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“Of the Law, but Not Its Spirit”: Immigration Marriage Fraud as Legal Fiction and Violence Against Asian Immigrant Women

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INTRODUCTION

The Immigration Marriage Fraud Amendments of 1986 (IMFA)¹ was a relatively brief piece of legislation that passed quickly through Congress during a neoliberal era of increased criminalization against communities of color, heightened anti-immigrant legislation, rollbacks in social welfare, and an uncritical reliance on methods of punishment as the solution to the problem of violence against women.² Although the IMFA was originally designed to prevent U.S.

* Assistant Professor in Women’s Studies at the University of Hawai‘i at Mānoa. I thank those legal advocates whose stories appear in this Article for their time, their insights, and gracious ethnographic participation. I hope this Article will open new points of conversation and collective efforts. Sora Han, Brian Chung, Kiri Saliata, Soniya Munshi, Chris Finley, and Jesse Carr provided invaluable feedback throughout all stages of this Article’s writing. I am deeply thankful for Kelly Suk, Michael Klinger, and Peter Waneis at the *UC Irvine Law Review* for the brilliance of their detailed work.

1. Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 10 Stat. 3537 (codified in scattered sections of 8 U.S.C.).

2. For discussions of the relationship between the War on Crime and social welfare legislation, see generally *IMMIGRANT RIGHTS IN THE SHADOWS OF CITIZENSHIP* (Rachel Ida Buff ed., 2008) (providing essay commentary on the ways in which questions of immigrant rights engage complexities of race and nation in citizenship debates); *GEORGE LIPSITZ, THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* (1998) (providing a historical account of structures of whiteness and racism in the U.S.); *MARC MAUER & RYAN S. KING, THE*

citizens from being “duped” into fraudulent marriages with noncitizens,³ the

SENTENCING PROJECT, *A 25-YEAR QUAGMIRE: THE WAR ON DRUGS AND ITS IMPACT ON AMERICAN SOCIETY* (2007), available at www.sentencingproject.org/doc/publications/dp_25year_quagmire.pdf (analyzing twenty-five years of government data regarding drugs and the criminal justice system, finding that the war on drugs has increasingly targeted low-level offenders for arrest and incarceration); MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994) (providing the theory of social construction to race, racism, and race making); DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997) [hereinafter ROBERTS, *KILLING THE BLACK BODY*] (analyzing neoliberal legislation and public policies that criminalized black communities, women’s bodies, and reproduction). DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002) (describing a worsening American social crisis for black children in the foster care system, its effects on black communities, tied in origin to racial injustice and poverty). Scholars have demonstrated how immigration-reform debates, anti-immigrant rhetoric, and questions over citizenship influenced federal and state legislative debates on welfare reform. See LYNN FUJIWARA, *MOTHERS WITHOUT CITIZENSHIP: ASIAN IMMIGRANT FAMILIES AND THE CONSEQUENCES OF WELFARE REFORM* 22 (2008); Sid Lindsley, *The Gendered Assault on Immigrants, in POLICING THE NATIONAL BODY: SEX, RACE, AND CRIMINALIZATION* 175, 182 (Jaël Miriam & Anannya Bhattacharjee eds., 2002). The relationship between antiviolenace agendas, feminist movements, and expansions of criminalization is well documented by scholars of race, law, and gender. See, e.g., KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (2008) (arguing that feminist antiviolenace movements were co-opted by neoliberal state agendas); BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN* (1996) (creating the concept of “gender entrapment” to describe the social and political conditions whereby African American women who are survivors of violence become locked into the criminal legal system rather than protected by it); Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 357, 357–77 (Kimberlé Crenshaw et al. eds., 1995) (offering an intersectional approach to race and gender in the law, particularly theories of structural, political, and representational forms of intersectionality that become necessary in order for us to fully understand violence against women of color); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory, in CRITICAL RACE FEMINISM: A READER* 34, 34–39 (Adrien Katherine Wing ed., 2d ed. 2003) (exploring the idea of “gender essentialism” to embrace the move away from univocal and toward multivocal theories of women’s experience and feminism in feminist legal theory); Mimi Kim et al., *A World Without Walls: Stopping Harm & Abolishing the Prison Industrial Complex, THE ABOLITIONIST*, Spring 2012, at 5, available at <http://abolitionistpaper.files.wordpress.com/2012/02/abolitionist-16-english.pdf>.

3. Newspaper and magazine reports illustrate the concern surrounding the growth of immigration marriage fraud, its impact on American society, and the need for legislation to prevent abuse of the immigration system. See, e.g., Carol Ann Campbell, *Having to Prove They Do*, RECORD (N.J.), Oct. 10, 1988, at B1; Howard Chua-Eoan, *Tightening the Knot*, TIME, Dec. 15, 1986, at 35; Judith Cummings, *California Wedding Chapels Prosper with ‘Quickie Marriages,’* DALLAS MORNING NEWS, Jan. 3, 1988, at 3F; Scott Eyman, *Till Citizenship Do Us Part*, SUN-SENTINEL (Ft. Lauderdale), May 17, 1987, at 6; Thomas Ferraro, *Marrying for a U.S. ‘Green Card’ Is a Growing Immigration Sham*, ORLANDO SENTINEL, Aug. 10, 1986, at H4; Charles Green, *Immigrant Marriage Scams Face Congress Crackdown*, SAN JOSE MERCURY NEWS, Jul. 17, 1986, at 8A; Editorial, *Marriage Cheats*, S.F. CHRON., Aug. 27, 1985, at 38; Tex O’Neill, *Suit Says INS Went Too Far to Eliminate Marriage Fraud*, HOUS. CHRON., Feb. 7, 1988, at 5; Tex O’Neill, *We Married Out of Love, Alien and Wife Tell INS in Suit*, CHARLOTTE OBSERVER, Jan. 28, 1988, at 1A; Chris Reidy, *Senate Panel Takes Up Marriage Fraud Proposal*, ORLANDO SENTINEL, Jul. 17, 1986, at A3; Peter Slevin, *What’s Wrong with This Marriage?*, MIAMI HERALD, Jan. 24, 1988, at 1G; Deborah Sontag, *U.S. Arrests 3 in Immigration Marriage Fraud*, N.Y. TIMES, Jul. 22, 1994, at A1; Judy Wiessler, *Senate Panel Readying New Rules to Stop Sham Marriages for Immigration Purposes*, HOUS. CHRON., Jul. 17, 1986, at 5; Martin Yant, *Nuptial Fraud Still in Cards for Foreigners*, COLUMBUS DISPATCH, Jul. 27,

IMFA's legal legacy has expanded much further into areas of legal practice that address domestic violence and battered immigrant women. Fraud shapes debates around citizenship and the contract of marriage. Fraud also determines how the law will read survivors of violence in immigrant marriages as either culpable for fraud or innocent as victims of violence. My purpose in this Article is to understand why immigration marriage fraud limits the relief immigrant women seek from the law and how love, whiteness, translation, innocence and fraud marshal the scope of antiviolenace legal practices in immigrant communities.

Of the few texts dedicated specifically to the IMFA, scholars have generally argued that battered immigrant women carry the burden of proving they are not frauds, yet women who are citizens are not asked to carry this same burden when seeking protection from domestic violence.⁴ Legal advocates and community organizers from the antiviolenace movement have argued that the IMFA places women in more restrictive dependency upon their spouses thereby furthering conditions of violence due to such dependency.⁵ Both lines of argument have sought to show how fraud gets in the way of the law's ability to protect immigrant women from violence. To build upon these insights, this Article argues that we extend our analyses into the very concept of "fraud" itself and explore how the political ideologies espoused by the IMFA established the racial discourse within which immigrant women have become legal subjects and how their *legality* has shifted existing frameworks used to analyze gender, violence, and race in the law.⁶ This reading of "immigration marriage fraud" as more than merely an unequal

1988, at 15A; R.A. Zaldivar, *Fake Marriages to Enter U.S. Called Epidemic*, MIAMI HERALD, Jul. 24, 1985, at 1A.

4. For discussions of the barriers the IMFA created for battered immigrant women married to U.S. citizens or legal permanent residents, see Uma Narayan, "Male-Order" Brides: *Immigrant Women, Domestic Violence and Immigration Law*, 10 HYPATIA 104, 110–12 (1995); Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 95 AM. U. J. GENDER SOC. POL'Y & L. 95, 101–05 (2001). For discussions of legislative solutions to these problems, see Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I and II*, 17 BERKELEY WOMEN'S L.J. 137, 148 (2002); Leslye E. Orloff & Hema Sarangapani, *Governmental and Industry Roles and Responsibilities with Regard to International Marriage Brokers Equalizing the Balance of Power Between Foreign Fiancés and Spouses*, 13 VIOLENCE AGAINST WOMEN 469, 475–76 (2007); Rosalva Hernandez, *Ticket to Freedom from Abuse*, ORANGE COUNTY REG. (Cal.), May 1, 1995, at B1.

5. Narayan, *supra* note 4, at 111–12; Orloff & Kaguyutan, *supra* note 4, at 101–02.

6. Of the few authors to cover this subject, Christine So's work on mail-order brides and contestations over fraud provides a theoretically rich analysis of the racial figure of "mail-order brides" as "symbolic of the potential dissolution and recovery of a U.S. national identity." Christine So, *Asian Mail-Order Brides, the Threat of Global Capitalism, and the Rescue of the U.S. Nation-State*, 32 FEMINIST STUD. 395, 398 (2006). She argues that the narrative of "recovery" seeks not to rescue the bride as a victim, but rather to recover injuries to the male citizen spouse as representative of the nation. *Id.* at 399–400. In other words, the mail-order bride narrative is one where women become subjects only when they rescue white male citizen spouses. *Id.* So further argues that this particular formulation of mail-order brides reinforces subordinating gender relationships that temper the threat of global capitalism to the nation-state. *Id.* at 413–15.

legal requirement, allows us to consider the formation of legal practices that save, protect, and rescue noncitizen immigrant women from violence as shaped and regulated by immigration marriage fraud's epistemologies, constructed as a legal defense of the citizen subject's innocence. This Article argues immigration marriage fraud is not a racial misrepresentation of immigrant women but is instead a legal fiction, an invention of law that defines the subject of fraud as one who desires citizenship rather than the "bonafide" love of a citizen spouse. Yet, marriage contracts already include the possibility of citizenship for married noncitizen women and the legal fiction of fraud continuously disavows this material condition while claiming women should be able to disprove a desire they are already bound to within the law. Immigrant women are innocent of fraud only if they can match their love to that of their spouse and deny any articulation of self-love. The genre of legal fiction, when theorized as such, is able to connect the letter of law, legal practice, and women's experiences in new directions where we might locate not only the absence of the law's ability to address violence, but the presence of violence in the law itself.

