

GENDER DISPARITY, DOMESTIC ABUSE, AND THE MAIL-ORDER BRIDE INDUSTRY

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INTRODUCTION.....	167
I.HISTORY OF MAIL-ORDER BRIDES AND THE CURRENT STATE OF THE INDUSTRY.....	168
II.IMBS' COMMODIFICATION OF WOMEN	170
III.IMBS' PERPETUATION OF "TRADITIONAL" GENDER ROLES AND DOMESTIC VIOLENCE	172
IV.HISTORY OF LEGISLATION AND THE MAIL-ORDER BRIDE INDUSTRY	174
V.IMPACT OF IMBRA AND THE NEED FOR ADDITIONAL SAFEGUARDS FOR MAIL-ORDER BRIDES.....	180
VI.PROPOSED SOLUTIONS TO INCREASE PROTECTIONS FOR MAIL ORDER BRIDES.....	182
VII.AN ALTERNATIVE SOLUTION: MONITORING COMPLIANCE OF IMBS	185
CONCLUSION	185

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INTRODUCTION

When people think of marriage, they most often envision a new beginning based on love, partnership, and security. These notions are based on a contractual agreement entered into by both husband and wife, as fully consenting parties, with a shared mindset of what their joint future will hold. Rarely does the concept of a marriage evoke thoughts of a relationship based on power dynamics, sexual gratification, abuse, and isolation; however, these negative factors are often the reality for numerous foreign women who enter into marriages facilitated by International Marriage Brokers.¹ Each year, over 14,000 women enter the United States after meeting American men through “mail-order bride” websites.² Within the past twenty years, great strides have been made toward protecting mail-order brides from abusive husbands, as well as toward preventing these women from becoming victims of human trafficking.³ However, once a mail-order bride has entered the United States, many of these legal protections become moot due to the private nature of the domestic realm of marriage and the woman’s inability to navigate the American legal landscape.⁴

This paper describes the history of the mail-order bride industry and gender stereotypes that have made the market for foreign brides what it is today. It explores the notion of women as property, as perpetuated by the mail-order bride industry, as well as describes and analyzes attempts by the United States government to regulate and punish persons involved in the industry’s exploitation of women. It also presents

¹ See Christina Del Vecchio, *Match-Made in Cyberspace: How Best to Regulate the International Mail-Order Bride Industry*, 46 COLUM. J. TRANSNAT’L L. 177, 193–94 (2007). See also Suzanne H. Jackson, *To Honor and Obey: Trafficking in “Mail-Order Brides”*, 70 GEO. WASH. L. REV. 475, 477 (2002); Olga Grosh, *Foreign Wives: U.S. Law Stigmatizes and Fails to Protect “Mail-Order Brides”*, *Domestic Violence*, 22 HASTINGS WOMEN’S L.J. 81, 81, 84 (2011).

² *Frequently Asked Questions: International Marriage Broker Regulation Act of 2005 (IMBRA)*, TAHIRIH JUSTICE CENTER, <http://www.tahirih.org/site/wp-content/uploads/2009/03/FAQs-IMBRA-11.08.10.pdf> (last visited Sept. 7, 2013) [hereinafter *IMBRA FAQ*].

³ See generally Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); Violence Against Women And Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006); 8 U.S.C. § 1375a(d) (2006).

⁴ See Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J. L. REFORM 197, 235 (1994).

recommendations for increased regulation and oversight suggested by other authors, explores the potential drawbacks of some of these recommendations, and suggests alternative approaches to increasing protection of mail-order brides in the United States.

I. HISTORY OF MAIL-ORDER BRIDES AND THE CURRENT STATE OF THE INDUSTRY

The concept of mail-order brides—women brought to the United States from other countries for the purpose of marriage to an American man⁵—began long before the Internet changed the American dating scene.⁶ In fact, the mail-order marriage industry has been called a “part of North American history . . . [and] the settlement of . . . the United States.”⁷ The practice began as a means by which Japanese and Korean men, domiciled in the United States, could find culturally suitable partners.⁸ Interracial marriages were outlawed in our country in the late 19th Century and immigration quotas limited the number of Japanese and Korean women available in the United States for marriage to Asian men.⁹ In 1907, a “Gentleman’s Agreement” between the United States and Japan allowed Japanese men in the United States to communicate and trade pictures with women living in Japan.¹⁰ Under the agreement, a man could choose a woman as a potential marriage partner, and she would then be permitted to enter the United States without invoking immigration limits.¹¹

In more recent years, the mail-order bride business has evolved into a booming industry that operates primarily through the Internet.¹² The World Wide Web has made instantaneous communication between two people separated by geography possible; we no longer need to wait days or weeks for paper or packages to be physically transported by mail carriers. In the approximately one hundred years since Asian men and women communicated by mail under the Gentleman’s Agreement, the

⁵ See Jackson, *supra* note 1, at 476.

⁶ See Meng, *supra* note 4, at 200.

⁷ *Id.* at 198.

⁸ See Jackson, *supra* note 1, at 484–85.

⁹ *Id.* at 484–85. See NANCY F. COTT, PUBLIC VOWS 40–42 (2000).

¹⁰ Jackson, *supra* note 1, at 484–85.

¹¹ See *id.* at 485.

