.¹¹⁶ In the case of a joint-petition the INS must interview the couple,¹¹⁷ if the CPR self-petitions or applies for a waiver of the joint-petition requirement the INS interviews only the individual CPR.¹¹⁸ The INS, however, has discretion to waive interviews in both contexts.¹¹⁹

INS investigators have broad discretion during the interview process.¹²⁰ Investigators need not create a written record nor advise a CPR of her right to cross examine inconsistencies uncovered during the interview.¹²¹ During the interview, INS investigators may ask questions regarding the couple's courtship, their wedding ceremony, the decor of their residence, the division of household chores, and even what the applicant had for breakfast on the day of the interview.¹²² Inquiries into the most intimate aspects of the relationship are not uncommon and may include questions addressing the consummation of the marriage, the method of birth control used, and the sexual conduct of the couple before or after marriage.¹²³

III. MAIL-ORDER BRIDES AS A FORM OF TRAFFICKING IN ASIAN PACIFIC WOMEN

There appear to be two very different views of the mail-order bride traffic. One sees it as a source of marriage fraud and views the women who marry American citizens as cheating immigration restrictions. This view finds nothing wrong with the practice itself, analogizing it to a sort of cross-cultural dating service. But this is the view from the vantage point of consumer-husbands and those who profit from the traffic in

115. 8 U.S.C. § 1186a(d)(3) (1988).

116. *Id.* § 1186a(c)(1).

117. 8 C.F.R. § 216.4(b) (1994).

118. *Id.* § 216.5(d).

119. *See id.* §§ 216.4(b), 216.5(d).

120. *Investigation Policy*, *supra* note 94, at 1243.

121. *See id.* "Neither the INA nor applicable INS regulations require officials to make a transcript of the interview, to advise the spouses that they may be represented by counsel, or to make clear that any statements the spouses make may be used against them in a subsequent proceeding." *Id.*

122. *Id.* at 1242.

123. *Id.* at 1242-43. This line of questioning raises constitutional privacy concerns, discussed *infra* Part IV.A.1.

Asian Pacific women—it ignores the perspective of the mail-order brides themselves.

As Professor Delgado has noted, stories generated by society's dominant groups justify and construct a view of the world favorable to these groups.¹²⁴ While that view of the world may appear "inevitable, natural, just and best," the realities are, "for some, full of pain, exclusion, and both petty and major tyranny."¹²⁵ This Part presents challenges to those master narratives.¹²⁶

A. Immigration Fraud versus Sexual Slavery

1. *The Master Narrative: Mail-Order Brides as Perpetrators of Fraud*—To justify the passage of IMFA, the INS and lawmakers appealed to a popular image of immigrants cheating immigration restrictions. For instance, Senator Alan Simpson stated during Senate IMFA hearings that marriage fraud was "exploitation" and that aliens who marry to obtain lawful status were "gimmicking our . . . very generous immigrations laws."¹²⁷ Then-INS Commissioner, Alan Nelson, echoed these sentiments, stating that the spousal preference policy was being "abused by many people who feign legitimate relationships to circumvent the law."¹²⁸ Commissioner Nelson speculated that those who circumvent immigration laws through marriage may include "illegal worker[s], . . .

124. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2438 (1989). The analysis in this section juxtaposes the ways in which consumer-husbands and procurers view mail-order bride trafficking against the reality that the brides themselves endure. Perhaps it is because much of social reality is constructed, and therefore malleable by the dominant groups, that the two accounts offer starkly different—and sometimes contradictory—views of the same industry. See *id.* at 2416–17; see also Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1, 3 (1984) ("[W]e always see the world embedded in and embodying one of several possible stories."). See generally, JEAN-FRANCOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* 18–23 (Geoff Bennington & Brian Massumi trans., 1984) (arguing that reality is based on "the pragmatics of narrative knowledge").

125. Delgado, *supra* note 124, at 2439.

126. Counter-stories present alternative constructs of the world to "jar the comfortable dominant complacency that is the principal anchor dragging down any incentive for reform." *Id.* at 2438.

127. *Senate Hearings*, *supra* note 93, at 1 (opening statement of Sen. Alan Simpson).

128. *Id.* at 3 (testimony of Alan C. Nelson, INS Commissioner).

prostitute[s], criminal[s], narcotics violator[s], or terrorist[s]."¹²⁹ Also testifying at the hearings were unsuspecting United States citizens duped into marriage only to be divorced or abandoned after their alien spouses obtained lawful status.¹³⁰ Mail-order brides, too, were lumped together with those who marry to skirt immigration laws. For instance, Commissioner Nelson stated that mail-order brides "go through the appearance of wanting to marry and build a future life until after the actual wedding ceremony. The alien then promptly abandons his or her spouse."¹³¹ Senator Paul Simon also cited mail-order brides, "who enter[] into marriage solely for the immigration benefit,"¹³² as part of the immigration problem.

Commissioner Nelson further expressed his frustration that, once admitted to the United States, the same people who had cheated immigration quotas to gain entry became entitled to public assistance such as "SSI, unemployment compensation, HUD-subsidized housing, the AFDC program, food stamps, numerous Department of Education-funded programs including student loans and opportunity grants."¹³³

In these ways, the "master hand"¹³⁴ groups the mail-order bride with a class of immigrants prepared to dupe "an unwitting U.S. citizen or permanent resident" into a fraudulent marriage for immigration benefits.¹³⁵ Conversely, that same "master hand" situates the United States citizen *qua* consumer-husband as the potential victim of fraud to be perpetrated by the immigrant bride. Framed in this way, the logical legal solution is to shift the burden of proving that the

129. *Id.* at 17.

130. *Id.* at 42-56.

131. *Id.* at 9.

132. 132 CONG. REC. S6655 (daily ed. Apr. 8, 1986) (statement of Sen. Simon stating that spousal preference has given rise to a highly lucrative mail-order bride business in the United States). John Broussard, owner of the Rainbow Ridge mail-order bride agency, echoes this view, saying that the men are at risk of being "exploited." Hanson, *supra* note 3.

133. *Id.* at 37.

134. Professor Ikemoto describes the "master hand" as the "hand of the master narrative in social discourse" and she uses it to "evoke a sense of control felt but not seen." Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. CAL. REV. 1581, 1582 (1993).

135. 132 CONG. REC. S6655 (daily ed. Apr. 8, 1986) (statement of Sen. Simon). An INS spokesperson also stated that "generally, it's the American who is duped" by mail-order brides. Thomas Ferraro, *Mail-Order Marriage: Marriage Agencies Legal, But There Are Concerns*, UPI, Aug. 10, 1986, available in LEXIS, News Library, UPI File.

marriage was not fraudulent to the immigrant spouse¹³⁶ and to deter potential fraud by threatening the immigrant spouse with deportation during the first two years of marriage.

2. *Sexual Slavery*—While the CPR scheme seems logical when viewed from the perspective of the consumer-husband, for the mail-order bride, the CPR apparatus creates conditions akin to what Professor Kathleen Barry terms “sexual slavery.”¹³⁷ The threat of deportation under American immigration law creates a potential tool for consumer-husbands to control their mail-order brides by creating strong disincentives for the immigrant bride to leave her marriage during the first two years, even if the relationship is abusive.¹³⁸ The INS requires a showing of a viable marriage before removing the immigrant bride’s conditional status and being married is by definition more viable than being separated or divorced. Moreover, if an immigrant bride were to divorce or become separated during the conditional period, she would face the conditional status review process alone. If she were to stay in the marriage, she would more likely have her husband’s assistance in the conditional status review process, and presumably have a more credible case in the eyes of the INS.

Although IMFA allows some CPRs to remove their conditional status without their spouses, the requirements for such petitions—a showing of “extreme hardship,” “good faith,” “battery,” or “extreme cruelty”¹³⁹—present formidable barriers for many immigrant women. As to the first exception, the INS rarely waives conditional status on the basis of “extreme

136. This point was made by several people during the IMFA hearings. *E.g.*, *Senate Hearings*, *supra* note 93, at 64 (testimony of Roger L. Conner of the Federation for American Immigration Reform suggesting that the burden needs to be shifted to the person securing an immigration benefit); H.R. REP. NO. 906, 99th Cong., 2d Sess., 13 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5978, 5985 (letter from Rosemary Marcus (For Rudolph G. Penner, Director), U.S. Congress, Congressional Budget Office, to Hon. Peter W. Rodino, Jr., Chairman, House Committee on the Judiciary (Sept. 26, 1986), stating that one purpose of the CPR apparatus was to shift the burden of proof from the INS to the immigrant).

137. See BARRY, *supra* note †, at 40. According to Professor Barry, “*Female sexual slavery is present in ALL situations where women or girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation.*” *Id.*

138. See JACL Report, *supra* note 9, at 5.

139. 8 U.S.C. § 1186a(c)(4) (Supp. V 1993); see *supra* notes 108–11 and accompanying text.

hardship,"¹⁴⁰ and courts have been reluctant to interfere with the INS's narrow interpretation of this type of waiver.¹⁴¹ Even domestic abuse is not likely to qualify under this provision.¹⁴² Second, the "good faith" standard presents difficulties for applicants because it is quite vague.¹⁴³ Because the standard is so vague, INS investigators apply it inconsistently; some will accept photographs, love letters, marriage certificates or other similar documents as evidence of a marriage entered into in good faith, but others may demand different materials.¹⁴⁴ Immigrant brides also may have a more difficult time obtaining marriage records from foreign countries or may have insufficient resources to have what materials they do possess translated for the INS.¹⁴⁵

Lastly, although the definitions for "battery" and "extreme cruelty" appear quite liberal,¹⁴⁶ immigrant women still face barriers to qualifying for removal of conditional resident status under the domestic violence provision. Many immigrant women already face strong religious, marriage, family, and gender mores which hinder them from leaving abusive rela-

140. See Anderson, *supra* note 27, at 1413 (citing INS v. Wang, 450 U.S. 139, 145 (1981) and Hernandez-Patino v. INS, 831 F.2d 750, 754-55 (7th Cir. 1987)).

141. Wang, 450 U.S. at 145. The Supreme Court upheld the authority of the INS to construe the extreme hardship exception "narrowly" and to limit this remedy to cases of an "exceptional nature." *Id.*

142. See Anderson, *supra* note 27, at 1413. Note, however, that battered CPRs need not rely on "extreme hardship" petitions, as they can petition for removal of status on the basis of domestic violence. See *infra* notes 106-07 and accompanying text.