The "illegal" subject as a counter-narrative to the citizen subject is a dominant foundation to existing theorizations on the immigrant subject, law, and Asian American racial identity.⁷ The law's marking of immigrant subjects as "illegal" underpins many of our existing theorizations of why certain racial identities are excluded from the nation-state and even further, how racial meaning is often assigned to immigrant communities. Moreover, scholarship in this vein seeks to fit the IMFA within existing literature on illegality and criminality, debating whether "frauds" are criminal acts, whether battered women are exceptions to the norm of fraud, and whether the larger rhetoric of fraud as "illegal" can adequately account for the racial subject of the phenomenon of immigration marriage fraud.⁸ The production of the "illegal immigrant" has

7. The prominence of exclusion's theoretical reach goes beyond studies of legal doctrine, public policy, or political institutions to shape the field's broader scholarship on racial representation and identity. *See generally* Anthony Sze-Fai Shiu, *Transformation and Agency in Asian American Cultural Studies*, 6 CR: THE NEW CENTENNIAL REV. 111, 112 (2006) ("[T]he grounds of Asian American cultural studies have reiterated that which should be dismissed: a reliance upon racial(ist), exclusionary logics without either a dismissal of the calcified, particular Asian American identities, which are produced via exclusion, or an evacuation of hierarchies of power within Asian America.").

8. *See, e.g.*, Lisa C. Ikemoto, *Male Fraud*, 3 J. GENDER RACE & JUST. 511, 536–37 (2000) (likening the exclusionary anti-prostitution Page Law of the nineteenth century to the IMFA); M. Isabel Medina, *The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud*, 5 GEO. MASON L. REV. 669, 674 (1997) (arguing that criminal measures do not deter attempts to enter unlawfully, nor do they provide effective sanctions that prevent attempts at lawful admission). *See generally* Alicia Schmidt Camacho, *Hailing the Twelve Million: U.S. Immigration Policy, Deportation, and the Imaginary of Lawful Violence*, 28 SOC. TEXT 1 (2010) (examining why mass removal of immigrants does not take place and using this absence to critique existing immigration scholarship and immigrant rights discourses which have not taken into account the state's treatment of immigrants which Camacho argues is more adequately described as "lawful violence").

become the site of theoretical and empirical research on the racialization of immigrants and the contestation over their place within the nation-state.⁹

In the IMFA scheme, however, immigrant women break no law; that is, the law does not mark them as "illegal immigrants," but as subjects who the law worries are "of the law, but not its spirit."¹⁰ While the provisions restrict the means by which immigrant spouses maintain their legal status,¹¹ the law does so through considerations of how to manage the inclusion of those who are already *of the law*, not those whom the law seeks to exclude and mark as "illegal."¹² Theories of exclusion and illegality cannot capture the full extent of the IMFA's reach and its influence on violence in immigrant women's lives.

This Article demonstrates how "immigration marriage fraud" is a legal fiction.¹³ The racial violence immigrant women experience because of the IMFA is not due to the fact that the law incorrectly places the responsibility for marriage fraud on immigrant women, but rather due to the law's constitution of marriage fraud as a legal fiction to begin with it. Legal fiction is its own genre of law that is not purely fictive or factual, but is instead taken to be a form of racial truth

9. See, e.g., BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850–1990, at 203–06 (1993) (assessing American immigration policy's effect on Asian immigrants); ERIKA LEE, AT AMERICA'S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943 *passim* (2003) (writing about the effect of Chinese exclusion laws on both Chinese immigrants and the development of American immigration policy); MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 56–90 (2004) (examining the figure of the "illegal alien" in twentieth-century America); LELAND T. SAITO, THE POLITICS OF EXCLUSION: THE FAILURE OF RACE-NEUTRAL POLICIES IN URBAN AMERICA 1–31 (2009) (revealing how policies in California and New York that purport to be race neutral may actually perpetuate past discrimination); Lionel Cantú Jr. et al., *Well-Founded Fear: Political Asylum and the Boundaries of Sexual Identity in the U.S.-Mexico Borderlands*, in QUEER MIGRATIONS: SEXUALITY, U.S. CITIZENSHIP, AND BORDER CROSSINGS 61, 64–70 (Eithne Luibhéid & Lionel Cantú Jr. eds., 2005) (arguing racism and colonialism are inherent in asylum hearings to determine whether gay Mexican men should be granted asylum by the United States, and suggesting that efforts to exclude the Chinese laid the foundation for the entire U.S. immigration apparatus); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1586–91 (2002) (exploring various dimensions of the racial other, the logic of counter-terrorism, and the "Arab terrorist" post-9/11).

10. Throughout this Article, I discuss this logic of the "spirit" of marriage and its racial meaning by means of the immigrant subject. "Of the law, but not its spirit" is later explained in this Article within the historical context of the congressional hearings on immigration marriage fraud in the 1980s. See *infra* notes 47–52.

11. Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-637, 10 Stat. 3537 (codified in scattered sections of 8 U.S.C.) (allowing only a two year conditional residence for immigrant spouses, after which a good-faith marriage must be proven).

12. See *id.*

13. To be clear, I am not arguing that the law itself is fictive, "semi"-real or "quasi"-fact, nor am I suggesting that "social construction" be conflated with fiction defined in opposition to fact. See Robert F. Barsky, *From Discretion to Fictional Law*, 35 SUBSTANCE 116, 116 (2006) ("We need to . . . [suggest] that sometimes law isn't *like* fiction . . . but *is* a fiction, and the real-world consequences that occur in its name are as arbitrary as the discretionary conditions that led to its being invoked in the first place.").

precisely because the claims made about race are impossible to prove as false.¹⁴ Understanding legal fiction as its own genre, and not a conflation or collapsing of either fiction or fact, allows us to draw from the theoretical richness of the borders that establish naturalized perceptions of how fiction and fact are understood and accepted.¹⁵ In other words, our critiques of the IMFA have been limited to arguments that the law misplaces the marker of “fraud” in an act of injustice, however this can limit our understanding of what our objects of justice appear to be. Existing scholarship critiquing the IMFA is largely concerned with how “fraud” is defined and how such a definition is misplaced onto women. Thus, while this critique argues that women are unfairly profiled, the argument is limited by its acceptance of the legal meaning of immigration marriage fraud (i.e., there are frauds out there, but they are not battered immigrant women or clients of nonprofit immigrant-rights work). Theorizing immigration marriage fraud as legal fiction opens up the discussion of racial and gendered meaning even in the absence of an act of criminal activity, illegality, or assumed fraud. Unexpectedly, legal fiction allows us to more adequately speak to the lived experiences of fact in immigrant women’s lives.

In legal discourse and practice, fraud is not determined by criminal activity, but rather the interiority, the consciousness, and the desires of the racial subject.¹⁶ In particular, IMFA legislation promises to equally and fairly determine whether battered immigrant women display “bona fide” love or whether they are frauds based specifically on the measurement of an immigrant spouse’s desire U.S. citizenship.¹⁷ Marriage fraud as legal fiction has played a much larger role in the formation of racial identity, immigrant rights, and antiviolence political practices than previously acknowledged.

My discussion of the IMFA draws from ethnographic fieldwork conducted during 2009 and 2010 with nonprofit advocates in the San Francisco Bay Area serving survivors of domestic violence and human trafficking in Asian immigrant communities.¹⁸ Throughout these two years, I engaged in conversations with

14. I thank Sora Han for this insight on genre and legal fiction.

15. See Seema K. Shah & Franklin G. Miller, *Can We Handle the Truth? Legal Fictions in the Determination of Death*, 36 AM. J.L. & MED. 540, 556–59 (2010) (providing an overview of selected scholarship on legal fictions); Peter J. Smith, *New Legal Fictions*, 95 GEO. L.J. 1435 (2007) (proposing the concept of “new legal fictions” wherein a court proposes a legal rule based on a factual supposition that is descriptively inaccurate).

16. See Smith, *supra* note 15, at 1455–57 (discussing the legal fiction of “fraud-on-the-market”).

17. See Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-637, 10 Stat. 3537 (codified in scattered sections of 8 U.S.C.) (providing that in the case of an alien who has permanent resident status on a conditional basis under the IMFA, the marriage shall be terminated if it was entered into for the purpose of procuring an alien spouse’s entry as an immigrant).

18. I thank legal advocates for their time and for allowing me to speak with them about their work and their interpretations of the law. This Article is based on ethnographic research with nonprofit organizations serving primarily Asian immigrant communities in the capacity of legal and social services in the San Francisco Bay Area from 2009–2010. I define “legal advocate” broadly to

advocates from women's shelters, legal centers, and women's centers who focused on immigration law and family law. When we spoke specifically about domestic violence cases, many of the stories advocates shared were often laced with a common concern—the need to disprove fraud, to prove clients were not frauds, and to provide evidence that the marriage at hand was not fraudulent. A number of regulations and rules were often introduced to me as an effect of the law's "worry about fraud." Advocates shared stories that the difficulty their clients experienced in the legal process stemmed from the struggle to combat the law's assumptions of fraud that reoccurred even for clients who were not married. Stories about client experiences were often couched within larger discussions about the difficulties clients faced when asked to prove good moral character and good-faith marriages. The widespread repetition of an assumption of fraud and the heavy influence this played in advocacy work and women's experiences drove my commitment to seek a deeper understanding of "immigration marriage fraud."