¹² See Del Vecchio, *supra* note 1, at 185–86.

practice of seeking a bride abroad has adapted to modern electronic technology, resulting in thousands of websites promoting international engagements and marriage arrangements.¹³ The Immigration and Naturalization Service (INS) has estimated that each year approximately 4,000–6,000 women enter the United States under K-1 fiancée visas after having communicated with and piqued the interest of an American man through cyberspace.¹⁴

The vast majority of correspondence between foreign women and American men, for the purpose of engagement leading to marriage that occurs online, is facilitated by firms collectively known as International Marriage Brokers (IMBs).¹⁵ The United States recognizes IMBs as valid businesses and expects IMBs to comply with United States immigration policies.¹⁶ IMBs not located in (not having a physical presence in) the United States are considered to be not operating in this country and are, therefore, not subject to certain Federal rules, such as tax laws;¹⁷ however, all IMBs must comply with United States immigration laws when arranging for a woman's entry into this country (e.g., ensure immigration paperwork is complete and valid).¹⁸ In 2010, the Tahirih Justice Center reported that there are over 400 IMBs doing business in the United States;¹⁹ however, this number is likely an underrepresentation since it reflects only registered

¹³ Jackson, *supra* note 1, at 484–85. See Del Vecchio, *supra* note 1, at 185, 188–89. See also GETMARRIEDNOW.COM, <http://www.getmarriednow.com> (last visited Sept. 8, 2013) (“Our goal is to allow you to establish a meaningful correspondence with the women you meet online in order to create real relationships that can lead to marriage.”).

¹⁴ See Robert J. Scholes, *The “Mail-Order Bride” Industry and its Impact on U.S. Immigration*, app. A, AM. IMMIGR. LAW. ASS’N, <http://www.aila.org/content/fileviewer.aspx?docid=13775&linkid=151742> (last visited Sept. 23, 2013). See also INS ‘Mail-Order Bride’ Report, AM. IMMIGR. LAW. ASS’N (Mar. 9, 1999), <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C16871%7C17119%7C13775>.

¹⁵ See Del Vecchio, *supra* note 1, at 185–86.

¹⁶ See 8 U.S.C. § 1375a(e)(4)(A) (2006).

¹⁷ Daniel Cassidy, *Federal Taxation of International Transactions*, in *DOING BUSINESS IN WASHINGTON STATE* 83, 84 (Randy J. Aliment ed., 2010) (discussing when a foreign corporation is subject to income tax). *But see* Lisa Schwamkrug, *The Russian Mail-Order Bride Industry: From Russia for Love, to America in Danger*, DFWVISA.COM, <http://www.dfwvisa.com/mobi.pdf> (last visited Sept. 23, 2013) (stating that IMBs that locate their operations outside of the United States still have to comply with United States law but enforcement is much more difficult).

¹⁸ 8 U.S.C.S. § 1375a(d)(1)(B) (LexisNexis 2013).

¹⁹ See *IMBRA FAQ*, *supra* note 2.

IMBs. As with all Internet businesses, noncompliance is difficult to identify, track, and prosecute.²⁰

II. IMBS' COMMODIFICATION OF WOMEN

Because the vast majority of IMBs are for-profit businesses,²¹ it behooves each company to use catchy phrases and interesting pictures to capture the interest of the American male consumer. Women featured on IMB websites are often displayed in photographs and videos, akin to those used on pornography websites, bringing to mind the adage "sex sells."²² Competition between IMBs is fierce, leading to the proliferation of flashy sites that employ "pop-up" advertisements and other tricks of the e-trades to draw web-surfers into viewing IMB sites, with the purpose of maximizing their potential customer base.²³ IMBs' presentation of women, using photographs, videos, and descriptive text, is no different than internet-based sales of products, such as homes, tulip bulbs, or household items. The customer has the opportunity to peruse multiple listings on multiple sites, and to make a choice based on a virtual presentation (i.e., without interaction with a tangible item). One IMB claims that finding a wife on their website is "as easy as ordering pizza."²⁴

There is, however, one IMB marketing strategy that goes well beyond the similarities described above. Automobile manufacturers, for example, may advertise a certain car using a subliminal message that targets sex appeal; IMBs highlight sex appeal and overtly use the message of sexual submission.²⁵

²⁰ See *FTC Legal Compliance*, PHILIP A. NICOLosi, LTD., <http://www.internetlegalattorney.com/website-ftc-compliance-lawyer/> (last visited Sept. 9, 2013) ("Many website operators violate the FTC Act with their everyday business practices without even knowing it.").

²¹ See International Marriage Broker Regulation Act of 2005, H.R. 3657, 109th Cong. (1st Sess. 2005) (enacted).

²² See Laura A. Pennington, *Marriage Migration, Citizenship, and Vulnerability* (Apr. 19, 2010) (unpublished thesis) (on file with Virginia Polytechnic Institute and State University).

²³ See, e.g., HOT RUSSIAN BRIDES, http://www.hotrussianbrides.com/campaign/ChatGirls?ppc=g&gclid=CP773-DD_bYCFUNIMgodawQAOQ (last visited Sept. 5, 2013); *A Foreign Affair*, LOVEME.COM, <http://www.loveme.com/index1.shtml> (last visited Sept. 5, 2013); ANASTASIA DATE, http://www.anastasiadate.com/?gclid=CJCd5ZvE_bYCFYU-Mgod9xQAIA (last visited Sept. 5, 2013).

²⁴ Grosh, *supra* note 1, at 88.

²⁵ See, e.g., HOT RUSSIAN BRIDES, *supra* note 23; *A Foreign Affair*, *supra* note 23; ANASTASIA DATE, *supra* note 23.