143. Interview with Estelle Chun, family law attorney with the Asian Pacific American Legal Center of Southern California, in Los Angeles, Cal. (Feb. 25, 1995) [hereinafter Chun Interview] (author's notes of Interview on file with the *University of Michigan Journal of Law Reform*).

144. *Id.* The INS generally has an extraordinary degree of discretion; outcomes are impossible to predict and different regions reach different results. Paul T. Wangerin, *A Beginner's Guide to Business-Related Aspects of United States Immigration Law*, 5 NW. J. INT'L L. & BUS. 844, 847 (1983). One court called the Immigration and Nationality Act a "never-never land . . . where plain words do not always mean what they say." Yuen Sang Low v. United States Att'y Gen., 479 F.2d 820, 821 (9th Cir. 1973). The vague definition and arbitrary application of the good-faith requirement raise possible procedural due process questions, discussed in *infra* Part IV.A.2.

145. Some Asian countries may not even offer formal documentation of marriage. Traditional Vietnamese marriages, for instance, require the couple only to visit relatives and offer gifts in order to be recognized as a married couple by their community. See Chun Interview, *supra* note 143. Korean couples may only record marriages in a family registry. *Id.* Practitioners report that while some INS investigators are sensitive to such cultural differences, many are not and will not approve petitions based on such evidence. *Id.*

146. See *supra* notes 106-07 and accompanying text.

tionships.¹⁴⁷ Even if an immigrant woman overcomes these obstacles and decides to file a petition for removal of conditional status based on domestic violence, she faces stringent evidentiary requirements to show such abuse.¹⁴⁸ For example, INS regulations require evaluations by an INS-approved professional who is recognized as an expert in the field to show mental cruelty.¹⁴⁹ To prove physical abuse, INS regulations require evidence in the form of reports and affidavits from police, judges, medical personnel, school officials, and social service agencies.¹⁵⁰ But some immigrant women fear bureaucratic entanglement and will not approach the police or other agencies for assistance.¹⁵¹ Others lack access to medical or social services to obtain the requisite evidence of abuse. The limited numbers of bilingual professionals¹⁵² prevent some from obtaining requisite reports and many immigrant women simply do not have the resources to hire professional experts.¹⁵³

Ultimately the threat of deportation, no matter how remote, creates perhaps the most formidable barrier for immigrants to

147. See Anderson, *supra* note 27, at 1420–22; Wendy Lin, *Immigrants Fear Fighting Back*, *NEWSDAY* (New York), June 10, 1991, at 23; see also Hodgin, *supra* note 16, at E3 (noting that, for some Asian communities, “divorce is a shame on the whole family” and that “[j]ust to find the opportunity and courage to call [social service agencies] is an accomplishment for many”). For many Asian Pacific women, the stigma of divorce or leaving their husbands prevents them from leaving their abusive husbands. See Chun Interview, *supra* note 143. Economic factors also may force an abused CPR to remain with her spouse; in China, for instance, aside from being viewed as a “deserter,” a woman who leaves the country by marriage to a foreign man also loses government benefits such as jobs and housing. *Id.*

148. Chun Interview, *supra* note 143. These requirements have been called “impossibly high.” Anderson, *supra* note 27, at 1417–18 (referring to the standards for proving mental cruelty).

149. 8 C.F.R. § 216.5(3)(e)(iv) (1994). The evaluation must contain the professional’s name, license number, and licensing authority, and the INS has the right to verify the professional’s license and to request additional evaluations. *Id.* § 216.5(3)(e)(v), (vi). Experts must be licensed, although unlicensed experts may be used in states that do not provide for licensing. *Id.* § 216.5(3)(e)(vii). Unlicensed experts must be included in the Register of Clinical Social Workers published by the National Association of Social Workers or certified by the American Board of Examiners in Clinical Social Work. *Id.*

150. *Id.* § 216.5(e)(3)(iii).

151. Anderson, *supra* note 27, at 1421 (“[M]any women, when faced with a complex bureaucracy that would force them to risk their safety by being confrontational, will capitulate and become undocumented. Others will simply return to their abusers.”); see also Lin, *supra* note 147, at 23 (“[I]n the case of domestic violence, some cultures discourage involvement of police into ‘family matters.’”).

152. See Anderson, *supra* note 27, at 1418.

153. See Chun Interview, *supra* note 143.

leave their abusive spouses.¹⁵⁴ Even the most liberal IMFA exceptions may be small comfort for those who live in fear of violence, who are not familiar with the fineries of immigration law, who may not be fluent in English, who may be poor and have no access to legal assistance, or who are isolated from family, friends, and other support networks.¹⁵⁵

Although the CPR scheme arguably deters fraudulent marriages, it is a poor fit when applied to mail-order brides because many immigrant brides are not likely to leave their marriages even without the threat of deportation. While some mail-order brides may marry American men to secure immigration benefits,¹⁵⁶ once they arrive in the United States they may discover substantial impediments to leaving their spouses. Having few or no friends or family, encountering language barriers, and being dependent on the consumer-husband for economic support¹⁵⁷ all make it difficult for mail-order brides to leave even abusive marriages.

Furthermore, cross-cultural relationships are inherent in mail-order marriages, and when expectations created through correspondence and letters meet with the realities of marriage and cultural differences, the resulting difficulties may exacer-

154. In one study, fear of deportation was found to be the primary barrier for immigrant women to seek help from social services. See Anderson, *supra* note 27, at 1421. This fear prompted one subject to say: "I would rather be dead in this country than go back home." *Id.* at 1421 n.127. The study concluded that many women "would rather stay in abusive relationships than risk facing the INS and deportation." *Id.* at 1422; see also Hodgin, *supra* note 16, at E3 (quoting a social service worker who stated that mail-order brides "have little or nothing to go back to. They are terrified of [INS], even if they don't need to be"). One practitioner called the fear of deportation "overwhelming" for some battered CPRs. See Chun Interview, *supra* note 143.

Shelters for immigrant women report that consumer-husbands often use the threat of deportation as a way to control their mail-order brides. See Leung, *supra* note 49, at A9. In one instance, a consumer-husband kicked his wife in the neck and face, telling her, "You do exactly what I say, or I'll call [i]mmigration." Hodgin, *supra* note 15, at E1. A worker at San Francisco's Asian Women's Shelter called the episode "typical." *Id.* One prosecutor called immigrant women "almost the perfect victims" because they cannot turn to authorities: "their legal status . . . makes them vulnerable." Lin, *supra* note 147.

155. Chun Interview, *supra* note 143. One practitioner cited to an example of an immigrant woman isolated from her community and subject to battery of her husband where she lived in the United States for four years with her husband, but never discovered that her legal status had lapsed and her husband filed for divorce without her knowledge. *Id.* A further criticism of the domestic abuse petition is that it does not cover immigrant brides during the 90-day period after they receive a fiance-petitioned visa. *Id.* Therefore, a mail-order bride abused during this period could conceivably be deported unless she stayed and married her sponsor.

156. See *supra* notes 127-32 and accompanying text.

157. Chun Interview, *supra* note 143.

bate marital problems between a consumer-husband and his bride.¹⁵⁸ CPR status complicates those difficulties for mail-order brides, especially when they are divorced, separated, or even abandoned by their husbands. Such brides face the daunting prospect of meeting arbitrary standards of "good faith," "extreme hardship," "battery," or "extreme cruelty" on their own. This creates additional incentives for any mail-order bride to remain with her spouse, however abusive. Moreover, such incentives may become so coercive that they shackle the mail-order bride into sexual slavery.¹⁵⁹

Analyzing mail-order brides as a form of sexual slavery reveals its intersections with other forms of trafficking in women: prostitution and sex tourism.¹⁶⁰ For instance, several Australian consumer-husbands have boasted that they decided to purchase mail-order brides because "it was cheaper to get an Asian wife than to get an Australian prostitute."¹⁶¹ Some marriage agencies also promote prostitution¹⁶² and many mail-order brides actually end up working as prostitutes.¹⁶³ There have been cases in Germany where consumer-husbands pimp their mail-order brides to their friends.¹⁶⁴ Organized crime and sex syndicates involved in both prostitution and sex tourism also have been known to operate mail-order bride agencies.¹⁶⁵

158. See Anderson, *supra* note 27, at 1410-11.

159. Professor Barry includes mail-order brides in her discussion of sexual slavery. Barry, *supra* note †, at xii-xiii. Elizabeth Uy Eviota also calls the mail-order bride industry one of the "more subtle forms of sexual trade." UY EVIOTA, *supra* note 18, at 140; see also Belkin, *supra* note 22, at 52 (interviewing Grace Lyu-Volckhausen, a member of the New York City Commission on the Status of Women, who stated that men who seek mail-order brides are "look[ing] for women who can be their total slaves"); *United States: Look at Violence Against Women, Democrats Told*, Inter Press Service, July 14, 1992, available in LEXIS, News Library, Inpres File (citing Patricia Eng, founder of the New York Asian Women's Shelter, who stated that through her work with Asian women, particularly mail-order brides, she "know[s] that slavery in [the United States] is alive and well").

160. The connection between these forms of international trafficking in women was suggested by Birgit Schmidt am Bursch. Schmidt am Bursch Address, *supra* note 28.

161. Seneviratne, *supra* note 3.

162. Cf. UY EVIOTA, *supra* note 18, at 140 (stating that "a number of marriage bureaux are actually fronts for prostitution"); Lan Cao, Note, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297, 1301 (1987) (noting that many mail-order bride agencies "are fraudulent organizations used as prostitution fronts").

163. See UY EVIOTA, *supra* note 18, at 140. "Philippine embassies in Europe have sent reports back to Manila that some of the match-making bureaux are really syndicates forcing the newly-arrived Filipinos into prostitution." Callo, *supra* note 16.

164. See Nakanishi, *supra* note 16.

165. Keith Stafford, *Japanese Gangs Extend Their Criminal Tentacles Worldwide*, Reuters N. Eur. Service, Jan. 11, 1987, available in LEXIS, News Library, Reuwlid

Mail-order brides and prostitutes also receive similar treatment under the law. Just as the threat of deportation has long been a way for pimps to keep immigrant prostitutes from leaving¹⁶⁶ and laws criminalizing prostitution generally are enforced against prostitutes instead of pimps or customers,¹⁶⁷ mail-order brides facing deportation under immigration law bear the sole risk of engaging in the activity while the bridal agency-pimp and consumer-john escape legal scrutiny.