In this Article, I begin with a discussion of political debates over comprehensive immigration reform beginning in the late 1980s and continuing throughout the 1990s. Part I defines how immigration marriage fraud is established through legal fiction. The "family" emerges as the site through which citizenship, race, and the sanctity of marriage appear as central concerns over unlawful immigration and family reunification.¹⁹ It is within this context that immigration

include attorneys, social workers, counselors, and nonprofit staff who work directly with the legal system to provide assistance to immigrant women. All interviews in this Article were conducted anonymously by request of those I spoke with.

19. The Immigration Nationality Act of 1924 (INA) was the first comprehensive piece of legislation to regulate immigration. Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (1924). The INA incorporated into its backbone the adoption of a family preference system. *Id.* For example, section 4(a) of the INA exempts any "unmarried child under 18 years of age, or the wife, of a citizen of the United States" from immigrant quotas. *Id.* Pub. L. No. 68-139, §4(a), 43 Stat. 153, 155. For discussions on the family and law, see generally WILLIAM N. ESKRIDGE JR. & NAN D. HUNTER, *SEXUALITY, GENDER, AND THE LAW* 663–858 (3d ed. 2011) (providing a comprehensive overview of family and law); Jennifer M. Chacón, *Citizenship and Family: Revisiting Dred Scott*, 27 WASH. U. J.L. & POLY 45 (2008) (exploring "the implications of the *Dred Scott* case for modern questions about family unity as it is affected by U.S. immigration law and policy"). For discussion on the family as the site through which race, gender, and nation are produced, see HOWARD BALL, *THE SUPREME COURT IN THE INTIMATE LIVES OF AMERICANS: BIRTH, SEX, MARRIAGE, CHILDREARING, AND DEATH* (2002) (discussing the effect of various Supreme Court cases affecting the family and issues associated with families); Patricia Hill Collins, *It's All in the Family: Intersections of Gender, Race, and Nation*, in *DECENTERING THE CENTER: PHILOSOPHY FOR A MULTICULTURAL, POSTCOLONIAL, AND FEMINIST WORLD* 156 (Uma Narayan & Sandra Harding eds., 2000) (analyzing the normative subject of the U.S. family through the lens of intersectionality, which conceptualizes analyses of gender, race, sexuality, and nation as mutually informative); Anne McClintock, *Family Feuds: Gender, Nationalism and the Family*, 44 FEMINIST REV. 61 (1993) (theorizing the production of gender in relation to articulations of nation and family); So, *supra* note 6, at 398–99 ("[N]ot only does the Asian mail-order bride signify the labor that enables the 'success' of global capitalism, she also becomes a repository for national fears about global competition, loss of U.S. jobs and cultural identity, and the 'invasion' of immigrants of color, a threat that becomes particularly palpable when located in the American home.").

marriage fraud was popularized as a political issue and a cause for legislative action and the racial subject of immigrant spouses as “of the law, but not its spirit.” Part II theorizes the place of legal ethnography in scholarship on the IMFA through acts of refusal and confession. I interrogate how the legal discourse of fraud laces the ability to name legal practices that serve noncitizen immigrant women. Part III engages with translation in ethnographic stories to demonstrate how the law’s use of translation traps immigrant women into betraying themselves. Part IV analyzes the role of “love letters” and the white normative subject of marriage contract. Part V demonstrates how legal fiction requires an innocent victim and demonstrates how the monetary contract absolves citizen subjects for fraud in the law.

I. IMMIGRATION MARRIAGE FRAUD AS A LEGAL FICTION

I worked with an immigrant woman who was abused during her marriage with a white man. When Immigration interviewed her, the official said, “Why didn’t you call the police every time this happened, I can’t believe you didn’t call the police.” He was mocking her. Instead of looking at the evidence of abuse that was in front of him, he was looking to see if my client was in a fraudulent marriage with this white guy. So I tell my clients, “My goal is not only to get you the green card, but to skip the interview with Immigration.”²⁰

Carol, an Asian American nonprofit attorney in San Francisco, shared this story about her work with immigrant women who were survivors of violence. In this story, immigration law provides the avenue through which Carol’s client is able to receive a green card that will allow her to leave her abusive marriage. At the same time, the enforcement of immigration law drives the standard practice of challenging a particular kind of legal subject’s credibility. Thus, Carol’s goal was not merely the procurement of a green card for her client; she intended to find a way for her client to skip the immigration interview entirely.

Carol continued to describe how immigration officers not only sought facts about women’s experiences with domestic violence, but also measured these facts against the intentions, consciousness, and desires of noncitizen immigrant women married to U.S. citizens. In this story, her client becomes a subject of law through measurements of “credibility” defined both by her racial difference to her spouse and her legal difference as a noncitizen married to a U.S. citizen. The client’s credibility is challenged not by illegality, as she is legally married, but rather, by the credibility of her interiority as a racial subject. That is, when asked “Why didn’t you call the police every time this happened?” Carol’s client faces a direct challenge against her lived experience but instead of speaking as a survivor of violence, her client must respond as a speaking subject whose position within the

20. Anonymous interview with Carol, Attorney, in S.F., Cal. (Oct. 2009).

law is determined by the racial separation from her spouse, "The [immigration officer] was mocking her. . . . looking to see if my client was in a fraudulent marriage with this white guy."²¹ Indeed, racial separation was the impetus for the immigration official's suspicion that violence did not occur "every time." This is a very curious point of focus in this particular line of questioning. For, if multiple acts of violence are read as fraudulent, the reverse would suggest that if this were not a fraudulent marriage then the reoccurrence of violence would somehow be acceptable and unquestioned.

Carol's goal to "skip the immigration interview" reflects how acutely immigration marriage fraud shapes antiviolence legal practice in ways we cannot understand without exploring how the law produces the racial meaning of fraud that limits the ability of immigrant women to become speaking subjects within the law.²² Carol's strategy "to skip" foreshadows the dead-end of this interview and an experience so grave that Carol attempts to remove the opportunity for her client to speak.

In the late 1980s, Congress debated national efforts to reform the existing immigration system, which resulted in the passage of a series of legislative amendments to the Immigration and Nationality Act. This particular immigration reform effort came at the height of the conservative era culture wars, the reduction in welfare spending, growing military spending, the increased criminalization of poor communities of color during the War on Drugs, the expansion of the U.S. prison system, and the use of punitive measures and unquestioned ideologies of punishment to solve social problems as part of what Beth Richie has called, the building of "a prison nation."²³ The Immigration

21. *Id.*

22. *Id.*

23. BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012). *See generally* FUJIWARA, *supra* note 2 (examining, amongst other issues, drops in welfare services and programs during this era); RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007) (discussing California's economy, theories of surplus, the suppression of social movements and political organizing, and the politics of race and incarceration in building the prisons system); ROBERTS, *KILLING THE BLACK BODY*, *supra* note 2 (analyzing neoliberal legislation and public policies that criminalized black communities, women's bodies, and reproduction); Marylee Reynolds, *The War on Drugs, Prison Building, and Globalization: Catalysts for the Global Incarceration of Women*, 20 NWSA J. 72 (2008) (documenting the expansion of the U.S. prison system in relation to the War on Drugs and global economic capital). Massive cutbacks to social welfare programs took place and President Reagan's War on Drugs resulted in the wide sweeping Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986), and the introduction of national "lock 'em up" policies that emphasized punishment over rehabilitation. Through the mid-1980s, mandatory minimum sentencing for drug offenses was established even while actual drug use at a national level was at its high in 1979, and began declining by the early to mid-1980s before President Reagan's War on Drugs began in 1982. MAUER & KING, *supra* note 2, at 3-4. *See generally* INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT (Marc Mauer & Meda Chesney-Lind eds., 2002) (featuring essays examining the apparent and hidden effects of conviction and imprisonment). Scholars have documented correlating relationships between rising criminalization practices over

Marriage Fraud Amendments (IMFA) passed relatively quickly during this period²⁴ before stringent immigration reform at the federal level²⁵ and California's massive anti-immigrant ballot initiatives.²⁶ Although the IMFA was a statute originally popularized as a mechanism to protect white female citizens from being “duped” into marriages with noncitizen immigrants, its impact and legal legacy has since formed one of the primary constraints nonprofit attorneys face in their work to obtain legal protections for Asian immigrant women who are survivors of domestic violence.

Immigration reform resulted in a reduction in social services and welfare benefits to immigrants, increased deportations, but at the same time created new preference categories to ease the immigration backlog and “reunify” families.²⁷ While scholarship on Asian immigrant communities has accounted for these reform efforts, the IMFA and the legal workings of “marriage fraud” are relatively undertheorized in spite of the prevalence of fraud as a racial marker of Asian and Asian Americans as contested subjects of the U.S. nation-state.²⁸

“domestic” poor and working class communities of color and increasingly stringent border policing and surveillance over “foreign” immigrant communities; the 1980s were no exception. *See generally* MAUER & KING, *supra* note 2, at 2. The Sentencing Project documented statistics collected from the Bureau of Justice Statistics: drug arrests tripled in the last twenty-five years; drug offenders in prison and jail increased 1100% since 1980; nearly six in ten persons in state prison for drug offense have no history of violence or high-level drug selling activity; African Americans are responsible for fourteen percent of regular drug use, but comprise thirty-seven percent of those arrested for drug offenses, and fifty-six percent of those in prison for drug offenses. *Id.*

24. The IMFA sought to amend the existing Immigration and Nationality Act, the backbone of U.S. immigration law. Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-637, 10 Stat. 3537 (codified in scattered sections of 8 U.S.C.).

25. Most notably, the reduction of social services, welfare, and increased levels of deportation set in motion by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. DANIEL MARTINEZ HOSANG, RACIAL PROPOSITIONS: BALLOT INITIATIVES AND THE MAKING OF POSTWAR CALIFORNIA 1, 196–97 (2010); *see also* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546.

26. *See* HOSANG, *supra* note 25, at 1, 130–59, 160–200 (describing the effects of specific California anti-immigrant ballot initiatives).