Potential brides are typically displayed in ways meant to appeal directly to male sexual fantasies; the women are often displayed in submissive poses, wearing make-up bordering on theatrical and revealing clothing, and are adorned in jewelry that resembles cuffs and collars.²⁶ Typically, each IMB website features at least 100 women and boasts about new inventory to entice frequent revisits (e.g., “new women added weekly!”),²⁷ and most sites have a catalog system that facilitates searches based on the male consumer’s personal preferences regarding nationality, hair and eye color, age, height, zodiac sign, etc.²⁸ Many IMBs go beyond the typical Internet marketing strategy of providing product details, by providing search categories on intimate sexual characteristics including, but not limited to, sexual experience (whether or not the woman is a virgin), her sexual preferences, and breast size.²⁹ Enabling men to make selections based on such intimate factors reinforces the idea that a woman is not a human being, but rather is a customizable object that may be added to the purchaser’s “shopping cart” before proceeding to “check out.”³⁰

IMBs make their money through fees.³¹ Initially, the potential purchaser-husband is required to pay a fee for website membership, plus additional fees for profile information on specific women, women’s contact information, fiancée visa information, and any costs incidental to the facilitation of communication or travel.³² By the time the transaction has concluded and the potential bride enters the United States, the typical cost paid to an IMB by the purchaser-husband ranges from \$6,000 to \$10,000.³³ Such an expenditure promotes an attitude of entitlement and ownership over the hand-selected purchase. The man’s perception of power is increased further by the fact that his bride likely traveled from a developing country and has little to no money of her own, making her financially

²⁶ See RUSSIANBRIDES, http://www.russianbrides.com/?gclid=CMni6Inh_bYC Fc5cMgods24ANg (last visited Sept. 5, 2013).

²⁷ E.g., *A Foreign Affair*, *supra* note 23.

²⁸ See, e.g., *id.*

²⁹ Grosh, *supra* note 1, at 84.

³⁰ *Id.* at 88.

³¹ See Domestic Violence Information and Resources for Immigrants and Regulation of International Marriage Brokers, 8 U.S.C. § 1375a(e)(4)(A) (2012).

³² See Carin M. Bowes, “Male” Order Brides and International Marriage Brokers: *The Costly Industry that Facilitates Sex Trafficking, Prostitution, and Involuntary Servitude*, 18 CARDOZO J.L. & GENDER 1, 4, 7 (2011).

³³ *Id.* at 8.

dependent.³⁴ Mail-order brides are oftentimes unfamiliar with American culture and speak little or no English, which makes brides further dependent on their husbands, especially since family support systems are lacking.³⁵

While the vast majority of IMBs charge their male clients for membership and communication services, most potential brides are not required to pay a fee to be featured on the company websites.³⁶ The exception is women whose value is considered low, due to age or dependent children.³⁷ IMBs recruit women by advertising in their home countries; many of these advertisements tout that the company will find the woman her American soul mate.³⁸ The recruited women see themselves as the clients of the company, leading to the perception that the IMB has the woman's best interest in mind when searching for a husband-to-be.³⁹

III. IMBS' PERPETUATION OF "TRADITIONAL" GENDER ROLES AND DOMESTIC VIOLENCE

Various websites indicate that men have been increasingly seeking foreign wives through IMBs because American women are perceived as being too "career-oriented," pushy, and independent, and accordingly not paying enough attention to the needs of families and husbands.⁴⁰ IMBs have embraced this misconception by advertising the women featured on their websites as having sought-after qualities and personality traits as "loyal," "not after your money," "affectionate," "family-oriented," "tender," and "lov[ing] the warmth of the house."⁴¹ As a result of this wording, men who use mail-order bride services generally infer that his new wife will be content remaining home, performing domestic tasks, and being sexually available.⁴² As the

³⁴ *White Paper: Unhappily Ever After: The Plight of Children and Mail-Order Brides*, SOROPTIMIST INTERNATIONAL OF THE AMERICAS, <http://www.soroptimist.org/whitepapers/WhitePaperDocs/WPPlightChildMailOrderBrides.pdf> (last visited Sept. 5, 2013).

³⁵ See ELENA POPOVA, THROUGH ALIEN EYES 193 (2008).

³⁶ Bowes, *supra* note 32, at 5, 6.

³⁷ *Id.* at 6.

³⁸ Jane Kim, *Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride Industry*, 51 VA. J. INT'L L. 443, 474 (2011).

³⁹ *See id.*

⁴⁰ See Bowes, *supra* note 32, at 8.

⁴¹ See generally ANASTASIA DATE, *supra* note 23.

⁴² See LOUISE LANGEVIN & MARIE-CLAIRE BELLEAU, TRAFFICKING IN WOMEN IN

new wife becomes accustomed to the American culture, differences in opinion can develop between her and her husband concerning gender roles and duties; this creates a situation ripe for domestic violence, fueled by the husband's sense of his wife's indebtedness to him for spending a large sum of money to bring her to the United States as his fiancée.⁴³

In fact, foreign women who marry American men are between three and six times more likely to be victims of domestic abuse than American women.⁴⁴ A 2003 study reported that more than fifty percent of legal assistance providers handling cases of battered immigrant women involved women who had met their American husbands through IMB websites.⁴⁵ The number of abused immigrant women is likely a gross underestimation because such women are substantially less likely to report domestic abuse for a number of reasons.⁴⁶ The primary reason being, the fear of retaliation from the husband, not only in the form of increasing severity of punishment, but also the potential for deportation if the engagement does not lead to a more permanent commitment and associated permanent visa status.⁴⁷ Immigrant women may also believe abuse is the norm, as their homeland culture often includes a tolerance for abuse against women,⁴⁸ or they may simply lack information on means of reporting.⁴⁹ Lacking knowledge of the United States' immigration system, and of protections for battered spouses, mail order brides tend to rely solely on their husbands for their information about the consequences of divorce or reporting domestic violence.⁵⁰ When the power imbalance is so great that the wife believes her ability to continue residing in the United States is dependent upon her abiding by her husband's wishes, instances of abuse may become tolerated as just another part of married life.⁵¹

CANADA 84 (2000).

⁴³ See Bowes, *supra* note 32, at 5.

⁴⁴ *IMBRA FAQ*, *supra* note 2; Daniel Epstein, *Romance is Dead: Mail Order Brides as Surrogate Corpses*, 17 *BUFF. J. GENDER L. & SOC. POL'Y* 61, 77 (2009).