As for sex tourism, the same countries that export mail-order brides are also the prime destinations for sex tourism.¹⁶⁸ In the late 1970s when the Asian and Pacific mail-order bride business boomed,¹⁶⁹ sex tourism in Asia also hit new heights.¹⁷⁰ Bridal tours seem like less expensive versions of sex tours, the bargain being that the man gets to "court" immigrant women but pays the agency only if he marries.¹⁷¹ In Australia, 80 out of 110 consumers of mail-order brides are "serial sponsors" who have sponsored more than one bride.¹⁷²

Unfortunately, the CPR apparatus acts as yet another mechanism forcing immigrant brides to submit to exploitation, sexual or otherwise. The requirements for converting from conditional to permanent resident status indicate that consummation of marriage, having children, using birth control, or performing domestic services (evidence of doing housework)

File; *Japanese Sex Syndicate Members Arrested in Manila*, Xinhua Gen. Overseas News Service, Mar. 10, 1988, available in LEXIS, News Library, Xinhua File.

166. See Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 188-90 (1994).

167. Cao, *supra* note 162, at 1305-06. In 1979, only 1 of every 10 people arrested on prostitution-related charges was a customer. *Id.* at 1305 & n.42.

168. Compare UY EVIOTA, *supra* note 18, at 137 (discussing the multi-million dollar sex tourism industry in the Philippines) and THANH-DAM TRUONG, SEX, MONEY AND MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA 158, 161-80 (1990) (focusing on the expansive sex tourism industry in Thailand) with text accompanying *supra* notes 27-28 (listing Thailand, Sri Lanka, India, Taiwan, Macao, South Korea, Hong Kong, and the Philippines as the primary exporters of mail-order brides). The customers of sex tours and foreign prostitution also tend to be of the same nationality as the consumer-husbands of mail-order brides. Compare UY EVIOTA, *supra* note 18, at 138 (noting that, in the Philippines in the late 1970s, the primary clients of prostitutes were the Japanese, Australians, Americans, and Europeans) with text accompanying *supra* notes 45-47 (listing American, Australian, Canadian, Western European, and Japanese men as the usual consumer-husbands of mail-order brides).

169. See *supra* notes 16-24 and accompanying text.

170. See, e.g., UY EVIOTA, *supra* note 18, at 137 ("In the late [1970s], at the height of sex tourism [in the Philippines], there were an estimated 350,000 women employed in the hospitality industry.").

171. See *supra* notes 81-83 and accompanying text.

172. Isberto, *supra* note 32.

can be sufficient to show a viable marriage.¹⁷³ But these standards actually prescribe what immigrant women must do to fulfill their two-year warranty: offer sexual services (i.e., consummation of marriage, having children, using birth control), offer domestic labor (i.e., housework, chores), or void the warranty by being abused (i.e., the domestic violence exception). In other words, the viability standard used by the INS not only creates obstacles for mail-order brides to leave consumer-husbands, but also tells them that they may be deported unless they give their consumer-husbands their money's worth. Thus, the CPR apparatus works like a consumer protection by giving consumer-husbands a sort of two-year guaranty that they get what they paid for.

B. International Matchmaking versus Subordination

1. The Master Narrative: Legitimate Cross-Cultural Dating Service—Some see the mail-order bride business as an international personal ad service. One mail-order bride agency depicts the practice of purchasing wives for money as a choice made by “‘consenting adults [and] competent people.’”¹⁷⁴ An Australian government official stated: “There are lonely people out there, sometimes desperate to meet someone. How can you stop that?”¹⁷⁵ An INS spokesperson said: “‘It’s a perfectly legitimate business.’”¹⁷⁶ In 1989, after a nine-month investigation, Sweden’s Ombudsman Against Ethnic Discrimination concluded that the mail-order bride business was not unethical or unlawful:

Even if a woman who comes to Sweden is treated like a slave and the man uses, abuses and violates her rights, it is not easy to cast the blame on the marriage broker

Some people simply prefer meeting their partners through an agency. Just because the agencies make money

173. See *supra* notes 105, 122–23 and accompanying text.

174. Hanson, *supra* note 3 (quoting John Broussard, owner of the Hawaii-based Rainbow Ridge mail-order bride agency).

175. Callo, *supra* note 16.

176. Henneberger, *supra* note 21, at 6 (quoting Richard Kenney of the INS).

is not enough cause for condemnation. Neither is the fact that some may choose partners on the basis of nationality

....

....

It would be too difficult to decide on where to draw the line in a free society.¹⁷⁷

2. *Cross-Border Inequalities: Gender, Class, and Ethnic Subordination*—Unlike dating services or personal ads, the mail-order bride transaction is one where the consumer-husband holds all the cards: he has access to, and chooses from, a pool of women; he has all the information about the potential bride laid out in a catalog while potential brides often know little or nothing about their potential husbands;¹⁷⁸ he seeks a sexual partner-cum-servant,¹⁷⁹ while potential brides face inordinate pressures to satisfy; he is financially sound whereas potential brides come from impoverished countries; he is a citizen or permanent resident whereas potential brides are seeking a way into the United States; and he has the threat of deportation available to him through IMFA whereas potential brides will live under that threat once they are married.¹⁸⁰ In other words, unlike dating services or personal ads, there is a great disparity in power between the parties. Oftentimes the only choice available to immigrant brides is between living in poverty or being trafficked to Western men.¹⁸¹

Moreover, the mail-order bride traffic is driven by a transnational web of subordination rooted in gender, class, and ethnicity. The fact that men seeking sex partners drive the market for mail-order brides illuminates the gender dynamics

177. *Swedish Study Says Mail-Order Brides Are Legal*, Reuters Libr. Rep., Feb. 14, 1989, available in LEXIS, News Library, Reuwlid File (quoting Gunilla Upmark of the Ombudsman Against Ethnic Discrimination).

178. JACL Women's Concerns Comm., Japanese American Citizens League, *Mail-Order Asian Women Catalogues: Questions and Answers 1-2* (Spring 1985) [hereinafter JACL Questions & Answers] (printed as an attachment to JACL Report, *supra* note 9).

179. See JACL Report, *supra* note 9, at 2.

180. See JACL Questions & Answers, *supra* note 178, at 2; *supra* Part I.

181. One mail-order bride from Thailand, Wanwadee Larsen, wrote positively about her experience, yet when she returned to Thailand after her marriage she found that the friend who had suggested that she become a mail-order bride had begun working as a prostitute in Bangkok. See Cynthia Kadohata, *More Than He Bargained For*, N.Y. TIMES, Jan. 7, 1990, § 7, at 15 (reviewing WANWADEE LARSEN, CONFESSIONS OF A MAIL ORDER BRIDE: AMERICAN LIFE THROUGH THAI EYES (1989)). Thus, brides in Mrs. Larsen's position may face but two alternatives: be a prostitute or be a mail-order bride.

at work. Class and gender dynamics may reinforce one another in that consumer-husbands tend to be well-educated and financially sound¹⁸² whereas mail-order brides typically come from impoverished countries.¹⁸³ The mail-order bride's Asian Pacific ethnicity may further intersect with the gender and class dynamics already at work, creating more inequalities in that the traffic is driven by consumers looking for their submissive "number one Asian lady."¹⁸⁴

Gender, class, and ethnicity transcend borders in that variations of sexism, classism, and racism operate both in Western and in Asian countries. Sexism in the Philippines, even well-educated women take jobs abroad as domestic workers or marry foreign men because of the lack of opportunities for women.¹⁸⁵ In Thailand, it is acceptable for poor families to sell their daughters into prostitution even before they finish primary school.¹⁸⁶ The racism driving the mail-order bride market extends beyond Caucasian men purchasing Asian Pacific women; racism also fuels the demand of Japanese men for mail-order brides.¹⁸⁷ These marriages reveal a different brand of racism in a different habitus.¹⁸⁸ In Asia, the history of trafficking Filipina, Korean, Thai, and other Asian Pacific women to Japanese men reveals an ethnic hierarchy with Japan at the top.¹⁸⁹ Where Asian men in other developed

182. See *supra* note 48 and accompanying text.

183. See *supra* notes 36–37, 52 and accompanying text.

184. Hanson, *supra* note 3.

185. Mydans, *supra* note 42, at A9 (reporting that 40% of the Filipinas working as domestic workers in Hong Kong have professional skills). There is a tradition of exporting Filipinas abroad as domestic workers to support the women's families. See *supra* notes 42–43 and accompanying text. An additional implication is that "[w]hen young women leave, the burden of household work [in their families] then rests solely on the mothers who stay behind." UY EVIOTA, *supra* note 18, at 142.

186. See Rodney Tasker, *Alone In a Man's World: Female Governor Fights Child Prostitution*, FAR E. ECON. REV., Jan. 12, 1995, at 28, 28.

187. See Kakuchi, *supra* note 20 (noting that "non-Japanese Asian women are popular with Japanese men because they are considered easier to control than their Japanese counterparts").

188. "Habitus" is a concept proposed by Pierre Bourdieu. A habitus is composed of a class of persons who, when faced with similar conditions and social variables, generate similar practices with some regularity. See PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE* 101 (Richard Nice trans., 1984). It organizes groups of persons within a complex set of social conditions based on the regularity of their acts and strategies. See PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* 72–73 (Richard Nice trans., 1977).

189. During World War II, Japanese Army troops forced 200,000 women from Korea and the Philippines to work as "comfort girls" for the soldiers. See BARRY, *supra* note †, at 75. Today, women from countries such as Taiwan, Thailand, and the

countries, such as the United States, are consumer-husbands,¹⁹⁰ racism may be less of a factor than sex and class, but this only amplifies the point that racism alone cannot explain the web of subordination. Depending on particular contexts, ethnicity, together with gender, class, and variations in their habitus, compose interlocking and intersecting explanations for the root causes of the mail-order bride industry. Perhaps what is eroticized is not the Asian Pacific bride's gender or class or ethnicity, but rather the inequality of power *created by her gender, class, and ethnicity*. In other words, what is so sexy about buying a wife is perhaps the ability for a consumer-husband to be able to choose her, to control her, to abuse her, and in some instances to kill her. Seen in this light, CPR status arguably goes beyond consumer protection—it is a part of the inequality which makes purchasing wives so appealing.¹⁹¹

D. A Historical Context

Although the demand for Asian Pacific women as mail-order brides has increased dramatically in the last fifteen to twenty years while the threat of deportation created by the CPR apparatus has existed only since 1986, both the traffic of Asian Pacific women and the targeting of Asian Pacific women through immigration law have deeper historical roots.