27. *See generally* BILL ONG HING, DEPORTING OUR SOULS: VALUES, MORALITY, AND IMMIGRATION POLICY (2006) (discussing how debates over American values, morals, and ideologies are played out through modern immigration policy debates); HOSANG, *supra* note 25 (discussing California ballot initiatives' effect on immigrants); THE NEW ASIAN IMMIGRATION IN LOS ANGELES AND GLOBAL RESTRUCTURING (Paul M. Ong et al. eds., 1994) (examining Asian immigration post-World War II, a period characterized by significant political and economic restructuring in Asian countries and the United States).

28. Sociological and political studies have analyzed how campaign finance debates invoked narratives of “traitors” and “spies” to explain the potential threat of Asians within the nation-state as fraud. *See* THOMAS P. KIM, THE RACIAL LOGIC OF POLITICS: ASIAN AMERICANS AND PARTY COMPETITION 62 (2007) (pointing to Asians labeled as “spies” in debates over campaign finance); CRYSTAL PARIKH, AN ETHICS OF BETRAYAL: THE POLITICS OF OTHERNESS IN EMERGENT U.S. LITERATURES AND CULTURE 129–59 (2009) (analyzing politically and ethically the case of Wen Ho Lee—wrongly accused of being a spy against the United States); Colleen Lye, *The Literary Case of Wen Ho Lee*, 14 J. ASIAN AM. STUD. 249, 251 (2011) (analyzing books about Wen Ho Lee that “depict a subject's becoming Asian American through being racialized as a national security threat”). Similarly,

The political formation of "the family" anchored debates described by Senator Alan Simpson as "filled with emotion, fear, guilt and racism"²⁹ and what the *Wall Street Journal* reported as the phenomenon of "[i]llegal immigration and its handmaidens—cynicism and fraud . . ."³⁰ Anti-immigrant politics seeking to undermine the push to reunify immigrant families charged immigrants and noncitizens residing in the United States as sources of fraudulent marriages, births, and legal identities.³¹ Stories about families were, and continue to be, at the forefront of legislative efforts to increase the number of immigration visas granted by the state per year, to secure more funding to process and clear out the immigration backlog, and to provide comprehensive social services and benefits to recent immigrants.³²

In 1986, the Immigration and Naturalization Service (INS) introduced

literary studies of the "cheat" and the "chinaman" as racial and sexual threats have also touched upon how Asian literary figures are narrated as frauds. *See, e.g.*, ROBERT G. LEE, *ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE* (1999) (cataloguing and discussing representations of Asian Americans in popular culture); Thomas W. Kim, *Being Modern: The Circulation of Oriental Objects*, 58 *AM. Q.* 379, 379 (2006) (arguing that for American culture of the late nineteenth and early twentieth centuries "the Orient (as object and concept) acts both as an agent for and a palliative against the contradictions activated by modern consumption"). Despite this presence within Asian American Studies scholarship, there is still much room for theorizations of fraud within the specific context of "immigration marriages" and the racial and gendered identities of Asian immigrants.

29. Andy Pasztor, *Immigration Bill Passes Congress as Session Ends, Employers to Be Required to Check Documents of All Job Applicants*, WALL ST. J., Oct. 20, 1986, at 2. Patricia Hill Collins has argued that the family is an ideology and a "principle of social organization" that links hierarchies of gender, race, and nation, yet naturalizes this organization so as not to appear hierarchical. Collins, *supra* note 19, at 157–61. Along the same lines, a number of scholars writing on gender, sexuality, race, and racism have theorized the formation of state power through the figure of the family as a rhetorical device carrying ideological persuasions in political debates over abortion, reproduction, land rights, religion, and popular music. *See, e.g.*, ESKRIDGE JR. & HUNTER, *supra* note 19, *passim*; RETHINKING VIOLENCE AGAINST WOMEN 70 (R. Emerson Dobash & Russell P. Dobash eds., 1998); Eithne Luibhéid, *Sexuality, Migration, and the Shifting Line Between Legal and Illegal Status*, 14 *GLQ: J. LESBIAN & GAY STUD.* 289, 298–304 (2008); McClintock, *supra* note 19, at 61; Chandan Reddy, *Asian Diasporas, Neoliberalism, and Family*, 23 *SOC. TEXT* 101, 102 (2005).

30. Deborah M. Levy, *Better Immigration Rules, Not More Patrols*, WALL ST. J., Jan. 29, 1986, at 30. Congressional testimonies raised questions over family preferences and "seed" immigrants.

31. For discussion of the formation of family and immigration reform, see generally FUJIWARA, *supra* note 2, at 154 (exploring the ill effects of welfare reform on Asian immigrant women and families); HING, *supra* note 27, at 118–39 (exploring how U.S. immigration policies have shaped Asian American communities). For a discussion of the heteronormative family as the maintainer of white racial order through immigration policy, see Luibhéid, *supra* note 29, at 297.

32. Narratives of immigrants as "frauds," most visibly used as counterarguments against reforms efforts seeking to unify "family," ran simultaneously alongside each other during the legislative reform efforts of the 1980s and well throughout the 1990s. *See supra* text accompanying note 3 (providing numerous newspaper and magazine articles from the late 1980s to early 1990s that address growing concern over marriage fraud and the need for legislation in that regard). In the IMFA debates, "seed immigrants" were at the forefront of the debate over preference categories for immediate relatives to those already residing within the United States. *Immigration Act of 1989: Hearing on S. 358, H.R. 672, H.R. 2448, and H.R. 2646 Before the Subcomm. on Immigration, Refugees, & Int'l Law of the H. Comm. on the Judiciary*, 101st Cong. 2 (1989) [hereinafter *Hearing on Immigration Act of 1989*].

immigration marriage fraud as a threat against the sanctity of American families and the true “spirit” of the American legal system.³³ The resulting IMFA passed quickly through Congress and garnered fears that a rising number of marriages between noncitizens and U.S. citizens were not “bona fide” forms of love, but rather acts of fraud and deception defined specifically, and racially, as immigrants seeking citizenship through marriage. The INS and Congress cautioned against any legislation increasing the number of temporary visas available to immigrants without first strengthening measures to ward off the potential of marriage fraud—the figure of the family as a site through which the nation imagined its future and the protection of this future against the threat of fraud. INS officials appeared on daytime talk shows *Oprah* and *Sally Jesse Raphael*³⁴ to heighten the public’s awareness of immigration marriage fraud.³⁵ President Bush stated that the legislation met “several objectives of this Administration’s domestic policy agenda—cultivation of a more competitive economy, support for the family as the essential unit of society, and swift and effective punishment for drug-related and other violent crime.”³⁶ And presiding over the Senate hearings, Chairman Bruce A. Morrison argued that immigration in the 1990s would be of the “New World”³⁷

33. See Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified in scattered sections of 8 U.S.C.). The Immigration Naturalization Service (INS) under the Department of Justice was abolished in 2003 by the Homeland Security Act of 2002. Homeland Security Act of 2002, 6 U.S.C. § 101 et seq. (2012). The creation of the Department of Homeland Security and the U.S. War on Terror, post-9/11, reorganized the INS into three separate agencies placed under the newly formed Department of Homeland Security: United States Citizenship and Immigration Services, United States Immigration and Customs Enforcement, and United States Customs and Border Protection. *Id.* For further history on the INS, see *Immigration and Naturalization Service Abolished, with Border Security, Immigration Services Divided at Department of Homeland Security*, in CQ ALMANAC 2002, at 13-8 (58th ed. 2003).

34. *Marriage Fraud* (NBC television broadcast Aug. 2, 1985); *Nightline: Marriage Fraud* (ABC television broadcast Aug. 26, 1985); *The Oprah Winfrey Show* (syndicated television broadcast Jan. 16, 1991); *The Sally Jesse Raphael Show* (syndicated television broadcast Oct. 1990).

35. It is within this time period that congressional members began to introduce a slew of additional bills. These bills placed stringent restrictions on immigration and social services to immigrants and expanded the range of conditions for criminalization of immigrants. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (codified in scattered sections of 8 U.S.C.) (creating a three-year or ten-year reentry bar for immigrants unlawfully present within the United States for over 180 days and lowering the bar for deportable offenses); Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.) (making it illegal to knowingly hire or recruit unauthorized immigrants and requiring employers to attest to their employees’ immigration status); Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 10 Stat. 3537 (codified in scattered sections of 8 U.S.C.) (restricting marriage benefits to individuals upon a conditional status basis, and requiring that aliens deriving their immigrant status based on a marriage of less than two years are conditional immigrants).

36. Presidential Statement on Signing the Immigration Act of 1990, 2 PUB. PAPERS 1717-18 (Nov. 29, 1990).

37. *Hearing on Immigration Act of 1989*, *supra* note 32 (statement of Chairman Bruce A. Morrison). Congressional hearings spanned three days with opening and closing statements to “mediate between the individual and the nation.” Phyllis Pease Chock, “*Illegal Aliens*,” and

with families at the forefront of the nation's ability to "maximize the diversity of opportunity from which this immigrant society is drawn."³⁸ Thus, the national push to recognize fraud mirrored what Sherene Razack critiques as the "simple logic" of immigration.³⁹ The simplicity of this logic presents immigrants as already and always seeking to trick the nation, and the nation's "logical" response is to defend itself. It was within national debates over family reunification and immigration reform throughout the 1980s and 1990s that the potential threat of fraud emerged.⁴⁰ The threat of fraud against the sanctity of the family unit was read as a threat against the sanctity of the nation-state.⁴¹

Alan Nelson, commissioner of the INS, argued at a special hearing on immigration fraud in 1985 that "[i]f the reunification of families is a priority of this nation, we should assure that families—and not the paper creation of families—are being reunified."⁴² In his public call, Nelson specifically warned that fraud against the nation-state should be differentiated from illegal border crossing: "Most aliens are ineligible for visas because they have flaunted the law . . . [t]he aliens then go on to violate the law again by entering into a fraudulent marriage to fulfill the letter of the law, though not its spirit."⁴³ Here, Nelson's testimony began to define "the fraud" as a subject who not only enters the United States legally, but is a bearer of foreign finances, someone who can provide funds to U.S. citizens in marriage, few in number, and as a threat already included within the national body.⁴⁴ By contrast, the "illegal" subject is marked as posing a threat from outside the nation (not within), seen as opening the "floodgates," blamed for

"Opportunity": *Myth-Making in Congressional Testimony*, 18 AM. ETHNOLOGIST 279, 281 (1991). Individuals like Cecilia Muñoz from the National Council of La Raza, Donald Martin from the Irish Immigration Reform Movement, Melinda Yee from the Organization of Chinese Americans, and members of the Catholic Church and the American Civil Liberties Union gave testimony favoring increased immigration and provided varying perspectives on "family" preference categories and whether they benefitted immigration needs amongst different communities of color. *Hearing on Immigration Act of 1989*, *supra* note 32, at 202, 218, 239, 290, 329.