⁴⁵ *IMBRA FAQ*, *supra* note 2.

⁴⁶ *Id.*

⁴⁷ *See id.*

⁴⁸ Kim, *supra* note 38, at 474.

⁴⁹ Epstein, *supra* note 44, at 77–78.

⁵⁰ *See id.*

⁵¹ *See IMBRA FAQ*, *supra* note 2.

IV. HISTORY OF LEGISLATION AND THE MAIL-ORDER BRIDE
INDUSTRY

The Immigration and Nationality Act of 1952 organized existing United States immigration laws into a single statute.⁵² The primary purpose of the Act was to set annual limitations on the number of persons allowed to immigrate to the United States from various countries;⁵³ however, it later provided exceptions to the limits for “immediate relatives” of United States citizens, including spouses.⁵⁴ As a result, a foreign citizen was granted United States residency upon entering the United States as the spouse of an American citizen, regardless of whether the marriage occurred on American soil or abroad.⁵⁵

In the 1980s, Congress became concerned that an increasing number of immigrants were taking advantage of the legal exception for spouses, and were entering into marriages merely as a means to avoid the waiting periods for visas.⁵⁶ (Foreign blood relatives, other than parents and children, of United States citizens must wait a minimum of one year to receive a visa; however, spouses face a minimum wait time for paperwork processing.)⁵⁷ In 1986, the Immigration Marriage Fraud Amendments were enacted in response to Congressional reports that immigrants, otherwise not eligible to live in the United States, were entering into fraudulent marriages, solely for the purpose of gaining United States citizenship.⁵⁸ The major provision of the 1986 Amendments required that immigrants whose access to the United States was based on a marriage relationship complete a two-year “conditional” period in which they remain married to their American sponsor before being

⁵² *Immigration and Naturalization Act of 1952*, LAW OFFICE OF DAVID H. WALKOWIAK, <http://www.dhwpalaw.com/newsletters/immigration/immigration-and-naturalization-act-of-1952/> (last visited Sept. 5, 2013).

⁵³ U.S. Dep’t of State, Off. of the Historian, *Milestones: 1945-1952, The Immigration and Nationality Act of 1952 (The McCarran-Walter Act)*, <http://history.state.gov/milestones/1945-1952/ImmigrationAct> (last visited Sept. 21, 2013).

⁵⁴ Immigration and Nationality (McCarran-Walter) Act, Pub. L. No. 89-236, 79 Stat. 911 (1965) (codified as amended at 8 U.S.C. § 1151).

⁵⁵ *See id.* (allowing issuance of immigrant visas or legal status as an “alien lawfully permitted to the United States for permanent residence”).

⁵⁶ *See* H.R. REP. NO. 99-906 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5978, 5978.

⁵⁷ *See* ANGIE JUNCK ET AL., *FAMILIES & IMMIGRATION* 1-3, (3d ed., 2011), *available at* http://www.ilrc.org/files/chapter_01.pdf.

⁵⁸ H.R. REP. NO. 99-906.

eligible for permanent residency status.⁵⁹ The spouse of the immigrant must petition for permanent resident status with the United States Citizenship and Immigration Services within ninety days of the two-year marriage anniversary;⁶⁰ if this step is not completed, the immigrant spouse's conditional status lapses and the immigrant is then residing in the United States illegally.⁶¹

Notably, the immigrant bride is unable to petition on her own for permanent residence status.⁶² Therefore, the wife's legal status in the United States is entirely dependent upon her husband's willingness to petition on her behalf. This arrangement perpetuates the power imbalance between husband and wife, making it possible for the husband to deliberately allow his wife's legal status to lapse, from which point he may threaten her with deportation should she report domestic violence or fail to be a "good wife."⁶³

The 1986 Amendments were based on a finding that nearly one-third of immigrant marriages to United States citizens were fraudulent and entered into primarily for the purpose of gaining United States resident status.⁶⁴ Years later, in 1999, although the percentages driving the Act had been found to be unsubstantiated (and newly estimated at one percent of immigrant marriages),⁶⁵ the United States Immigration and Nationalization Service (INS) continued to hold to the position that "[t]here is no question that many of the alien women who advertise for U.S. husbands are far more interested in gaining permanent residence alien status than in gaining a good marriage," and "the self-descriptions [the women] offer and their willingness to marry men of advanced age and dubious character attests to this intention."⁶⁶ This stated position revealed that Congress and the INS viewed mail-order immigrant brides as a suspect class seeking fraudulent marriages for immigration purposes, regardless of updated statistical information to the contrary. Furthermore, it is a telling statement, in that the word "women" was deliberately used, indicating that the true target of

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *See id.*

⁶² Del Vecchio, *supra* note 1, at 202.

⁶³ *See id.*

⁶⁴ H.R. REP. NO. 99-906.

⁶⁵ Grosh, *supra* note 1, at 90.

⁶⁶ *Id.* at 90–91.

the 1986 legislation was immigrant women as a class rather than all immigrants seeking entry to the United States.

In the time between the 1986 Amendments and the 1999 INS-released statement noted above, two additional acts targeting immigration abuse went into effect to remedy the situation, because, as noted by Congressional Representative Louis M. Slaughter, “many battered conditional residents had no viable legal options.”⁶⁷ These were the 1994 Violence Against Women Act (VAWA)⁶⁸ and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).⁶⁹ Subtitle G of VAWA enables immigrant spouses who have not completed the two-year conditional residency period to petition to the Attorney General for a waiver granting them permanent residence status if the marriage “was entered into in good faith by the alien, and during the marriage the alien . . . has been battered by or has been the subject of extreme cruelty perpetrated by the alien’s spouse.”⁷⁰ The immigrant spouse must also demonstrate that they would experience extreme hardship if faced with deportation.⁷¹ However, the burdensome evidentiary requirements were almost impossible to meet by a woman who likely knew nothing about American law and advocacy rights;⁷² this, combined with the Acts’ protracted administrative process, created by assigning to the Attorney General sole discretion over evidence admissibility and granting of a waiver, rendered the rules impractical and ineffective.⁷³

Despite failure to remedy the fraudulent aspects of the mail-order bridal industry through legislation, Congress openly recognized a need to regulate and oversee the immigration of foreign women through marriages facilitated by IMBs.⁷⁴

⁶⁷ *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1362 (N.D. Ga. 2007).