1. *The Eroticization of Asian Pacific Women*—Part of what drives the demand for Asian Pacific brides is the image of Asian Pacific women in the American consciousness as erotic beings.¹⁹² Asian Pacific women first entered the American consciousness as sexual beings in the late 1800s and early 1900s, when legislative efforts singled out Chinese prostitutes because it was thought that they brought “especially virulent

Philippines sometimes are smuggled into Japan to work as prostitutes. See Stafford, *supra* note 165.

190. See generally Leung, *supra* note 49 (discussing Chinese-American men ordering brides from China).

191. See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 3 (1987) (arguing that “[m]en in particular, if not men alone, sexualize inequality, especially the inequality of the sexes”).

192. See *supra* notes 57, 58, 61, 63–66, 69 and accompanying text; cf. JACL Report, *supra* note 9, at 1 (noting that thousands of American men are “searching for their personal ‘Oriental flower’”).

strains of venereal disease, introduced opium addiction, and enticed 'young white boys' to a life of sin."¹⁹³

Closer to the current mail-order bride phenomenon, American military sexual colonialism played a key role in eroticizing Asian Pacific women in the modern American consciousness.¹⁹⁴

Beginning in post-World War II Japan, the Japanese government procured Japanese "comfort girls" for the United States Occupation Forces.¹⁹⁵ As American soldiers replaced the French in Indochina, Vietnamese prostitutes served American servicemen.¹⁹⁶ By the mid-1960s, Thai and Laotian women also served American troops in Vietnam.¹⁹⁷ During the same period, American troops had access to Filipina prostitutes when they took leave at Subic Naval Base in the Philippines.¹⁹⁸

When American servicemen returned to the United States, they also brought back impressions of Asian Pacific women as

193. See Sucheng Chan, *The Exclusion of Chinese Women 1870-1943*, in *ASIAN AMERICANS AND THE LAW* 2, 46 (Charles McClain ed., 1994).

194. Professor Barry notes that any traffic in women depends upon a market. BARRY, *supra* note †, at 70. The demand for sexual services is most significant where men congregate in large groups separated from home and family, as in the military. *Id.* In Indonesia, for instance, from the mid-1890s to 1913, prostitution was regulated to enable the Netherlands' Indies Army soldiers to satisfy their sexual desires. TRUONG, *supra* note 168, at 80. In India, British military authorities maintained a provision of Indian women to serve British soldiers in Bombay from 1793 to 1905. *Id.* As for American servicemen, one United States Army training routine goes: "This is my rifle / This is my gun / One is for killing / The other is for fun." *Id.* at 158. One former American soldier wrote: "At 17, I joined the Navy during World War II. It wasn't long before I was exposed to an all-too-common sight: the use of prostitutes The message I received in boot camp was not to avoid sexual contact, but to use protection." Jim Fitzgerald, *For True Equality, Let's Try Peace for All*, DET. FREE PRESS, Apr. 16, 1993, at 8G.

The Philippines—the primary exporter of mail-order brides today—provide a good case study of American military sexual colonialism. Five cabarets with fewer than a dozen prostitutes operated near Subic Naval Base outside Manila before the Vietnam War. UY EVIOTA, *supra* note 18, at 135. As the United States increased its presence in Vietnam, Subic became the "rest and recreation" stop for the American military; from 1964 to 1973, a daily average of 9,000 military personnel were taking their leave at the base. *Id.* at 136. By 1979, there were 9,056 registered hostesses and entertainers and 8,000 streetwalkers near Subic. *Id.*

195. BARRY, *supra* note †, at 75. At its height, as many as 70,000 "comfort girls" were employed by the "Recreation and Amusement Association." *Id.* at 75-76. "[A]rmy brothels literally sprouted up before the smoke could clear from the bombed-out rubble of Tokyo, and within three months there were twenty-five such brothels." *Id.* at 76 (quoting Matsui Yoyori, *Sexual Slavery in Korea*, FRONTIERS J. WOMEN'S STUD., Spring 1977, at 27, 28).

196. *Id.* at 71.

197. See *id.* at 72. By 1972, American bases in Vietnam officially welcomed prostitutes as "local national guests." *Id.* Toward the end of the Vietnam War, between 300,000 and 500,000 prostitutes worked in South Vietnam. *Id.*

198. See *supra* note 194.

"prostitutes, bargirls and geishas."¹⁹⁹ In other words, the image of Asian Pacific women that the GI's brought home was that of a sexual object: "a doll, a useful toy or something to play with."²⁰⁰ Some cite to this as what spawned the mail-order bride industry.²⁰¹ The boom in demand for Asian Pacific mail-order brides in the 1970s²⁰² correlates with the withdrawal of United States servicemen from Southeast Asia. The continuing eroticization of Asian Pacific women, propagated through film,²⁰³ pornography,²⁰⁴ music,²⁰⁵ and now cyberspace²⁰⁶ may help sustain the current demand for Asian Pacific women's sexual labor.

2. *Immigration Measures Targeting Asian Pacific Women*—American immigration policies have had a paradoxical history of both supporting the traffic of Asian Pacific women into the United States and—sometimes simultaneously—targeting Asian Pacific women for exclusion or deportation, often specifically based on their marital relations.²⁰⁷

199. Villapando, *supra* note 14, at 324.

200. Evelyn Yoshimura, *GI's and Racism*, in *ASIAN WOMEN* 74 (1971). One joke among the GI's was that "Asian women's vaginas weren't like a white woman's, but rather they were slanted, like their eyes." *Id.*

201. *E.g.* Renee Tajima, *Lotus Blossoms Don't Bleed: Images of Asian Women*, in *MAKING WAVES*, *supra* note 13, at 308, 309–10; Villapando, *supra* note 14, at 324–25 (discussing how American military involvement in Asia created stereotypes among American men which have fostered the growth of the mail-order bride industry).

202. *See supra* notes 16–22 and accompanying text.

203. For a general discussion of stereotypes of Asian Pacific women in film, see Tajima, *supra* note 201, at 308.

204. *See* MICHAEL STEIN, *THE ETHNOGRAPHY OF AN ADULT BOOKSTORE: PRIVATE SCENES, PUBLIC SPACES* 60–61 (1990). Adult bookstores line their shelves with magazines entitled *Oriental Pussy* and *Hong Kong Hookers*, and videos such as *Oriental Orgasm*, *Asian Beauty*, *Oriental Lesbians*, *Dong Whore*, and *Rising Sun*. *Id.* at 61.

205. In a song about "sex packets"—pills that induce various sexual dreams, depending on the contents of each packet—the rap group Digital Underground sings: "Chinese girl, age 17, hips 32, waist 23." DIGITAL UNDERGROUND, *Sex Packets*, on *SEX PACKETS* (Tommy Boy Music, Inc. 1990).

206. One service accessible on the information superhighway is *Oriental Fetish*, which advertises: "Worship the exotic. Experience the mystery of the Far East by plunging yourself head first into its people and culture. Learn the secrets of Oriental sexuality." THE INTERNET YELLOW PAGES 284 (Harley Hahn & Rick Stout eds., 1994).

207. Immigration laws have had a long history of discrimination against Asian Pacific people in general, not just against Asian Pacific women. The United States banned Chinese immigration in 1882, Act of May 6, 882, ch. 126, 22 Stat. 58; Japanese immigration in 1907, Exec. Order No. 589 (1907); immigration by Asians in general in 1917, Act of Feb. 5, 1917, ch. 29, § 2, 39 Stat. 875; and Filipinos in 1934, Act of Mar. 24, 1934, ch. 84, § 8, 48 Stat. 462. Discrimination against Asians allowed to immigrate into the United States also has roots in anti-immigrant fervor and implications of lawful status and citizenship. Between 1886 and 1925, the states of California and Washington enacted alien land laws prohibiting Asian Pacific

The first Asian Pacific immigrants were male laborers who arrived in the United States in the mid-1800s to work on railroads and in mines.²⁰⁸ They usually came without wives or families because most expected eventually to return to their home countries.²⁰⁹ As public sentiment turned against Asian male laborers, Congress enacted exclusionary measures prohibiting immigration from Asian countries to the United States.²¹⁰ These immigration laws locked in the disproportionate male-female ratio among Asian Pacific immigrants: for Chinese immigrants, the ratio was almost nineteen men for every woman from 1860 to 1900;²¹¹ for Japanese immigrants, the ratio was approximately twenty-four men for every woman by 1900.²¹² During this same period, states such as California passed anti-miscegenation laws to prevent "intermarriage of white persons with Chinese, negroes, mulattoes, or persons of mixed blood, [or] descended from a Chinaman or negro."²¹³ Separated from the women in their home countries and prevented from having relations with white women, Asian Pacific male laborers felt a certain social dislocation that produced a

Americans from owning and restricting their rights to lease land. See HYUNG-CHAN KIM, *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* 604-05 (1992). Before the time when Asian immigrants were allowed to become citizens, laws affecting those ineligible for citizenship were used specifically to target Asian immigrants. See, e.g., *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 413 (1948) (noting that the predecessor to the challenged law restricting fishing licenses had explicitly applied only to Japanese). Asian immigrants were not allowed to naturalize until as late as the 1940s. See Act of Dec. 17, 1943, ch. 344, 57 Stat. 600, 600-01 (repealing "Acts or parts of Acts relating to the exclusion or deportation of persons of the Chinese race" and permitting an allocated quota of Chinese persons to immigrate); Immigration and Nationality Act, ch. 477, § 403, 66 Stat. 279 (1952) (repealing Act of Feb. 5, 1917, which prevented Japanese and other Asians from immigrating). Brief for *Amici Curiae* at 5-10, *Antonio v. Wards Cove Packing Co.*, 10 F.3d 1485 (9th Cir. 1993), cert. denied, 115 S. Ct. 57 (1994) (on file with the *University of Michigan Journal of Law Reform*).

208. See Megumi Dick Osumi, *Asians and California's Anti-Miscegenation Laws*, in *WOMEN'S PERSPECTIVES*, *supra* note 13, at 1-3.