38. *Hearing on Immigration Act of 1989*, *supra* note 32, at 2.

39. Sherene H. Razack, "Simple Logic": *Race, the Identity Documents Rule, and the Story of a Nation Besieged and Betrayed*, in *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* 199, 216–17 (Francisco Valdes et al. eds., 2002).

40. See *supra* text accompanying note 3 (providing newspaper and magazine articles from the late 1980s and early 1990s that elucidate the national debate over marriage fraud within the context of family reunification); see also *Hearing on Immigration Act of 1989*, *supra* note 32 (providing commentary and debate on immigration marriage fraud with relation to goal of family reunification in immigration).

41. See generally *Hearing on Immigration Act of 1989*, *supra* note 32 (discussing the "national ethics" that would be threatened if Congress did not adopt legislation to deter immigration marriage fraud).

42. *Fraudulent Marriage and Fiancé Arrangements to Obtain Permanent Resident Immigration Status: Hearing Before the Subcomm. on Immigration & Refugee Policy of the S. Comm. on the Judiciary*, 99th Cong. 18 (1985) [hereinafter *Hearing on Immigration Marriage Fraud*] (prepared statement of Alan C. Nelson, Comm'r, Immigration and Nationality Services).

43. *Id.* at 18.

44. *Id.* at 18–19.

draining economic and social resources from the state, already excluded from the state, and marked as committing criminal activity in order to enter the nation.⁴⁵

Laws mark “illegal” subjects as those who have already broken the law, but the immigrant who frauds is of “the letter of the law, though not its spirit”⁴⁶ That is, the spirit of law becomes the spirit of marriage based absolutely on the desire for love, not citizenship, and supportive rather than suggestive of the family as a construct of nationhood. Yet, when noncitizen immigrants are legally wed to U.S. citizens they enter a contract that by design always grants them the possibility of citizenship. Should the terms of the marriage end in dissolution, the possibility of legal status, a green card, or U.S. citizenship also changes. Thus, immigrant spouses are dependent upon their citizen spouse for legal status. Given the law’s definition of “immigration marriage fraud” as not love but a desire for citizenship, then by these terms no immigrant is ever *not* a fraud if they enter into the contract of a marriage with a U.S. citizen. Immigrants can never demonstrate an absence of desire for citizenship when the contract they enter already grants them this possibility. In this way, the attempt to prove one is of the spirit of law will always fall short when that very same spirit denies its own existence. “Immigration marriage fraud” is a legal fiction based on the invention of a subject of law who does not commit fraud (i.e., a subject who can be truly *bona fide*) in order to produce institutionalized rules that regulate immigrants who are always the subjects of racial interrogation (i.e., immigrant spouses are never *not* frauds).

Thus, what the law asks we hold immigrants accountable for is a measurement of the subject’s interiority through a determination of whether her consciousness and her goodwill is “of the spirit.” Unlike the subject of illegality who the law determines ought to know the law but breaks it, the subject marked as fraud must also know the law but is thought to be a threat regardless of any act to break the law. It is in fact the absence of evidence or proof of any criminal act which allows the law to define “immigration marriage fraud” as a threat that can only be ameliorated (or disproven) when the immigrant’s racial interiority is “of the spirit” thereby driving the law’s desire for evidence of *bona fide* love between noncitizen and citizen even when violence is present in a marriage.⁴⁷

45. Alan Nelson asserts that marriage fraud “gut[s] the Immigration and Nationality Act by facilitating the entry of aliens who are generally being excluded for good cause.” *Id.* at 18.

46. *Id.*

47. For discussions of the relationship between state violence and interpersonal violence and women of color antiviolence movements, see Andrea Smith, *Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 71 (Incite! Women of Color Against Violence ed., 2006) (providing literature advocating addressing solutions for women of color in conflict with state violence). For discussions of violence against immigrant women, see generally MARGARET ABRAHAM, *SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AMONG SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES* (2000) (focusing on South Asian women’s experiences of domestic violence); *BODY EVIDENCE: INTIMATE VIOLENCE AGAINST SOUTH ASIAN WOMEN IN AMERICA* (Shamita Das Dasgupta ed., 2007) [hereinafter *BODY EVIDENCE*] (examining South Asian experience, victims of violence face and

Battered immigrant women who choose to use the legal system as a form of protection against domestic violence fall subject to the racial interrogation tied to marriage fraud. In my conversations with Asian American attorneys across the San Francisco Bay Area, I often asked for their interpretation and explanation of rules: “How does one go about seeking a green card?” “How does this change if the client is a survivor of domestic violence?” “What are the steps from start to finish for a visa application?” Rules were often explained as: “this is the way it is because the state is worried about fraud.” Carol’s story breaks down this explanation and theorizes legal practice—the intricate and everyday engagement immigrant women and their attorneys undergo as they walk through the step-by-step tasks of seeking a green card or a visa, filing for a divorce, or obtaining a restraining order. Even further, I am alarmed by how differently Carol’s story can be read without the framework of legal fiction and how easy it is to arrive at the false conclusion that the only problem is that her client is misidentified as fraud, when she is “not.”

II. THE RACIAL PROBLEM WITH “COACHING”

CAROL. I’m not talking about coaching clients. We just need to prepare them for what to expect, it’s my job. I know they know it’s not going to be touchy-feely, but most cases, clients are never really prepared for what they have to endure.

ME. Oh, I wasn’t thinking about coaching, but just so you know, I have no problem with it!

CAROL. But we really aren’t coaching our clients.

intimate partner violence); HOAN N. BUI, *IN THE ADOPTED LAND: ABUSED IMMIGRANT WOMEN AND THE CRIMINAL JUSTICE SYSTEM* (2004) (detailing the experiences of Vietnamese immigrant women who have experienced intimate partner violence within the United States); JULIETTA HUA, *TRAFFICKING WOMEN’S HUMAN RIGHTS* (2011) (discussing the issue of human trafficking of women); ANDREA SMITH, *CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE* (2005) (discussing sexual violence, settler colonialism, and native women and communities); Shamita Das Dasgupta, *Women’s Realities: Defining Violence Against Women by Immigration, Race, and Class*, in *DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER, AND CULTURE* 56 (Natalie J. Sokoloff & Christina Pratt eds., 2005) [hereinafter *DOMESTIC VIOLENCE AT THE MARGINS*] (identifying cultural problems inherent in violence against women, including a fundamental belief that immigrant women of “other” cultures are inferior to Americans and perhaps contribute to their own victimization); Soniya Munshi, *Multiplicities of Violence: Responses to September 11 from South Asian Women’s Organizations*, 4 *RACE/ETHNICITY: MULTIDISCIPLINARY GLOBAL CONTEXTS* 419 (2011) (asking not only what was limited by post-September 11 policies but what was made possible for South Asian antiviolence advocates due to such policies; critiquing the “exceptional logics” of culturally sensitive responses to domestic violence); Sherene Razack, *Domestic Violence as Gender Persecution: Policing the Borders of Nation, Race, and Gender*, 8 *CAN. J. WOMEN & L.* 45 (1995) (arguing that the subject of gender persecution is a culturally othered woman); Natalie J. Sokoloff & Ida Dupont, *Examining the Intersection of Race, Class, and Gender: An Introduction*, in *DOMESTIC VIOLENCE AT THE MARGINS*, *supra*, at 1 (providing a comprehensive review of domestic violence at the intersection of race, class, and gender); Leti Volpp, *On Culture, Difference, and Domestic Violence*, 11 *J. GENDER SOC POLY & L.* 393 (2003) (reviewing ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000)).

ME. I know, I just meant [*struggling to change the subject*].

This was a very awkward end to an amazing interview. Carol was an Asian American nonprofit attorney in San Francisco focusing on human trafficking and immigration cases. Throughout 2009 we worked together on a number of small projects and in July of 2010 we sat down to talk about her work with survivors of violence and human trafficking from Asian immigrant communities.⁴⁸ This brief exchange between the two of us came at the tail end of our conversation. I felt strange about this split between our two different viewpoints on coaching. For me, it seemed logical that any attorney working with clients from immigrant communities would *need* to coach clients. Immigrant women, women of color, and women from poor communities face racism and sexism, language barriers, lack of resources and the inaccessibility of the legal system. It seemed acceptable and even necessary that attorneys coached their clients as a form of guidance and a method of representation. Unaware of the tensions associated with “coaching” I was eager to demonstrate my support for it—“but just so you know, I have no problem with it!”⁴⁹ I later realized, Carol was trying to stop me from making any association of her work with coaching. This quick slippage reveals a significant legal nuance for scholarship on immigration law and legal practice, where the emphasis around coaching comes from, and the legal meaning of coaching when attached to the racial subject of immigrant woman.

It was not until I found myself in the National Archives, poring through congressional documents, that I remembered this conversation. The record documented a particular testimony presented to congressional members during the IMFA hearings. Jose Caringal from Southern California was called before Congress on July 26, 1985.⁵⁰ Caringal worked for an attorney “in the business of arranging marriages” in Los Angeles.⁵¹ He cooperated with the INS as an informant for an investigation of law firms that processed marriages licenses between citizens and noncitizen immigrants.⁵²

Senator SIMPSON. And what was it that you did for [the attorney in Los Angeles]? Would you describe that, please, for a second?