⁶⁸ *Id.* at 1362–63.

⁶⁹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

⁷⁰ Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902, 1953 (1994).

⁷¹ *Id.*

⁷² See Illegal Immigration Reform and Immigrant Responsibility Act, § 652(a)(4), 110 Stat. at 712.

⁷³ See Leila Rothwell, Comment, *VAWA 2000’s Retention of the “Extreme Hardship” Standard for Battered Women in Cancellation of Removal Cases: Not Your Typical Deportation Case*, 23 HAW. L. REV. 555, 581 (2001).

⁷⁴ See Illegal Immigration Reform and Immigrant Responsibility Act, § 652(a)(1), 110 Stat. at 712.

Legislators expressly cited recent expansion of the mail-order bride industry as factoring into support of the Acts,⁷⁵ suggesting that the number of incidents of violence and cruelty toward immigrant women would likely increase. For the first time, the government openly recognized that mail-order brides often “find themselves in abusive relationships.”⁷⁶ Most notably, IIRIRA was the first legislation to take into account the particular difficulties faced by foreign brides due to ignorance of immigration laws combined with a fear of deportation.⁷⁷ Specifically, the Act includes a provision requiring IMBs that conduct business in the United States to provide information concerning United States immigration laws (i.e., battered spouse waivers, fraudulent marriage penalties, and permanent residence status) to recruited and potential brides in their native language.⁷⁸ An IMB’s failure to comply would be punishable by a fine of up to \$20,000 for each violation.⁷⁹ Finally, in order to determine how better to police the industry, IIRIRA called for a study to be jointly conducted by the INS Commissioner and the Director of the Violence Against Women Initiative of the Department of Justice, purposed with determining the annual number of IMB marriages, the extent of reported fraud, the extent of abuse in such marriages, and the need for continued regulation.⁸⁰ While VAWA and IIRIRA represent a coordinated effort aimed at providing legal protections for mail-order brides once residents in this country, there remained an ongoing, under-the-radar problem of spousal abuse.⁸¹

The most recent legislation, speaking directly to the mail-order bride industry, is the 2005 International Marriage Broker Regulation Act (IMBRA), which was passed as a part of a reauthorization of VAWA following the findings from the IIRIRA-

⁷⁵ Roxanne Sims, Comment, *A Comparison of Laws in the Phillipines, the U.S.A., Taiwan, and Belarus to Regulate the Mail-Order Bride Industry*, 42 AKRON L. REV. 607, 621 (2009).

⁷⁶ *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1363 (N.D. Ga. 2007).

⁷⁷ *Id.*

⁷⁸ See Sims, *supra* note 75, at 620.

⁷⁹ *European Connections & Tours*, 480 F. Supp. 2d at 1363.

⁸⁰ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208 § 652(c), 110 Stat. 3009-546, 712-13 (1996).

⁸¹ See Peter Kwan, *Invention, Inversion and Intervention: The Oriental Woman in the World of Suzie Wong, M. Butterfly, and the Adventures of Priscilla, Queen of the Desert*, 5 ASIAN L.J. 99, 130 (1998) (describing instances of abuse).

mandated study.⁸² The main purpose of IMBRA is to prevent domestic abuse of mail-order brides.⁸³ Congressional findings supporting the passage of IMBRA included: (i) one-third to one-half of foreign fiancées admitted to the United States each year met their husbands through IMBs; (ii) abuse rates in marriages between United States citizens and foreign women may be as much as three times higher than that of the general United States population; and (iii) information on consumer-husbands' sex offender status or domestic violence history was not collected by IMBs and was not provided to potential foreign brides.⁸⁴ The report concluded that there existed "alarming evidence of a growing nationwide trend of abuse and exploitation of so-called 'mail-order brides.'"⁸⁵ Accordingly, IMBRA's key provisions were drafted to address the above findings. The Act creates an affirmative duty for IMBs, conducting business with American men, to obtain the woman's written consent for disclosure of her contact information after she had the opportunity to review certain information the IMB was required to disclose to the woman recruit in her native language, including sex offender status, criminal arrest records, and current marital status of the male customer.⁸⁶ This provision was designed to ensure an informed decision whether or not to permit the male customer access to her contact information.⁸⁷ Violators of this provision face a civil penalty of a fine ranging from \$5,000 to \$25,000, and a criminal penalty of up to five years in prison.⁸⁸ Furthermore, IMBRA mandated that the United States Department of Homeland Security and the Departments of State and Justice develop a pamphlet containing information about immigration laws, immigrants' rights, and domestic violence in the United

⁸² See International Marriage Broker Regulation Act of 2005, Pub. L. 109-162, 119 Stat. 3066, 3066 (2006); Illegal Immigration Reform and Immigrant Responsibility Act § 652(c), 110 Stat. at 712-13.

⁸³ See Memorandum from Michael Aytes, Assoc. Dir., Domestic Operations Directorate, to Reg'l Dirs. of U.S. Citizenship and Immigration Servs., et. al. (July 21, 2006) (on file with U.S. Citizenship and Immigration Servs.). See also *IMBRA FAQ*, *supra* note 2; Brandon Robinson, *The Disruption of Marital E-Harmony: Distinguishing Mail-Order Brides from Online Dating in Evaluating "Good Faith Marriage"*, 13 PUB. INT. L. REP. 252, 255-56 (2008).