209. *Id.*

210. E.g., Chinese Exclusion Act of May 6, 1883, 27 Stat. 25. The constitutionality of this Act was upheld in *Chan Chae Ping v. United States*, 130 U.S. 581 (1889). The Court appeared to be swayed by the fear that Chinese laborers were taking jobs away from "Americans." *Id.* at 599-603.

211. See Osumi, *supra* note 208, at 8. The ratio remained high after 1900: approximately 7 to 1 in 1920 and 1.4 to 1 in 1950. *Id.*

212. Gee, *supra* note 13, at 66-67 (specifically, there were 23,841 Japanese men and 985 Japanese women).

213. Proposed amendment to the California Constitution presented at the California Constitution Convention of 1878-1879, as cited in Osumi, *supra* note 208, at 6 & n.30. This amendment was adopted subsequently in 1879. Osumi, *supra* note 208, at 6. The California legislature later amended this law to include Japanese and Filipino immigrants. *Id.* at 2.

demand for Asian Pacific prostitutes.²¹⁴ Despite exclusionary immigration measures, a traffic of Asian Pacific women as prostitutes flourished: by the late 1800s, the majority of Chinese women allowed to immigrate in California worked as prostitutes.²¹⁵ Thus, immigration measures played an indirect but certain role in creating a demand for the traffic of Asian Pacific women in the nineteenth century.

Simultaneously, immigration laws were used to exclude or deport Asian Pacific women. In the late 1800s, Congress passed measures forbidding the entry of Chinese prostitutes into the United States.²¹⁶ Although the specific reference to Chinese prostitutes was deleted in 1874, the effect of this hostility towards Chinese prostitutes was to restrict the admission of Chinese women generally.²¹⁷ Later, federal laws excluding Chinese immigration were used to harass Chinese women residing in the United States.²¹⁸ After Congress passed exclusion laws, the marital status of Asian Pacific women became a factor in their immigration status, as it is today in the IMFA context. For instance, American citizens of Chinese descent who married non-citizens "lost" their American citizenship if they left the United States.²¹⁹ As a result, Chinese women were subject to exclusion or deportation depending on their marital status and their spouses' citizenship status and occupation²²⁰ and "an untold number of Chinese women lived under a virtual reign of terror."²²¹

214. For a discussion of similar immigrant male work forces and other factors which created the demand for sexual services in the 1970s, see BARRY, *supra* note †, at 80–83.

215. Lucie Cheng Hirata, *Chinese Immigrant Women in Nineteenth Century California*, in *WOMEN'S PERSPECTIVES*, *supra* note 13, at 46. This was accomplished by fraudulent promises of marriage, *id.* at 42–43, and sometimes bribes to immigration officials sufficed. *See id.* at 43 (explaining that traffickers had to share their profits with "lawyers and immigration inspectors in San Francisco").

216. *See* Chan, *supra* note 193, at 5–7.

217. *Id.* at 7. In one instance in 1874, 22 of 89 Chinese women trying to enter the United States through San Francisco in 1874 were detained on suspicion of being prostitutes. *Id.*

218. *Id.* at 35.

219. *E.g.*, *Ex parte* (Ng) Fung Sing, 6 F.2d 670, 671 (W.D. Wash. 1925) (citing the Immigration Act of 1924 with respect to immigration and exclusion laws that excluded Chinese American citizens who left the country to marry a Chinese citizen).

220. Chan, *supra* note 193, at 17–40 (discussing how, at various points after 1920, Chinese women were subject to deportation or exclusion sometimes depending on the employment status of their husbands).

221. *Id.* at 45.

In the middle of this century, the role that marital status played once again was reversed, as marital relations no longer excluded Asian Pacific women but rather allowed them to immigrate. As a result of the deployment of troops in Asia during World War II, over 200,000 Japanese, Vietnamese, Thai, Korean, and Filipina women immigrated to the United States by marrying American servicemen as "war brides."²²² Similarly, at the close of the Vietnam War, American servicemen brought Vietnamese prostitutes into the United States by using family preferences in immigration law:

Within a week [of the end of the war], there were few beautiful prostitutes in Saigon. Young Americans made the rounds of virtually every bar and whorehouse in the capital to round up women and sponsor them out of the country. One man claimed he made four trips in and out of Saigon, each time leaving with another "wife" and several "sisters-in-law."²²³

Seen in this historical context, IMFA's CPR apparatus, in which a mail-order bride's lawful status and ability to remain in the United States depend on her marital relations, raises the specter of past discriminatory immigration laws. Previous laws, like IMFA's CPR apparatus today, simultaneously discriminated against and supported the traffic of Asian Pacific women.

222. See Anderson, *supra* note 27, at 1406. The experiences of Asian Pacific war brides are strikingly similar to the experiences of many mail-order brides today:

The dominant theme that ran through the war bride marriages was that of female powerlessness. As a result of the circumstances surrounding their marriages and immigration, these women had few resources (including social support) that would give them leverage in the conjugal relationship. Separation and often estrangement from kin, social isolation, inability to speak English, and restricted employment options placed these women at a considerable disadvantage vis-à-vis their husbands, as well as in relation to the larger society.

EVELYN NAKANO GLENN, ISSEL, NISEI, WAR BRIDE: THREE GENERATIONS OF JAPANESE AMERICAN WOMEN IN DOMESTIC SERVICE 231-32 (1986). Leaving one's family, adjusting to a new culture and language, confronting limited economic resources, facing racism, and feeling alienated from old communities and identities all contributed to a sense of powerlessness for many war brides. *Id.* at 241-42. As one Japanese war bride said of her marriage and her spouse, "As long as he's got a good job, got a good home, better stay even if the husband is terrible." *Id.* at 233 (internal quote marks omitted).

223. BARRY, *supra* note †, at 72 (citations omitted). Vietnamese prostitutes also were trafficked to Germany, Hong Kong, and Thailand. *Id.* at 73-74.

IV. AN AGENDA FOR REFORM

This Part suggests various strategies to eliminate the coercive effects of the two-year conditional status and to stem the traffic in mail-order brides. This Part also attempts to address the subordination of Asian Pacific mail-order brides in its different facets, from the everyday hardships of individual brides to the systemic causes that drive the entire industry.

The first step is to dismantle the CPR apparatus and the threat of deportation that it embodies. This will reduce the fear and coercion that dominate the daily lives of many immigrant brides.²²⁴ Next, strategies should be implemented to curb the forces driving this industry—a demand for and ready access to Asian Pacific women.

We already have taken the preliminary step toward reform by examining the mail-order bride phenomenon in all its complexity. As discussed in Part III, the industry arises out of a complex intersection of gender, class, ethnicity, geography, culture, colonial history, and other dynamics which operate across national borders. As such, no single solution or strategy can address all of the dynamics driving the industry. As Foucault suggested, “power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations.”²²⁵ Because “there is no single locus of great Refusal, no soul of revolt, source of all rebellions, or pure law of the revolutionary,” there must be “a plurality of resistances.”²²⁶

A. *Removing the Threat of Deportation*

One strategy to protect mail-order brides is to dismantle the CPR apparatus. This section suggests a number of legal

224. See MICHEL FOUCAULT, *Two Lectures*, in *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972–1977*, at 78, 96 (Colin Gordon ed. & Gordon et al. trans., 1980) [hereinafter *POWER/KNOWLEDGE*] (urging an effort against examining domination solely on “global” terms by focusing on where domination operates at its “capillary,” i.e. on a local level where it appears everyday); see also MICHEL FOUCAULT, *Truth and Power*, in *POWER/KNOWLEDGE*, *supra*, at 109, 116 (arguing that power must be analyzed “on the basis of daily struggles at grass roots level, among those whose fight was located in the fine meshes of the web of power . . . where the concrete nature of power [becomes] visible”).

225. MICHEL FOUCAULT, 1 *THE HISTORY OF SEXUALITY* 94 (Robert Hurley trans., 1978).

226. *Id.* at 95–96.

challenges to the constitutionality of the CPR status as applied to mail-order brides. Each aims to lessen or remove altogether the threat of deportation, which coerces many immigrant brides into remaining in relationships which they might otherwise leave.

1. *Right to Privacy*—The INS procedure of investigating a CPR and her spouse's marital conduct may violate the right to privacy.²²⁷ Activities within the constitutionally protected "zones of privacy" include "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education."²²⁸ These matters are protected against governmental intrusion by an individual's right to avoid "disclosure of personal matters"²²⁹ and by the right to have "independence in making certain kinds of important decisions."²³⁰ The INS interview process for investigating the viability of a marriage—even the CPR scheme itself—intrudes into both aspects of the right to privacy.

The practice during INS interviews of asking about sexual history, the degree of intimacy between the couple, and birth control practices forces CPRs to disclose constitutionally protected personal matters involving marital affairs. And by prescribing activities which qualify as evidence of a viable marriage—commingling assets, cohabitation, having children, and consummation of marriage²³¹—the CPR scheme unconstitutionally affects a couple's decisions in these deeply private marital matters. A couple, for instance, may wish to keep separate bank accounts, abstain from sexual relations, live apart, or not have children, but, in doing so, the couple runs the risk of having their petition to remove the immigrant spouse's conditional status denied.²³² In other words, the

227. This is an argument advanced in detail in *Investigation Policy*, *supra* note 94, at 1243–51.

228. *Paul v. Davis*, 424 U.S. 693, 712–13 (1976); *see also* *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (stating that marriage is "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees").

229. *Whalen v. Roe*, 429 U.S. 589, 599 (1977). This has been called "the right to be let alone." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

230. *Whalen*, 429 U.S. at 599–600; *see also* *Roe v. Wade*, 410 U.S. 113, 152–53 (1973) (holding that constitutional right to privacy protecting marriage- and family-related activities also protect women's decisions to have certain abortions); *Loving v. Virginia*, 388 U.S. 1, 12 (1966) (recognizing "the freedom to marry . . . as one of the vital personal rights" protected by the Fourteenth Amendment).

231. *See supra* text accompanying notes 105, 122–23.