Mr. CARINGAL. I was the legal assistant in the law office I will have to coach them on the probable areas of examination down the Immigration. We have some sort of a questionnaire or a question sheet, where we caution the applicants, our client, to master, to avoid getting caught in the Immigration during the interview.

Senator SIMPSON. What was the coaching? What did the coaching consist of?

48. Anonymous interview with Carol, Attorney, in S.F., Cal. (July 2010).

49. *Id.*

50. *Hearing on Immigration Marriage Fraud*, *supra* note 42, at 48.

51. *Id.*

52. *Id.*

Mr. CARINGAL. The coaching consist of principally the behavior of the petitioner, and the alien during the interview, that they should be very convincing that they are indeed husband and wife. OK. And we coached them on the areas of cohabitation, like they should know the activities of each other, how the house looks inside—you know—their daily activities, the time when they get off, and on to work, things like that.

Senator SIMPSON. Who hid the toothpaste?

Mr. CARINGAL. Something like that, Mr. Senator.

Senator SIMPSON. So that was done just to disclose that they had cohabited, they had lived together, and that that was shown?

Mr. CARINGAL. Yes, sir.

Senator SIMPSON. Trying to show habits of a married couple, that was the coaching?

Mr. CARINGAL. Yes, sir.⁵³

Caringal's testimony illuminated the awkwardness between myself and Carol and our quick moment of misinterpretation. When we spoke to each other, it was very important to Carol that she distance herself from the kind of coaching Jose Caringal testified before Congress—the coaching that implies a lack of truth and an attempt at fraud. The distance she sought to establish was an effect of the discourse on fraud for immigrant women and the restrictions and conditions under which Asian American nonprofit attorneys operate. In our conversation, had Carol told me she prepared her clients to explain the kinds of stories that would portray habits of a married couple, or how to explain to an immigration officer why, when, and how a marriage took place, this description would easily read as similar to the kinds of coaching Caringal performed in his collusion with law enforcement. Regardless of the difference between her role as a nonprofit attorney and Caringal as an FBI informant, Carol knew that her job of "preparing [clients] for what to expect" could not be easily separated from coaching, for coaching was not detached from the discourse of fraud. In this moment between us, I thought Carol meant to only describe how most "clients are never really prepared for what they have to endure." As I struggled to say, "I have no problem with it!" she refused my words knowing the meaning I intended would never have an actual place within the racial context of coaching. Instead, Carol told me "but we really aren't" in an act of refusal that revealed what I did not see—a client who is an immigrant woman will always be in a position marked by the law's assumption of fraud, and her attorney always read as a possible subject who coaches.

The slippage between Carol and myself is what anthropologist Kamala Visweswaran calls a moment where "refusing the subject becomes indeed the

53. *Id.* at 49.

ground of a feminist ethnography.”⁵⁴ Visweswaran asks, what happens when someone refuses to speak to the ethnographer? Refuses to become a subject of ethnography? These moments she argues, should become the object of feminist inquiry in ethnographic writing, for the act of refusal is also a profound critique.⁵⁵ I build upon this analysis to ask, what happens instead, when someone refuses what the ethnographer speaks? When Carol refuses my confession, “just so you know, I have no problem with it” this opens two critiques. First, the refusal is a critique of how quickly the discourse of fraud forecloses different interpretations of legal practice, resulting in a need for deeper theorizations of race, gender, sexuality, fraud, and the law’s determination of what an immigrant marriage is. Second, the refusal critiques the limits of our existing political language determined for us by the dominant discourse of immigration marriage fraud. In my attempt to get to know Carol, I want to confess that I think the accusation of coaching is unjust, that I understand the difference between coaching and preparing a client, and that I believe the way this is delineated for immigrant women is determined by anti-immigrant racism. These are the political discussions I attempt to convey, none of which have political value to Carol unless I acknowledge first that she is not coaching clients. Her refusal reveals how large the stakes are for nonprofit attorneys working within the legal legacy of the IMFA.

Immigration marriage fraud and antiviolence legal advocacy cannot be fully understood without our recognition of fraud as a legal fiction. Many immigrant women do not possess detailed documentation of their marriages, no access to their homes or records because of domestic violence no financial support, and may not speak English as their primary language. Knowledge of the legal system is not beholden to everyone, let alone immigrant women who are attempting to leave abusive marriages.⁵⁶ Thus, the questions an immigration officer will ask you, what you will be expected to say, or how you are expected to behave, are unknown areas for women who have not entered the legal system, and they determine whether an immigrant woman will receive protection as a survivor or whether she will be seen as a fraud. These were also the very same areas identified as “coaching” in Senator Simpson’s hearing.

54. KAMALA VISWESWARAN, *FICCTIONS OF FEMINIST ETHNOGRAPHY* 67 (1994).

55. *Id.*

56. Antiviolence organizers and policy advocates have long documented the difficulties women face as they are leaving situations of violence but are required to bear the burden of proof on multiple levels should they continue forth with the legal system. For a discussion of evidence and proof in domestic violence cases, see generally *DOMESTIC VIOLENCE AT THE MARGINS*, *supra* note 47 (providing various texts and discussions describing the burdens imposed upon victims of domestic violence); LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 160–63 (2012) (illustrating the evidentiary burdens that women of violence face through a narrative story); *MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA* 61 (Amnesty Int’l ed., 2007) (describing the challenges indigenous women face as victims of domestic violence, and in particular pointing out how failures in prosecuting sex crimes has led to egregious abuse).

In Part III, I demonstrate how the legal fiction of immigration marriage fraud compartmentalizes the kinds of subjects Asian immigrant women are able to speak as when they come before the law. Once asked to speak within the terms of this legal fiction where no immigrant can fully disprove they are not a fraud, women must betray their own experience in order to define their position as a spouse of a U.S. citizen.

III. TRANSLATION AS FRAUDULENT SPEAKER

In 2010, I met with Sara, an immigration and family law attorney who worked with a Bay Area legal center. Many of her clients were Asian women from immigrant communities, born outside the United States, who spoke languages other than English as their primary language.⁵⁷ We met to talk specifically about her work with domestic violence cases. Sara often accompanied her clients to meetings and court appearances with the assistance of translators who were either volunteers or staff from partner organizations in the local area. Indeed the process of translation was a reoccurring dynamic in the stories she shared about her clients' experiences and her own experiences as an advocate. I asked if there was a particular story she felt exemplified some of the most key dynamics of legal advocacy work with survivors of domestic violence. Sara shared this story:

[F]or clients where they've married U.S. citizens and then they are abused and divorced, you go to interviews, you file an application and I would have to say that most of the time those interviews are really hostile; they [ICE officials] are just looking for fraud . . . they are assuming my clients married these men to get status . . . I've been refused translators where a client wanted to bring in a translator and immigration [the interviewing official] said no because they said "I want to hear her speak in the way that she spoke to him" because he was white and she was Chinese. They didn't want her to have the benefit of a translator because they wanted to see how she was able to communicate with this white guy that she supposedly married in good faith . . .⁵⁸

Sara's client, a noncitizen immigrant woman, was asked to "speak in the way that she spoke"⁵⁹ to her citizen spouse and was denied translation services in a moment when her position as a legal subject was ushered down one of two separate paths: that of a good-faith marriage, or that of a fraudulent marriage. The legal binding of her marriage was not under question. Instead, she was asked to prove whether her spirit of her "good faith" matched the spirit of the contract.⁶⁰ In other words, Sara's client had to prove she entered the contract based on the

57. See *supra* text accompanying note 47 (providing various texts on violence against immigrant women).

58. Anonymous interview with Sara, Attorney, in S.F., Cal. (2010).

59. *Id.*

60. *Id.*

spirit of marriage and not a desire for legal status or citizenship. If the law determined any presence of the desire for citizenship then Sara's client would be read as a fraud and the marriage, an example of immigration marriage fraud. Yet, the contract itself affords Sara's client the benefits of citizenship as an immigrant spouse. She cannot disprove the desire for something she already possesses and is granted to her by contract. If an immigrant spouse desires citizenship and this desire defines the law's understanding of fraud then by this formulation, immigration marriage fraud is a legal fiction for no immigrant married to a citizen spouse is ever not a fraud and every immigrant marriage is an example of fraud.

Before Sara's client could begin her attempt at disproving fraud and proving good faith, the law removed translation in an act solely derivative of the discourse of fraud. The law claimed the removal of translation was necessary as a safeguard in an act that is reminiscent of Sherene Razack's "simple logic."⁶¹ In the story Sara shared, her client's ability to speak in "good faith" was already made fictive by the law's own doing. The client will always be the fraudulent speaker if her words are translated before the law. If she speaks in her original language the immigration officer will not believe she was able to communicate with her citizen spouse; if she speaks in English without translation then she betrays herself and English becomes the original language of the "good faith" marriage. In this way, Sara's client will always fail.

Language is another site upon which the racial interrogation of women reproduces the legal fiction of immigration marriage fraud. Indeed, the law has provided limited English proficient clients with translation services with the purpose of fair and equal treatment. To translate is to promise the possibility of equal treatment through language where the law treats both with equal ability to speak. Yet, embedded within this promise is the recognition that languages are inherently unequal for the original must always be translated into another. The act of translation itself is taken to be the act of equal treatment under the law for the two languages themselves can never be seen as equivalent when one is always the original and one is always "the other." Translation is a form of equal protection but equal protection is carried out through the law only in the form of equal treatment of languages that are inherently and always unequal to begin with.⁶²

The possibility that a noncitizen could tell a true story about a citizen spouse is illegible to the law. Thus, to create legibility, the law removes translation in order to obtain what is believed to be more "true," and the removal of a translator

61. Razack, *supra* note 39.

62. Indeed, the use of the English language as a tactic of assimilation and colonialism is what Vicente Rafael has called "militant monolingualism" to argue the foreign is recognizable only when it is held in subordination to the domestic. In translation, the foreign subject's original language is then translated and through the process of translation the possibility of transformation opens up power "[s]ince it is 'they' who must assimilate, it is therefore 'they,' not 'us,' who must translate their native tongues into English. The reverse would be unthinkable." Vicente L. Rafael, *Translation, American English, and the National Insecurities of Empire*, 27 SOC. TEXT 1, 3 (2009).

is underpinned by the possibility of truth and not the presence of a criminal act. I want to emphasize that my reading of Sara's story does not see the denial of translation as a legal mechanism used to interrogate "the truth" from immigrant women, for interrogation seeks to find truth from a subject already marked as guilty of a crime. Here, though, the law has not marked Sara's client as culpable but instead claims to question the consciousness and intentions of Sara's client. Thus, it is not the noncitizen subject's actions that the law is able to measure and interrogate, but rather the consciousness, intentions, and desires placed against that of the citizen spouse.