⁸⁴ *IMBRA FAQ*, *supra* note 2.

⁸⁵ *Id.*

⁸⁶ 8 U.S.C.A. §§ 1375a(d)(3)(A)(iii), (iv) (West 2013).

⁸⁷ *European Connections & Tours Inc. v. Gonzales*, 480 F. Supp 2d 1355, 1368 (N.D. Ga. 2007).

⁸⁸ 8 U.S.C.A. §§ 1375a(d)(5)(A)(i), (B)(i)(II).

States for distribution to women entering the United States via fiancée visas.⁸⁹ IMBRA also places a lifetime limit of two fiancée visas per American male in an effort to prevent serial applicants, or men who have a history of bringing several fiancées to the United States and then failing to pursue a marital relationship.⁹⁰

Additionally, through IMBRA, Congress, for the first time, established a definition for an IMB as an “entity . . . that charges fees for providing . . . matchmaking services[] or social referrals between United States citizens or . . . permanent residents and foreign national[s]”⁹¹ The Act exempted domestic matchmaking services, non-profit religious, and cultural based services, recognizing that these types of companies (i.e., Match.com) did not promote relationships based on power imbalances between men and women.⁹² Domestic matchmaking services, such as Match.com, charge both male and female members an equivalent fee, while IMBs as defined in IMBRA typically charge only male customers and allow the women to join for free.⁹³ In a 2005 report, Congress found a causal relationship between domestic violence and a man’s ability to “purchase” a wife, noting that “American men who use the services of an international marriage broker tend to seek relationships with women whom they feel they can control.”⁹⁴

In 2007, IMBRA’s validity was attacked by European Connections & Tours, Inc., an IMB, when it alleged that the Act was an unconstitutional restriction of First Amendment protected free speech, and a violation of the Equal Protection Clause of the United States Constitution.⁹⁵ European Connections complained that IMBRA’s requiring information collection from male clients for disclosure to female recruits was an infringement of the IMB’s “commercial speech.”⁹⁶ The Court concluded that IMBRA merely requires the IMB to perform a “transmittal role” and does not prevent the IMB from advertising or distinguishing itself from

⁸⁹ *Id.* at § 1375a(1).

⁹⁰ *IMBRA FAQ*, *supra* note 2.

⁹¹ 8 U.S.C.A. § 1375a(e)(4)(A).

⁹² *Id.* at § 1375a(e)(4)(B).

⁹³ *European Connections & Tours v. Gonzales*, 480 F. Supp 2d 1355, 1378 (N.D. Ga. 2007).

⁹⁴ International Marriage Broker Regulation Act of 2005, H.R. 3657, 109th Cong. (1st Sess. 2005).

⁹⁵ *European Connections & Tours*, 480 F. Supp 2d at 1358.

⁹⁶ *Id.*

competitors.⁹⁷ European Connections argued that the forced revelation of criminal history and other personal information would cause some potential male clients not to sign on with the company;⁹⁸ the court responded that the types of men likely to be deterred from using IMB services, because of the disclosure requirements, were exactly the type of men to which Congress intended the Act to apply, since there is a demonstrated causal relationship between violent criminal history and domestic abuse.⁹⁹ European Connections' Equal Protection claim was similarly invalidated, with the court concurring with Congressional findings that for-profit IMBs fostered relationships with imbalanced power dynamics that have a greater potential to result in domestic violence.¹⁰⁰ IMBRA was therefore validated by the courts to be rationally related to the legitimate government interest of preventing domestic abuse.¹⁰¹

V. IMPACT OF IMBRA AND THE NEED FOR ADDITIONAL SAFEGUARDS FOR MAIL-ORDER BRIDES

Since IMBRA's enactment in January of 2006, most of its provisions—at least in theory—have gone into effect.¹⁰² There is currently a lifetime limit of two fiancée visas, and there are legal courses of action against IMBs that fail to comply with IMBRA disclosure and consent requirements.¹⁰³ Also, a pamphlet containing information on immigration and domestic violence in the United States was finalized by the Department of State in 2012.¹⁰⁴ However, much like previous legislation aimed at domestic violence and mail-order brides, IMBRA's practical impact has been less than was envisioned.¹⁰⁵ Most notably, IMBRA's failure to achieve a significant reduction in domestic violence against mail-order brides is due to IMBRA lacking a

⁹⁷ *Id.* at 1370.

⁹⁸ *Id.* at 1375, 1380.

⁹⁹ *Id.* at 1380–81.

¹⁰⁰ *Id.* at 1378.

¹⁰¹ *Id.* at 1372, 1380.

¹⁰² See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-862, INT'L MARRIAGE BROKER REGULATION ACT OF 2005 (2008).

¹⁰³ Grosh, *supra* note 1, at 100–01.

¹⁰⁴ Posting of Pamphlet Provided for in the International Marriage Broker Regulation Act, 77 Fed. Reg. 74, 546 (Dec. 14, 2012).