232. *Id.* Another dangerous aspect of prescribing certain marital activities is that the CPR scheme imposes American norms about marriage upon an inherently cross-

immigrant spouse runs the risk of deportation unless she engages in the marital and other private activities prescribed by the CPR scheme. Moreover, the recently-adopted Violent Crime Control and Law Enforcement Act of 1994 creates a variance in requirements to remove a CPR's conditional status based on her marital status; a CPR may face less onerous requirements if she divorces or becomes separated from her spouse,²³³ yet she also may wish to remain unmarried in order to take advantage of the self-petitioning option.²³⁴ Either way, this variance in the IMFA apparatus threatens to interfere with a CPR's decision making in regard to a constitutionally protected private matter.

2. *Procedural Due Process*—INS regulations promulgated pursuant to IMFA raise procedural due process concerns relating to vagueness.²³⁵ The void-for-vagueness doctrine dictates that a law must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."²³⁶ Laws must be formulated so that "ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."²³⁷ The IMFA standards of "good faith" and marriage "viability" which must be met to prove that a marriage is not fraudulent are not only vague but also are enforced by different INS districts in an arbitrary manner.²³⁸ Arguably, these definitions are so vague as to violate procedural due process.

Other due process concerns also may arise out of regulations yet to be promulgated pursuant to the Violent Crime Control and Law Enforcement Act of 1994. One requirement under the 1994 amendment of IMFA is that a battered CPR be of "good

cultural relationship. See *Investigation Policy*, *supra* note 94, at 1246. The INS may claim a legitimate state interest in detecting marriage fraud to justify its intrusion—this weakness to privacy-based, and other constitutional, challenges to IMFA is discussed *infra* Part IV.A.4.

233. See *supra* text accompanying notes 106–07.

234. See *supra* notes 106–07 and accompanying text.

235. Procedural due process is not always available to aliens. See *Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."); see also *Rafeedie v. INS*, 880 F.2d 506 (D.C. Cir. 1989) (holding that a resident alien is entitled to due process in connection with deportation proceedings). However, the Supreme Court consistently has held that due process is extended to aliens who have entered the United States. See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Rosenberg v. Fleuti*, 374 U.S. 449, 460 (1963).

236. *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

237. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

238. See *supra* notes 143–44 and accompanying text.

moral character.”²³⁹ Courts have required that determinations of “good character” be applied in accordance with procedural due process.²⁴⁰ Moreover, should the INS retain existing definitions of “extreme hardship” or “battery” or “extreme cruelty” for the new self-petition provision, there may be due process concerns about whether such agency rulemaking is consistent with congressional intent. Courts have invalidated regulations which are inconsistent with enabling statutes for violating procedural due process.²⁴¹ The rationale is that if an agency promulgates rules which are inconsistent with the statutory authority set forth in the enabling statute, that agency has exceeded its constitutional authority.²⁴² Before 1994, a discrepancy between broad statutory authority to allow waivers for domestic violence and stringent evidentiary standards required by INS regulations led a sponsor of IMFA to question whether the INS regulations are consistent with congressional intent.²⁴³ The 1994 amendment requires that the INS consider “any credible evidence relevant to the petition.”²⁴⁴ If the INS retains the previous onerous evidentiary requirements, the result of the 1994 amendment would have the effect of making battered CPRs who are still married face even more stringent standards than before. In light of the new statutory language which seems to indicate an intent to create a more relaxed standard, it is arguable that those requirements violate procedural due process.

239. See *supra* text accompanying note 107.

240. *E.g.*, *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963) (holding that applicant denied opportunity to engage in livelihood because of character is entitled to notice and a hearing); *Goldsmith v. United States Bd. of Tax Appeals*, 270 U.S. 117 (1926) (holding that applicant whose application for admission to practice was denied after an *ex parte* investigation is entitled to notice and a hearing).

241. *E.g.*, *Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) (holding that courts must reject “administrative constructions of the statute . . . that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement”). The Court formulated a 2-prong test for this type of procedural due process analysis in *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842–45 (1984).

242. *E.g.*, *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 26 (1982) (holding that regulations “fundamentally at odds with the manifest congressional design” exceed authority conferred by Congress and are thus invalid).

243. Representative Bruce Morrison, sponsor of the 1990 amendment to IMFA, stated in a 1992 interview that “the law we passed made no specific requirement for medical or professional evidence.” Anderson, *supra* note 27, at 1419 and n.111 (quoting Interview with The Hon. Bruce Morrison, Former Member of Congress, in New Haven, Conn. (Mar. 10, 1992)).

244. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 40701, 108 Stat. 1953, 1954 (to be codified at 8 U.S.C. § 1154(a)(1)(H)).

3. *Equal Protection*—The differing requirements created by the Violence Crime Control and Law Enforcement Act of 1994 for married, divorced, and separated CPRs who are battered make possible an equal protection challenge.²⁴⁵ One principle of equal protection is that all persons similarly situated should be treated alike, and classifications which fail to do so are subject to constitutional review.²⁴⁶ As discussed in Part II, battered CPRs who are still married must show not only battery but also good moral character, good faith, and extreme hardship, whereas an unmarried CPR can apply for a waiver of the joint-petition requirement and only show battery, good faith, or extreme hardship.²⁴⁷ If anything, the INS should be perhaps more suspicious of petitions from divorced or separated CPRs than from married CPRs, yet married CPRs are the ones who face tougher requirements in the domestic abuse context. In addition, creating an incentive for battered women to remain married in order to take advantage of self-petitioning seems illogical, if not foolish. This distinction may not survive even rational basis review under an equal protection challenge.²⁴⁸

4. *Disadvantages to Constitutional Challenges*—The strategy of challenging the conditional permanent resident status on constitutional grounds faces several potentially serious barriers. Courts traditionally have deferred to Congress on matters of immigration on the ground that Congress has plenary power in the immigration arena.²⁴⁹ The federal

245. Equal protection principles are applied to federal actions through the Fifth Amendment Due Process Clause. See, e.g., *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954) (stating that the Fifth Amendment does not have an Equal Protection Clause, but nevertheless holding that maintenance of racially segregated public schools in the District of Columbia resulted in a violation of the due process protections of the Fifth Amendment).

246. E.g., *City of Cleburn v. Cleburn Living Ctr., Inc.*, 473 U.S. 432, 439–40 (1985) (holding that a zoning ordinance of city which denied special use permit to a group home for mentally retarded individuals violated the Equal Protection Clause).

247. See *supra* notes 106–14 and accompanying text.

248. Depending on how the INS defines battery or what evidence is acceptable under the newly-adopted Violence Crime Control and Law Enforcement Act of 1994, there may be an additional equal protection argument. If the INS adopts less stringent requirements to show battery or extreme cruelty, there is again a variation between what a CPR needs to prove depending on whether or not she is married; this time, the divorced or separated CPR faces tougher requirements. An argument can be made that this distinction between married and divorced or separated CPRs violates equal protection principles since in both instances the focus should be on domestic abuse, not marital status. See *infra* Part IV.A.3.

249. E.g., *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute

judiciary traditionally has applied a deferential standard of review in cases where heightened scrutiny might have been triggered had they arisen outside of the immigration context—including cases involving executive branch interpretations of First Amendment rights,²⁵⁰ equal protection claims involving a suspect class,²⁵¹ the right to marry,²⁵² and due process.²⁵³ Moreover, even if constitutional challenges to conditional permanent resident status were successful, they would only affect parts of the CPR scheme but still allow the mail-order bride traffic to continue.

B. Legislative Reform

Because immigrants who otherwise face immigration quotas can circumvent long waiting periods by marrying American citizens or permanent residents, marriage fraud is a legitimate problem for immigration control. Even so, IMFA either should be fine-tuned to be less intimidating to immigrant women²⁵⁴ or,

exercised by the Government's political departments largely immune from judicial control."); *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909) (stating that in perhaps no arena other than immigration is the legislative power "more complete"); *accord Fiallo v. Bell*, 430 U.S. 787 (1977).

250. *E.g.*, *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972) (applying limited review of a particular executive branch interpretation of First Amendment rights).

251. *E.g.*, *Fiallo*, 430 U.S. at 797-98 (applying deferential review where alleged discrimination was based on gender and illegitimacy).

252. *E.g.*, *Almario v. Attorney Gen.*, 872 F.2d 147, 152 (6th Cir. 1989) (holding that the plenary power of state legislatures precludes the court from applying heightened scrutiny even when marriage—a fundamental right protected by the Constitution—is involved).

253. *Id.* at 152 (holding that the plenary power doctrine dictates that denials of due process should be remedied by Congress, not the courts).

254. The process by which the INS determines marriage viability can be improved to provide greater due process. In *Stokes v. United States*, 393 F. Supp. 24 (S.D.N.Y. 1975), the INS entered into a consent decree to improve pre-IMFA viability determinations. See Stanley Mailman, "Illegal Aleins"—A View of the Employer's Rights and Risks, 54 INTERPRETER RELEASES 1, app. at 80 (1977). These standards can be used to improve the CPR apparatus as it exists today. First, the review process should be made more formal, requiring a verbatim record. Second, INS should give advanced written notice before the petition process commences, setting forth the applicant's rights, including the right to counsel, to call witnesses, and to confront adverse witnesses; applicants should also be informed of their right to be free from self-incrimination, and denials should not be based solely on the exercise of that right. Third, the investigation should be completely separate from the adjudication, with separation between the investigating and adjudicating officer. Fourth, interviews should be less intrusive and not delve into private matters. Finally, INS officials should be trained on these and other requirements. See *id.* at 80-89.

better yet, discarded in favor of an alternative scheme that combats marriage fraud without invoking the coercive threat of deportation.

One alternative would be to discard the CPR apparatus altogether and return to the process that existed prior to IMFA. Under this earlier process, alien spouses of United States citizens were screened when they applied for visas at consulate offices.²⁵⁵ Like the current IMFA review process, a consulate office would investigate the couple to determine whether the marriage was fraudulent: a consulate officer would inquire into how the couple met, review any correspondence between them, ask about details of the marriage ceremony, and review other documents.²⁵⁶ Anti-fraud officers existed at all major visa-issuing posts and the Bureau of Consulate Affairs held regular training sessions, conferences, and workshops on sham marriages.²⁵⁷ The process was perhaps just as onerous for alien spouses as the current IMFA scheme, but the key difference was that after the immigrant spouse entered the United States, she was granted lawful resident status without any threat of deportation during her first two years of residence. A representative of the Bureau of Consular Affairs testified during the IMFA hearings in 1986 that he believed that, given advanced training, the pre-IMFA process could be effective against marriage fraud.²⁵⁸ This alternative would still provide an effective process to screen for marriage fraud without maintaining the threat of deportation as a potential coercive weapon.