Sara's client actually seeks translation in order to speak the truth the law demands of her, yet is denied translation in an act the law declares will allow actual truth to come forward. Sara's client was forced to use English and "speak the way she spoke to [her husband]."⁶³ She was asked to reenact a marriage she must prove is of good faith while at the same time coming before the law because of violence caused by this very same marriage. In choosing to continue without translation, she was forced to say that which she did not originally intend. She was also placed in a position where the words she spoke without translation were marked as somehow more true than the words she would have said with translation, words that her legibility as a legal subject will now always lack. In a way, the law asked that Sara's client betray herself by speaking in English, a language she had not used frequently while separated from her spouse.

As the law asks that Sara's client demonstrate, through the use of English, that her marriage was bona fide, Sara's client must demonstrate good faith and prove an absence of desire for citizenship benefits, followed by her ability to prove her emotional bond is based only on a desire for bona fide love between herself and her spouse. Whether the immigration officer believed Sara's client was acting in good faith or whether her client could convincingly speak "the way she spoke to [her husband],"⁶⁴ neither avoids the fact that when the officer asked for the removal of translation, the law already assumed that a foreign element (such as the need for translation) defined the difference between marriages with U.S. citizens and those "immigrant marriages" between a citizen and noncitizen. At that moment, when Sara's client was forced to speak without a translator, the law revealed (and continues to reveal) its anxieties about the betrayal of the bonds of marriage. To remedy this, the law asked that Sara's client betray herself. In her interpretation of this client's experience, Sara shared the following:

So now I know what I tell my clients. If you are married to a man from your own culture and you spoke the same language then they'll let you bring an interpreter, but if you married a white guy, they're not going to let that interpreter in there because they are going to say, like—if you

63. Anonymous interview with Sara, Attorney, in S.F., Cal. (2010).

64. *Id.*

can't communicate with me to tell your story then I can't believe that you were married to someone in good faith because how did you communicate daily with "Joe Schmo" in English. But if you're living day to day with someone who speaks English that's a whole lot different than not speaking it for two years and then going into a stressful interview⁶⁵

Fraud sets a condition where some act of betrayal must always take place. So long as the words Sara's client spoke were marked as translatable and coming from an origin that was different than her spouse's, she could not speak with translation. Thus, the only words she could speak would inevitably be measured unequally from her spouse's. She was asked to speak in the way she spoke to *him*, not—for example—in the way *they spoke to each other*. The removal of translation is argued to be an act that made the words Sara's client spoke fair and equal. Yet the two spouses—one, a white man who was a citizen, and the other, an Asian woman who was not a citizen—were never legal equivalents. The law had already asked Sara's client, and not her client's spouse, to prove that the marriage was entered into on good faith by betraying the presence of citizenship benefits. Sara's client was asked to carry the burden of good faith through the absence of English translation, and this is a gesture the law will never ask of her English-speaking spouse—not only will not, but cannot, because only Sara's client could exchange the removal of her foreign origin and difference in language for the opportunity for the law to read the words she spoke as "truth." Without breaking a law, and in the absence of any crime, the charge of fraud cannot be defined by an act. Indeed, the absence of a broken law is the defining precursor to immigration marriage fraud as legal fiction; this precursor buttresses the acceptance and the embrace of legal fiction itself.

Rey Chow has argued that translation asks the translator herself to serve as a mediator between two cultures inherently placed in tension by the need for translation.⁶⁶ When the subject whose culture is "Other" is asked to translate, two movements of this translation can occur. The translator is either asked to be a "native informant" and must act as a translator/traitor who betrays her native culture by translating the origin of meaning into another space not of that origin,⁶⁷ or the translator is a translator/mourner who cannot fully translate the true meaning of the origin because the origin "is rendered inadequate and inferior precisely through the act of translation"⁶⁸ Thus, the translation mourns the loss of the original. In translation the original takes precedence. The removal of

65. *Id.*

66. Rey Chow, *Translator, Traitor; Translator, Mourner (or, Dreaming of Intercultural Equivalence)*, 39 *NEW LITERARY HIST.* 565, 570 (2008); see also Lydia H. Liu, *The Question of Meaning-Value in the Political Economy of the Sign*, in *TOKENS OF EXCHANGE: THE PROBLEM OF TRANSLATION IN GLOBAL CIRCULATIONS* 13, 36–37 (Lydia H. Liu ed., 1999); Rafael, *supra* note 62, at 3.

67. Chow, *supra* note 66, at 570.

68. *Id.* at 569 (emphasis omitted).

translation for Sara's client was an act that shifted the placement of the original. Does the law view the Asian language she speaks as the original, or the English language the judge assumed she only spoke in the presence of her husband? With removal, the court decides English is the original and removes translation in order to give the original precedence, an act which not only creates a false original but denies the violence in the marriage by hindering the client's ability to speak. Without a translator then, Sara's client became, in effect, her own translator. And yet, as translator she was forced to simultaneously perform the absence of translation of a non-original language as the "original."

IV. LOVE LETTERS AND WHITENESS

To prevent "sham marriages," the IMFA introduced a number of new restrictions placed upon aliens who were married to U.S. citizens and legal permanent residents. Most notably, noncitizens were required to remain married for a conditional two-year period at the end of which they must show proof that the marriage is still in good faith.⁶⁹ Existing scholarship on gender and sexual violence cites how the IMFA's two-year conditional period locks battered immigrant women into violence. Women must navigate between the risk of deportation if they leave their marriages before the end of the two-year conditional period, and the risk of violence if they stay in an abusive relationship in order to prove good faith.

In 2009, I met Elaine, an advocate with a Bay Area women's shelter. Most of her clients were Chinese immigrant women who had fallen out of status or whose legal status was near expiration. They were all clients whom the organization had agreed to work with because they were survivors of violence. At the shelter, Elaine worked with attorneys from partner organizations across the Bay Area assisting women with divorces, visas, child custody, and restraining orders. As we talked she described the process of advocacy work from beginning to end for clients who were able to seek remedies via the legal system and clients whose experiences could not be addressed by the legal system. Elaine explained her role in advocacy work for social services, employment, housing, counseling, and family support. In the area of law, she emphasized over and over the need to first prove women were in good-faith marriages and only after this is demonstrated can they move on to establish the presence of violence in the marriage. Elaine shared this story:

[W]e work with [attorneys] to submit all the documents, marriage photos, correspondence, to prove that it was a "good-faith marriage." But you know Chinese are very subtle, especially if you don't see that person . . . you seldom say I love you on the letter. They say—"Oh,

69. 8 U.S.C. § 1186a (2012). Amendments to the INA in 1990 created conditions for battered immigrant women to qualify for the ability to petition to remove conditional status without the cooperation of their spouse. The Violence Against Women Act of 1994 also created a self-petitioning process for battered immigrant women. See Orloff & Kaguyutan, *supra* note 4, at 114.

your permit, I submitted everything to the immigration office, and you should receive a copy of it, within the two weeks, and then say hello to your mother and father, and pay my respects, that I respect and honor them”—and that’s it. No love letters. Actually, these are not love letters, all are business, like—“Did you send in your papers, how much did you pay for it, should I send you money?” Those are the things [*laughing*] so that’s why it’s hard. From the whole stack of letters, we pick the ones that we feel the immigration officer may find interesting and also may sense that this is a good-faith [marriage]. Officers are trying to establish that a relationship existed.⁷⁰

She was flustered. There were “no love letters” and based on her past experience and the expanding legal fiction of immigration marriage fraud, Elaine knew the available letter between her client and her client’s spouse would be seen as “all business” and not “love.” In Elaine’s experience, women were often unable to prove “love” based on the lack of available documentation exchanged back and forth with their spouses. As she explained, the documents her clients presented were all based on “business” transactions and logistics. She asked, “What did they [officers] expect? The marriage is between a citizen and an immigrant . . . [T]here’s always logistics and business!”⁷¹ The extremity of the insufficient letter was almost ridiculous and we both laughed at the impossibility of this condition. Elaine’s story described the absence of “love letters” for a case where the law absolutely demanded it.

As she described the scenario further, Elaine expressed how difficult it was to establish good faith—proof of good faith not simply to receive something from the law, but proof in order to even appear as a subject of the law in the first place. That is, women must first be legitimized as good-faith spouses before they are able to speak as anything else, or in other words, the law’s recognition that violence is present in a marriage is dependent and first determined by the immigrant spouse’s ability to prove she is “of the spirit.” For Elaine, the problem she described as “Chinese are very subtle” is the whiteness of the law’s normative subject of marriage. For Carol, her client spoke only through the subject of her white citizen spouse. We see a reinforcement of whiteness again with Elaine’s client even though both client and spouse are Chinese. Elaine’s client must provide evidence that a marriage between two Chinese spouses is in the same “good faith” as a non-immigrant marriage defined by the spirit of a white normative subject of marriage, not the immigrant subject marked by fraud. In other words, Elaine’s client can only solve her problem of “subtle” love by providing evidence directed away from her own experience and defined instead by the spirit of a marriage that is not her own. She must find a way to show her immigrant marriage is made of “bonafide” love in order to match squarely with

70. Anonymous interview with Elaine, Attorney, in S.F., Cal. (2009).

71. *Id.*

the law's racial neutral claim that good faith marriages are universal. Elaine's client and her client's spouse must become lovers who are white.