¹⁰⁵ Grosh, *supra* note 1, at 102 (outlining reasons for IMBRA's ineffectiveness, such as failure to provide customer personal information to potential foreign brides).

process to police the IMB industry.¹⁰⁶ Another factor, one beyond the scope of legislation, is that American culture affords domestic/marital relationships a high degree of privacy, which prevents continuous monitoring of mail-order brides once they have legally entered the country and are residing with their fiancés or husbands.¹⁰⁷

While IMBRA imposes sanctions for IMBs that fail to comply with its provisions, there is no government agency tasked with monitoring whether or not IMBs are actually complying with the law by informing female recruits of male customers' criminal and sex offender records.¹⁰⁸ One IMB website tells men, "[m]ost foreign women will base their opinion on you after they meet you and not by what you did in the past," seemingly downplaying the importance of providing accurate information about negative histories.¹⁰⁹ IMBs are prompted by a financial incentive to serve the wishes of the customer, who may infer that the IMB should not seek information about his past, even when the woman is legally entitled to such information.¹¹⁰

Most IMBs examined through a limited Internet search are posting information on IMBRA's requirements,¹¹¹ but it is clear that many of the IMBs do not value strict compliance with the law. A Google search of "IMBRA effects" results in a webpage stating that IMBRA has several "loopholes," through which a man may obtain a foreign bride by lying both to the IMB and to United States immigration officials.¹¹² This website also contains

¹⁰⁶ See Kim, *supra* note 38, at 478–79 (stating that domestic violence continues due to the fact that IMBRA protections have not been effectively implemented).

¹⁰⁷ Del Vecchio, *supra* note 1, at 181.

¹⁰⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 102, at 6.

¹⁰⁹ IMBRA LAW-Int'l Marriage Broker Regulation Act, UKRAINESWEETHEARTS.COM, <http://ukrainesweethearts.com/html/imbra.cfm> (last visited Sept. 4, 2013).

¹¹⁰ Compare *id.* (stating that personal information is not collected until after the male customer and prospective bride have met), with Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 833, 119 Stat. 2960, 3072–73 (forbidding the supplying of contact information of a potential bride to a male customer until after personal information has been received and a background check performed).

¹¹¹ See, e.g., *Protect Your Future. Avoid Immigration Nightmares*, HEARTOFASIAONLINE.COM, <http://www.heartofasiaonline.com/hr3402.php> (last visited Sept. 4, 2013). See also *The IMBRA Law and the Loophole*, MARRIAGEAGENCYSCAMS.COM, <http://marriageagency-scams.com/imbra.html> (last visited Sept. 4, 2013) [hereinafter MARRIAGE AGENCY SCAMS].

¹¹² MARRIAGE AGENCY SCAMS, *supra* note 111.

links to similar instructional sites that provide step-by-step instructions on avoiding self-incrimination when questioned by United States immigration officials and instructs men on how to coach their chosen woman to do the same.¹¹³ Even though United States immigration officers interview foreign fiancées before granting them conditional residency in the United States,¹¹⁴ it is clear that such interviews are an inadequate means to determine whether IMBs are fulfilling their legal obligations under IMBRA. Websites that encourage lies and personal history omissions, and also suggest that negative information need not necessarily be revealed to the potential mate,¹¹⁵ highlight the impracticality of IMBRA's disclosure provisions.

VI. PROPOSED SOLUTIONS TO INCREASE PROTECTIONS FOR MAIL ORDER BRIDES

Proposed solutions for provisions of greater protections from abusive spouses for mail-order brides can be summarized by two approaches. The first focuses on amending immigration laws, including IMBRA, to afford immigrant spouses more legal options when faced with an abusive partner. One author suggests that the ability to petition for the permanent residency status of the immigrant wife should be available to either party in the relationship, thereby making the wife eligible to petition for citizenship on her own behalf should the man decline to do so.¹¹⁶ Permitting the immigrant wife to petition would diminish the control that the husband wields by no longer making her legal status in the United States dependent upon his agreeing to petition for her. The two-year conditional residency period under IIRIRA would remain in force.

The second suggested solution would have the two-year conditional period required by IIRIRA¹¹⁷ completely eliminated, as it is unlikely to significantly increase the number of fraudulent marriages. Data accumulated since enactment of the Immigration Marriage Fraud Amendments in 1986 suggests that the number of fraudulent marriages—those arranged solely to

¹¹³ *Id.*

¹¹⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 102, at 10.

¹¹⁵ *See, e.g.*, MARRIAGE AGENCY SCAMS, *supra* note 111 (advising male customers to “[m]ake up any BS story”).

¹¹⁶ Kim, *supra* note 38, at 504.

¹¹⁷ Grosh, *supra* note 1, at 97–98.

acquire United States residency—accounts for less than eight percent of all fiancée and spousal visas.¹¹⁸ Additionally, the INS has concluded that the two-year conditional residency period is unlikely to deter immigrants from entering into marriages with United States citizens solely for residency purposes.¹¹⁹ This solution holds that removing the conditional residency period would eliminate the window period during which the American husband may subject his wife to abuse in order to exercise control over her immigration status. This approach does not address the exclusivity of the husband's petition rights for permanent residency status for the woman.

This author suggests that a combination of the two aforementioned proposals should be further explored as a viable means of increasing immigrant wives' legal rights. What remains lacking in either suggestion, as well as in their combination, is the concept that the best way to reduce spousal abuse is through education. In effect, the proposals are solely procedural and fail to address cultural factors. Currently, the overall outcome does not serve to increase the wives' access to, and understanding of, legal services that would advocate for and protect her legal rights. Ideally, a practical and culturally appropriate means of increasing immigrant spouses' knowledge of women's rights and accessibility to legal services should be explored to ensure that mail-order brides feel empowered and make use of available legal remedies. Unfortunately, in some cases, cultural brainwashing may make it impossible for some women to embrace empowerment.¹²⁰

This author also advocates for a change that would hold the husband (in addition to the IMBs) responsible for failure to communicate his personal history information, to the potential bride, in accordance with IMBRA.¹²¹ The means of involving the male customer may be a signed or notarized affirmative declaration that the personal history information he has

¹¹⁸ *Id.* at 90.

¹¹⁹ *See id.*

¹²⁰ *See* Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail Order Bride Industry and Proposed Legal Solutions*, 5 *ASIAN L.J.* 139, 143–44 (1998) (describing how regional, social, and cultural history influence Filipino women to seek foreign marriages).