The chances for legislative reform may be slim. Immigrants in general have little or no political voice.²⁵⁹ Moreover given the current anti-immigrant mood in the United States,²⁶⁰ it is

255. See *Senate Hearings*, *supra* note 93, at 26–27 (1985) (statement of Vernon D. Penner, Jr., Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs).

256. *Id.*

257. *Id.* at 28.

258. *Id.* at 31 (stating that making initial approval of a spousal petition conditional and subject to further review might not be necessary if current laws were fully enforced).

259. See Stephen Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 SUP. CT. REV. 255, 305–06 n.254 (citing sources establishing that immigrants cannot vote, tend to be poorer, and lack familiarity with political institutions, language, and custom, all of which effectively preclude them from participating in the political process).

260. See, e.g., Stanley Mailman, *California's Proposition 187 and its Lessons*, N.Y. L.J., Jan. 3, 1995, *Immigration Law*, at 3 (depicting Proposition 187 as one example

unlikely that any legislative efforts reforming marriage fraud provisions in favor of immigrants will be successful. Even if such reforms were to occur, making the everyday lives of immigrant brides more bearable, legislative reform of this type would not stem the traffic in Asian Pacific women and the mail-order bride industry itself would remain untouched.

C. Targeting Mail-Order Bride Agencies and Consumer-Husbands

Much like prostitution laws which target prostitutes but rarely pimps and johns, the CPR scheme sanctions immigrant brides but not procurers or consumers. This section discusses several legal mechanisms that target those who profit from, and those who create a demand for, the traffic in Asian Pacific women.

1. Civil RICO—One way to target procurers of mail-order brides would be to employ the threat of treble damages available in a private cause of action created under the Racketeer Influenced and Corrupt Organizations Act²⁶¹ (RICO) against mail-order bride agencies. Private plaintiffs bringing a civil RICO action must prove: (1) a “business or property” injury (2) caused by the operation of an “enterprise” that affects interstate or foreign commerce (3) through a “pattern” of (4) “racketeering activity.”²⁶² The advantages of using a private suit

of how immigrants are a “much maligned species”); Patrick J. McDonnell, *For Them, Prop. 187 is Just the Beginning; Groups that Launched the Initiative are Widening Their Reach. They Are Targeting Aid to Mexico, Affirmative Action and Other Issues*, L.A. TIMES, Jan. 28, 1995, § A, at 1 (reporting that one group that supported Proposition 187 also wants to pass a constitutional amendment that would restrict United States citizenship largely to those “born of an American,” and strip foreign nationals of many rights).

261. 18 U.S.C. §§ 1961–1968 (1988 & Supp. V 1993). The private cause of action created under RICO is codified at 18 U.S.C. § 1964(c) (1988). Using civil RICO as a strategy against trafficking in women was suggested by Lan Cao. Cao, *supra* note 162, at 1298. Although federal criminal prosecution of bridal agencies under RICO’s criminal provisions also is available, private causes of action may be easier to win because private plaintiffs face a less stringent “preponderance of evidence” burden of proof, compared to the “beyond a reasonable doubt” burden imposed on prosecutors. See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491 (1985) (stating the general proposition that criminal statutes may be supported by civil sanctions); Cao, *supra* note 162, at 1310 n.68.

262. 18 U.S.C. § 1962(a) (1988). RICO is a complex and controversial area of law, and each element is subject to further elaboration. This section only sketches the basic

under civil RICO are: (1) the threat of treble damages²⁶³ may be a sufficient deterrent to drive mail-order bride agencies out of business and (2) private suits empower immigrant brides to fight a problem that the government will not.²⁶⁴

This Note has argued that the traffic in mail-order brides, together with the threat of deportation under IMFA, constitutes a form of sexual slavery akin to prostitution. RICO has been used in the context of prostitution²⁶⁵ and also may be an effective weapon against bridal agencies. An "enterprise," as defined by RICO, is any individual or legal entity or any group of individuals "associated in fact,"²⁶⁶ and one person alone can comprise an "enterprise."²⁶⁷ Thus, even small bridal agencies run by a single person could qualify. A "pattern" of racketeering requires at least two acts of related and continuing racketeering activity,²⁶⁸ so any bridal agency that has arranged two or more marriages may qualify.

"Racketeering activity" includes federal crimes listed in 18 U.S.C. § 1961(1). The listed crimes most applicable to the mail-order bride industry are prostitution and violations of the Mann Act,²⁶⁹ which makes it illegal for anyone to transport, entice, or coerce another person for purposes of prostitution, with or without that person's consent.²⁷⁰ If courts agree that the mail-order bride business is similar in nature to prostitution, then this element can be satisfied.

There are difficulties with using civil RICO in the mail-order bride context. First, civil RICO plaintiffs must show that they

elements to a RICO suit. For more detailed discussions of RICO, see Symposium, *Civil RICO*, 21 CAL. W. L. REV. (1985); Cao, *supra* note 162, at 1306-12.

263. 18 U.S.C. § 1964(c) (1988). This provision also provides that court costs and attorneys fees are recoverable under RICO. *Id.*

264. See Cao, *supra* note 162, at 1298.

265. *E.g.*, *United States v. Stern*, 858 F.2d 1241 (7th Cir. 1988); *United States v. McLaurin*, 557 F.2d 1064 (5th Cir. 1977), *cert. denied*, 434 U.S. 1020 (1977).

266. 18 U.S.C. § 1961(4) (1988); *United States v. Turkette*, 452 U.S. 576, 580 (1981).

267. *United States v. Joseph*, 526 F. Supp. 504, 507 (E.D. Pa. 1981).

268. 18 U.S.C. § 1961(5) (1988); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985). A "serial" consumer-husband who sponsors two or more brides within the ten-year period required by section 1961(5) also may come within the scope RICO. See 18 U.S.C. § 1961(5) (1988).

269. Act of June 25, 1948, ch. 645, 62 Stat. 812 (codified as amended at 18 U.S.C. §§ 2421-2424 (1988)).

270. 18 U.S.C. §§ 2421, 2422 (1988); see also, Cao, *supra* note 162, at 1310 n.67 (arguing that women in these contexts lack the capacity to consent because of the disparity in bargaining power between the parties).

have suffered a "business or property" injury.²⁷¹ One commentator has argued, however, that injury to a plaintiff's person or body in the prostitution context satisfies this requirement, and that this interpretation is in accord with congressional intent.²⁷² Second, plaintiffs under civil RICO will be immigrant brides, who may have neither the resources nor the access to legal assistance necessary to institute such a suit.²⁷³ Additionally, civil RICO might not stop individual consumers from advertising in foreign newspapers for brides;²⁷⁴ although one consumer could still qualify as an "enterprise,"²⁷⁵ unless he was a "serial" sponsor, one act of purchasing a bride would not create a "pattern" of racketeering activity.

2. Thirteenth Amendment Criminal Prosecutions for Slavery—One strategy to target consumer-husbands would be to prosecute them using legislative codifications of the Thirteenth Amendment.²⁷⁶ Although the Thirteenth Amendment was a response to antebellum slavery, courts since have used its broad language to reach other forms of slavery and involuntary servitude.²⁷⁷ The Amendment was codified at 18 U.S.C. § 1584, which imposes criminal sanctions on anyone who "knowingly and willfully holds to involuntary servitude or sells into any

271. 18 U.S.C. § 1964(c) (1988); *Brandenburg v. Seidel*, 859 F.2d 1179, 1187 (4th Cir. 1988).

272. See Cao, *supra* note 162, at 1313–16. As Cao has noted, however, there are additional legal difficulties, such as uncertainty in measuring damages and the possibility that Congress could amend RICO to make it more difficult to bring a civil action of the type contemplated in this Note. *Id.* at 1316–19.

273. Any civil suits also may be secondary to the immigrant bride's first concern of the threat of deportation under the conditional permanent resident status. See *infra* Part IV.B.

274. Some consumers already do this. See Singh, *supra* note 42.

275. See *supra* note 259.

276. See, Neal K. Katyal, Note, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791, 806–26 (1993) (arguing that forced prostitution ought to be treated as slavery and therefore should come within the scope of the Thirteenth Amendment).

277. In discussing the meaning of "involuntary servitude," the Supreme Court has stated:

The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one [person] is disposed of or coerced for another's benefit which is the essence of involuntary servitude.

Bailey v. Alabama, 219 U.S. 219, 241 (1911) (discussing the rationale for using the term "involuntary servitude" in addition to the term "slavery," and addressing the meaning of the term in the context of other statutes).

condition of involuntary servitude, any other person for any term, or brings within the United States any person so held."²⁷⁸

Defendants have been convicted under the Thirteenth Amendment for activities ranging from employing migrant farm laborers to forced prostitution.²⁷⁹ Courts require some form of compulsion or coercion in order to sustain convictions²⁸⁰ but, although many cases involve physical force,²⁸¹ combinations of physical violence and threats of physical violence suffice.²⁸² Threats of legal sanction also may be sufficiently coercive.²⁸³ In the mail-order bride context, consumer-husbands purchase immigrant brides for their sexual labor and domestic services.²⁸⁴ Those who abuse, assault, or threaten physical violence or deportation to keep their immigrant brides from leaving the marriage could be subject to criminal prosecution under section 1584.²⁸⁵

A potential obstacle to this strategy, as in the prostitution context, is to convince prosecutors to change their deterrent focus from the immigrant bride to the consumer-husband. Another problem is that this strategy reaches only marriages

278. 18 U.S.C. § 1584 (1988).

279. See *Katyal*, *supra* note 276, at 807-08 & nn.101-09 (citing *United States v. Booker*, 655 F.2d 562 (4th Cir. 1981); *United States v. Harris*, 534 F.2d 207 (10th Cir. 1976); *Pierce v. United States*, 146 F.2d 84 (5th Cir. 1944); *Bernal v. United States*, 241 F.2d 339 (5th Cir. 1917)).

280. See, e.g., *Booker*, 655 F.2d at 566 (1981) (stating that the key principle is that no person could secure the labor of another by compulsion); *Katyal*, *supra* note 276, at 807 (citing *Booker*, 655 F.2d 562 and *Pierce v. United States*, 146 F.2d 84 (5th Cir. 1944) as examples of convictions for coerced labor under Thirteenth Amendment criminal codification statutes).

281. E.g., *Booker*, 655 F.2d at 566 (physical beatings); *United States v. Bibbs*, 564 F.2d 1165, 1167 (5th Cir. 1977) (same), *cert. denied*, 435 U.S. 1007 (1978).

282. See, e.g., *Bibbs*, 564 F.2d at 1167-68 (stating that involuntary servitude is established when fear of physical harm is so great that the victim is afraid to leave); *Booker*, 655 F.2d at 566 (finding that a climate of fear was created by beatings and assaults and threats of the same). The context seems to dictate the type and extent of coercion required. In *Booker*, the court looked at the disparity in power between the parties, noting that the victims were migrant farmers without property, skills, education, and hope who easily fell prey to the tempting offers of "powerful and unscrupulous' individuals." *Id.*

283. See *Bernal v. United States*, 241 F.2d 339, 341, 342 (5th Cir. 1917) (threat of legal sanction); *United States v. Ingalls*, 73 F. Supp. 76, 77, 78 (S.D. Cal. 1947) (same). *But see* *United States v. Shackney*, 333 F.2d 475, 486 (2d Cir. 1964) (threat of deportation insufficient).

284. See *supra* Part I.B.

285. See *supra* note 266 and accompanying text. The Thirteenth Amendment right to be free of slavery and involuntary servitude also is protected under civil rights laws such as 42 U.S.C. § 1985(3) (1988). Thus, when a consumer-husband is liable for criminal sanction under section 1584, he also is subject to civil suit under civil rights laws, as discussed *infra* Part IV.C.3.

where domestic abuse has occurred or where deportation has been threatened. Nevertheless, the threat of criminal sanction may work as a deterrent against violence or threats of deportation by consumer-husbands trying to keep their immigrant brides from leaving the marriage.

3. *Civil Rights Remedies*—Title 42, section 1985(3), which allows private suits to redress civil rights violations, may be used to target the mail-order bride agencies individually or to target the agencies and consumer-husbands jointly.²⁸⁶ Section 1985(3) of the Civil Rights Act provides a remedy where “two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws.”²⁸⁷ “Conspiracy” is defined broadly to include even a person who, “having knowledge that any of the wrongs conspired to be done” and “having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do.”²⁸⁸ Plaintiffs also must show discriminatory animus, be it a racial or other class-based animus.²⁸⁹ Several courts also have held that discriminatory animus based on gender suffices.²⁹⁰ As for protected rights, the Supreme Court has recognized that section 1985(3) protects the right to be free from slavery and involuntary servitude.²⁹¹

Mail-order bride agencies intentionally market their brides using stereotypes of subservient Asian Pacific women.²⁹²

286. This approach was suggested in connection with forced prostitution by Katyal, *supra* note 276, at 815–16.

287. 42 U.S.C. § 1985(3) (1988).

288. *Id.* § 1986.

289. *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *see also* *Bray v. Alexandria Women's Health Clinic*, 113 S. Ct. 753, 758 (1993) (following the Court's approach in *Griffin*).

290. *See, e.g., Curran v. Portland Superintending Sch. Comm.*, 435 F. Supp. 1063, 1084–85 (D. Me. 1977) (holding that section 1985(3) reaches sex-based discrimination); *Stern v. Massachusetts Indem. & Life Ins. Co.*, 365 F. Supp. 433, 442–43 (E.D. Pa. 1973) (same). *But see, Knott v. Missouri Pac. R.R. Co.*, 389 F. Supp. 856, 857 (E.D. Mo. 1975) (rejecting plaintiff's argument that 42 U.S.C. §§ 1981, 1982, 1983, 1985, and 1988 extend to sex-based discrimination). The legislature intended, and courts will use, section 1985(3) “to protect any individual of a discernable and definite class from discrimination and violence directed toward [that person] because of his [or her] membership in such class.” *Scott v. Moore*, 461 F. Supp. 224, 229 (E.D. Tex. 1978), *aff'd in part and rev'd on other grounds*, 640 F.2d 708 (5th Cir. 1981). In *Scott*, the trial court found a section 1985(3) violation in the context of discrimination against employees of a non-union entity. *Scott*, 461 F. Supp. at 228. The appellate court upheld that finding. *Scott*, 640 F.2d at 716.

291. *See supra* note 277.

292. *See supra* notes 61–68 and accompanying text.

Consumer-husbands, too, specifically look for and purchase Asian Pacific women.²⁹³ Both parties, then, show requisite animus based on ethnicity and/or gender. Because both bridal agencies and consumer-husbands are involved in trafficking Asian Pacific brides—one to procure, the other to purchase—an argument can be made that agreements or actions of an agency *and* the consumer-husband together—or even the agency and all of its customers—conspired to interfere with an immigrant bride's right to be free of slavery or involuntary servitude.

D. Other Strategies

Legal efforts in the United States are not enough to halt the traffic in mail-order brides. As the industry is transnational, efforts to halt the traffic in mail-order brides also must address international concerns. International law is another source of potential remedies and a number of international instruments may be applicable.²⁹⁴ Other countries have attempted to address various problems with the mail-order bride trade. For example, Australia has considered requiring consumer-husbands to divulge their "personal histories" to their brides along

293. See *supra* notes 69–73 and accompanying text.

294. Birgit Schmidt am Bursch has suggested that the following instruments may be helpful: Convention on the Rights of the Child, Nov. 20, 1989; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, *reprinted in* HUMAN RIGHTS—A COMPILATION OF INTERNATIONAL INSTRUMENTS 112 (United Nations publication, 1988) [hereinafter HUMAN RIGHTS]; Convention Concerning the Abolition of Forced Labour, June 25, 1957, 320 U.N.T.S. 292, *reprinted in* HUMAN RIGHTS, *supra*, at 178; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201; 266 U.N.T.S. 3, *reprinted in* HUMAN RIGHTS, *supra*, at 160; Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others, Mar. 21, 1950, 575 U.N.T.S. 288; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431; Forced Labour Convention, June 28, 1930, 39 U.N.T.S. 55, *reprinted in* HUMAN RIGHTS, *supra*, at 166; Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 46 Stat. 2183; International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 416; International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83. See Schmidt am Bursch Address, *supra* note 28.

For a criticism of international law and international institutions, see generally Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991) (criticizing the international legal order for ignoring the voices of women and applying feminist analyses to international institutions and international legal principles).

with banning "multiple sponsorships."²⁹⁵ One member of the Philippines House of Representatives has suggested that women marrying foreigners undergo pre-marital counseling regarding immigration and divorce laws in their new countries.²⁹⁶ The United States should deal with a potential bride's lack of access to information by requiring bridal agencies to: (1) encourage consumer-husbands to be truthful with their brides and (2) provide brides placed with American men with legal advice about their immigration status. Bridal agencies are in a favorable position to disseminate such information because they have access to most of the brides entering the United States. In the alternative, the INS should be required to disseminate such information when issuing fiancée-petitioned visas or granting CPR status.²⁹⁷ At a minimum, bridal agencies or the INS should be required to provide this information in the native language of the immigrant brides.

These suggestions, however, do not go far enough, because they still allow women to be sold and purchased and thus implicitly condone the practice of purchasing mail-order brides. Reform efforts also should attempt to stem the traffic itself. The Philippine government recently attempted to ban advertising for wives and matchmaking agencies.²⁹⁸ There have been a few prosecutions²⁹⁹ but, as of 1992, one out of three Filipinas still left the country through marriage.³⁰⁰ Moreover, unilateral attempts by one supplier to ban the mail-order bride traffic may merely shift the market to a different supplier. For example, since the ban in the Philippines, the demand for Chinese women has been on the rise.³⁰¹

295. See Seneviratne, *supra* note 3. In addition, an activist representing the National Council of Disadvantaged Mail-Order and Military Brides has suggested that consumer-husbands be regulated through background checks. See Hanson, *supra* note 3.

296. See Isberto, *supra* note 32.

297. This would help not only mail-order brides but all CPRs to be more informed about the complexities CPR scheme.

298. *Philippines: Stops "Mail-Order Bride" Trade*, Inter Press Service, June 14, 1990, available in LEXIS, News Library, Inpres File.

299. See, e.g., *German Faces Mail-Order-Bride Charges in Philippines*, Xinhua Gen. Overseas News Service, June 10, 1993, available in LEXIS, News Library, Xinhua file.

300. *One out of Three Filipino Emigrants Leaves Through Marriage*, Xinhua Gen. Overseas News Service, June 9, 1993, available in LEXIS, News Library, Xinhua file (stating nevertheless that most emigrants said they left to marry foreigners for love and non-economic reasons).

301. One Chinese bridal agency predicted that China will soon overtake the Philippines and Thailand as a supplier of mail-order brides. See Cater, *supra* note 44, at 8; see also, *Sino-Foreign Marriages Rising 22 Pct a Year*, Reuters World Service,

Perhaps the most effective strategies to stem the traffic in mail-order brides are also the most difficult: first, to halt the eroticization of Asian Pacific women in consumer countries in order to stem the demand for the sexual labor of Asian Pacific brides and second, to improve opportunities for women in developing countries so that they do not have to resort to selling themselves to foreign men in order to improve their economic and social standing. Until these events occur, the legal and nonlegal strategies that this Note explores may begin to alleviate some of the worst problems associated with the traffic in Asian Pacific women as mail-order brides.

CONCLUSION

It may appear that the prospect for reform to stem the mail-order bride traffic is bleak, given the difficulties associated with dismantling a form of subordination rooted not just in gender, class, or ethnicity, but also in interlocking patterns of these and other dynamics across borders and cultures. Yet these same obstacles offer a starting point. The intersections embedded in the mail-order bride phenomenon mean that it is not just a concern for feminist or antiracist movements, but for both. The transnational dynamics of the traffic in Asian Pacific women mean that it is not just a concern for Western activists or for those in the host countries, but for both. To truly get at the root causes of the mail-order traffic requires both legal and non-legal efforts, here and abroad. Tackling the mail-order bride traffic, then, demands building coalitions across gender, class, ethnic, cultural, and national divides. It demands that we abandon perhaps naive notions of subordination and begin to approach such problems recognizing all of their complexities.

Dec. 19, 1994, *available in* LEXIS, News Library, Reuwlid File (noting that in 90% of marriages involving a Chinese national and a foreigner, the bride is Chinese and most of the husbands are either from Japan, the United States, France, Russia, or Korea).