¹²¹ *See* Domestic Violence Information Resources for Immigrants and Regulation of International Marriage Brokers, 8 U.S.C.A. § 1375a(d)(5)(A) (West 2013).

submitted is complete and accurate.¹²² While such a process does not ensure that the IMB will pass along whatever information has been provided, it holds the customer legally liable for material misrepresentations made to IMBs during the process of seeking a foreign wife. This approach relies on the deterrent effect and is designed to encourage men to be truthful in their applications. However, since charging and proving an allegation of material misrepresentation would require an involved legal process, the feasibility of this approach still relies on the foreign wife being knowledgeable enough of United States laws and the legal system to bring such a charge, as well as the financial means to hire legal representation. The case of *Fox v. Encounters International*, in which a mail-order bride brought suit against a recruiter and her husband for material misrepresentations and fraud, illustrates the myriad of difficulties inherent in such a cause of action.¹²³ Finding that the plaintiff bride did not detrimentally rely on certain information provided by both defending parties, the lower court concluded that the plaintiff-wife did not have a legally recognizable cause of action under the state claim of fraud in consumer transactions.¹²⁴ Only on appeal did the appellate court take into account the plaintiff's unfamiliarity with American laws and customs,¹²⁵ thus highlighting the fact that mail-order brides, who know little to nothing about United States laws, would face tremendous obstacles initiating and developing such a case.

Ideally, a social welfare system designed to periodically follow-up with mail-order brides after marriage would provide the women with a level of surveillance that would identify domestic abuse and spousal violence. All states have marriage license requirements¹²⁶ that may be used as a means by which to identify mail-order arrangements; however, given the degree of privacy afforded to the marital relationship in the United States, such a system would likely be proven unconstitutional as an

¹²² See *id.* at §§ 1375a(d)(2)(A)(ii), (B).

¹²³ *Fox v. Encounters Int'l*, 318 F. Supp. 2d 279, 282 (N.D. Md. 2002), *aff'd*, 2006 WL 952317 (4th Cir. 2006).

¹²⁴ *Id.* at 291–92.

¹²⁵ *Fox v. Encounters Int'l*, No. 05-1139, 05-1404, 2006 WL 952317, at *2 (4th Cir. 2006).

¹²⁶ See NAT'L CENT. FOR HEALTH STATISTICS, WHERE TO WRITE FOR VITAL RECORDS (2012), available at <http://www.cdc.gov/nchs/w2w/w2w.pdf> (provides information by State as to how to obtain vital statistics' records, including marriage licenses).

unwarranted invasion into domestic affairs.

VII. AN ALTERNATIVE SOLUTION: MONITORING COMPLIANCE OF IMBS

This author proposes that a more viable solution to reduce abuse of women who enter into mail-order marriage arrangements would be to limit IMBs' ability to violate IMBRA. IMBRA violations are only brought to light after spousal abuse has occurred and a suit is brought against the husband and the IMB.¹²⁷ Currently, IMBs are self-policing.¹²⁸ The most reasonable agency to assume IMB monitoring activities would be the Department of Immigration and Naturalization Services, through expansion of current immigration monitoring activities.

Possible approaches could include using agents as "undercover husbands" who would create online identities as men seeking foreign wives, much like police departments use officers to locate and build evidence against sexual predators who target children through the Internet.¹²⁹ In order to detect IMBRA violations, the undercover officers would ask questions of the IMB concerning background checks, immigration procedures, and the sort of information provided to the featured brides.¹³⁰ IMBs providing feedback inconsistent with IMBRA compliance would be flagged for follow-up investigation and prosecution. The mere knowledge that IMBs are subject to monitoring by the United States government may be enough to induce the more reputable IMBs to take measures to ensure that their practices conform to IMBRA's legal requirements.

CONCLUSION

This author has proposed a fairly straightforward method of

¹²⁷ See Grosh, *supra* note 1, at 106 (arguing that "IMBRA protects immigrant brides as long as they are victims of domestic violence").

¹²⁸ Grosh, *supra* note 1, at 104–05. See Del Vecchio, *supra* note 1, at 196 (stating that the majority of IMBRA's provisions leave IMBs "with affirmative responsibilities.")

¹²⁹ See Kimberly J. Mitchell et al., *Investigators Using the Internet to Apprehend Sex Offenders: Findings from the Second National Juvenile Online Victimization Study*, POLICE PRAC. & RES. (2011), available at <http://www.unh.edu/ccrc/pdf/CV212.pdf>.

¹³⁰ See Domestic Violence Information Resources for Immigrants and Regulation of International Marriage Brokers, 8 U.S.C.A. §§ 1375a(d)(2)(A)(ii), (B) (West 2013).

utilizing undercover government officers posing as consumer-husbands as a means to ensure randomly selected IMBs are in compliance with IMBRA. However, legislative officials' historical perception of immigrant brides as conniving women who cheat the United States immigration system by entering into fraudulent marriages to attain citizenship,¹³¹ is a significant obstacle in implementing such a monitoring system. This perception has a basis in a history of women as property, supported by religion and culture in general.¹³² A change to this mindset must become a top priority. It will be difficult and time-consuming, since morality cannot simply be legislated. However, the discussion leading to proposed legislation can serve as an eye-opener to the millions of Americans who fail to recognize the abuse of mail-order brides as a modern-day application of the outdated principle of male dominance.

¹³¹ See Grosh, *supra* note 1, at 90–91 (describing how faulty statistics presented before Congress, claiming significantly higher occurrences of fraudulent marriages, influenced legislation decisions).

¹³² See Epstein, *supra* note 44, at 82 (stating that the mail-order bride industry treats women as a commodity, founded on biases, and societal and cultural traditions).