The violence immigration marriage fraud disperses as a legal fiction cannot be understood through the framework of illegality or racial misrepresentation for Carol and Elaine's clients are both "of the law" but the law asks they prove they are "of the spirit." Through these attempts, we see how powerful this legal fiction is on immigrant women's lives. Carol's client who must prove she has no desire for citizenship already included in the contract she has entered and Elaine's client who must prove she is in a good faith marriage that is not her own, are both caught within the law's promise that it can fairly and justly determine what immigration marriage fraud is. As both clients experience however, immigration marriage fraud defines itself as the absence of any desire for citizenship and the presence of bonafide love, both fictions of immigrant marriage contracts that already provide the opportunity for legal status and the presence of one noncitizen and one citizen spouse.

In 2010 I met with Terry, a staff member who worked with a nonprofit legal organization in the Bay Area. I asked Terry if she felt there were certain challenges in her work with Asian immigrant women that perhaps other advocates did not necessarily face. Terry told me the following story:

For our clients, usually their spouses have sponsored them and the law allows them to stay for two years under a conditional period after which their husbands have to apply for a green card for them. They go back to immigration to verify that they have a son or daughter, or that they are in good faith and married together and the spouse is willing to continue to sponsor her to stay in the U.S. But, if there is domestic violence or a dispute, usually the husband is not willing to verify that their marriage is still in good faith, then there is a problem. So we help women apply for a "waiver" to see if they can obtain legal status without their husbands. We submit to immigration police reports, medical reports, mental health reports, a letter from a women's shelter if she was there, a letter from us showing we provided legal services. So all these legal documents have to be submitted after we've already proven the marriage was in good faith first, then we prove abuse. But this is an example of a very perfect case. Most often the time, evidence, the lack of evidence, is shaky.⁷²

Terry interprets the collection of documents to be the "perfect case." However, it is the temporal sequence Terry describes, and not simply the collection of documents she lists, that define the "perfect case." That is, if the marriage is not accepted as a good-faith relationship then the law reads a woman's experiences of abuse and violence as not of good faith either. Violence is legible only after marriage is established, and not merely any marriage, but a marriage already defined by legal fiction. In effect, immigration marriage fraud relies on a

72. Anonymous interview with Terry, Staff Member, in S.F., Cal. (2010).

temporal logic that applies only to the racial interiority of the noncitizen spouse. The ability to speak as a survivor of violence, and to even appear before the law as a legal subject in this way, can come into being only if the women are seen and heard as bona fide lovers. While these stories—Sara’s, Elaine’s, and Terry’s—take place more than twenty years after the passage of the IMFA, the rules and regulations created to address “fraud” now regulate the recognition of women’s experiences with violence in the law. This legal fiction produces a future for fraud embedded within the terms upon which the law provides protection to survivors of violence.

V. THE CITIZEN SUBJECT AS INNOCENT SPEAKER

When recognized and understood as a genre of legal fiction, the predicament of immigration marriage fraud is no longer a mere question of who committed fraud. Furthermore, battered immigrant women are subordinated by immigration marriage fraud not because they are unfairly or unjustly marked as frauds (i.e., not all immigrants are frauds, there are some out there, just not these women). But more importantly, because the terms upon which the law promises to protect them are terms that allow no immigrant to not be a fraud. Contemporary legal remedies laced with the legal fiction of fraud suppress advocacy strategies and limit our ability to recognize the problem with existing solutions.

The problem with legal fiction is the trapping of the racial subject, the noncitizen immigrant spouse, as a fraudulent speaker as a threat to the nation not because of illegality or criminality but rather, for the very *legality* formed through marriage contract designed for noncitizen and citizen spouses. If there is always a fraud, there must also be a victim. In Sara’s story her client must demonstrate she did not commit fraud against the “white guy she supposedly married in good faith”⁷³ who the law positions as the victim of fraud. Her client’s experience of violence, otherwise marked quickly by the law as the experience of a victim, falls behind the legal fiction’s schema. Elaine’s story about a Chinese immigrant woman married to a Chinese U.S. citizen stressed the perilous absence of love letters. Here, the victim of fraud is not a racially different spouse but rather the racially homogenous nation-state. Elaine’s work with her client is a story about gathering enough evidence of enough love to prove neither her client nor the abusive spouse agreed to enter a marriage that would fraud the state. The position of the victim is again shifted and Elaine’s client who is a survivor of violence seeking protection from the law is now also the fraudulent speaker against the nation-state as victim. The innocent speaker and the fraudulent speaker follow a racial logic fundamental to the determination of innocence in legal fiction. Sara’s client is read to commit fraud against her white citizen spouse but the spouse is not marked as colluding or partaking in fraud should the marriage be decidedly

73. Anonymous interview with Sara, Attorney, in S.F., Cal. (2010).

not of good faith. Should Elaine's client become a spouse without bona fide love the determination of fraud requires *both* spouses to lack good faith.

A series of *New York Times* articles in 1985 familiarized the public with the figure of white women as victims of frauds: "[F]inancial plight and emotional needs of women who are raising children alone have made them a popular target for the growing number of foreigners seeking a partner for a 'green card' marriage, according to leaders of single-parent organizations and the Immigration and Naturalization Service."⁷⁴ The INS arranged testimonies at the 1985 congressional hearings on the IMFA from white women who were "duped" by immigrant men. High-ranking INS staffers appeared on daytime talk shows to discuss immigration marriage fraud. They created a phenomenon by airing undercover video recordings from INS staff posing in marriage ceremonies and interrogation interviews with immigrants and U.S. citizens. "Who are they?" Sally Jesse Rafael asked on her talk show with special guests from the INS.⁷⁵ And on her January 16 show in 1991, Oprah requested the following of her audience:

Imagine you meet and marry the man of your dreams, he is a Latin lover, an amorous Frenchman, or an African prince, he showers you with compliments and fills your nights with passion . . . American women marrying foreign men, is it for love or a work permit?⁷⁶

Similarly, David North and INS Commissioner Alan Nelson spoke during the 1985 Congressional hearings to assure Congress not all immigrants were frauds, not all citizens are duped, and some citizens willingly accepted payment to marry an immigrant. Should U.S. citizens who married "frauds" for monetary payment also be considered frauds? North and Nelson argued in Congress for the two-year conditional period where noncitizen immigrants must remain married to their citizen spouse and undergo a review after the two years. To caution against any claims that the two-year period was unwarranted, North and Nelson reinforced the belief that the INS would develop a fair and accurate system to separate the innocent from the guilty.⁷⁷ In his testimony before Congress, North argued there were two kinds of immigration marriage fraud:

Mr. NORTH. [T]here are 2 different kinds of marriage fraud. . . the one-innocent cases [and] the no-innocent cases. In the no-innocent cases, the alien pays money to the citizen to go through a marriage that both [parties] realize is fraudulent. . . In the [one-innocent cases], the alien woos a citizen, or a green card holder for the purpose of securing an immigrant visa. The no-innocents cases are easier for the INS to do something about. It is not easy to do anything about any of them, but

74. Andree Brooks, *Single Mothers Are the Targets in Marriage Fraud*, N.Y. TIMES, June 13, 1985, at C1.

75. *The Sally Jesse Raphael Show*, *supra* note 34.

76. *The Oprah Winfrey Show*, *supra* note 34.

77. *Hearing on Immigration Marriage Fraud*, *supra* note 42, at 57.

they are easier to cope with than the one-innocent case. . . . [Ms. Marrero] who was sitting here just a few minutes ago was an innocent, and she could not tell the INS, at the moment she was filing for an immigrant visa, or the consular officer in that case, that there was anything wrong, because she did not think that there was anything wrong.⁷⁸

North argues “one-innocent” cases include a citizen spouse who is an unknowing and innocent victim of fraud.⁷⁹ The “no-innocent” cases are defined by the citizen’s willingness to enter into a marriage without “bona fide love.”⁸⁰ Both North and Nelson speak of the possibility of innocence only when referencing the participation of citizens, and never raise the possibility for immigrant spouses.

Ms. Marrero, the woman who could not tell the INS “that there was anything wrong,” had received payment to marry an immigrant.⁸¹ Despite this, Nelson and North argue that Ms. Marrero is the “one-innocent” based on her willingness to cooperate with an INS investigation into marriage fraud.⁸² They argue that while Marrero cannot demonstrate bona fide love nor can she demonstrate good faith, her reasoning for entering the marriage was not based on a desire to trick the nation by their count.⁸³ In other words, Marrero’s exchange of marriage for money absolves her of “fraud” in the eyes of Nelson and North.

Senator SIMPSON. And your [sic] agreeing to go ahead with that situation, what were some of your thoughts as to why that was good for you?

Ms. MARRERO. I was OK until I received the papers, the application for immigration, and then I started reviewing over it, and when I got to the part that said 10 years imprisonment if you get caught, I thought, oh, my God, what am I doing? and [sic] I was a little scared and sorry that I did it, and it was already too late, but it kept me from being pushy, and more hesitant, and so I finished, went through with it. And the Immigration Office was really—it was fast, simple and easy, and completely surprised me, but I was still scared and conscious of it afterward, but it was too late. I had already done it.

Senator SIMPSON. But the money was, I am certain, a great part of that [decision], was it not?

Ms. MARRERO. Yes.

Senator SIMPSON. I mean was that one of the reasons you did it?

Ms. MARRERO. That was the only reason I did it.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 52–53. Marrero was an adult entertainer in New Jersey who was asked to marry an immigrant man in exchange for monetary payment of \$2000 and was offered an additional compensation of \$1000 for every woman she referred as a possible interested spouse. *Id.*

82. *Id.* at 57.

83. *Id.*

Senator SIMPSON. The only reason?

Ms. MARRERO. Yes.

. . . .

Senator SIMPSON. Well, let me thank you very much and let me note for the record, that Miss Marrero fully assisted the Immigration and Naturalization Service in the investigation of this marriage arrangement, and served as a key witness in the INS's successful prosecution, and I thank you. . . . You have, through your own sharing and willingness to expose your vulnerability in the situation, have helped us to decide what we might be able to do And I think it is very real, or I would not have had this hearing. I do not do hearings to see how many people will show up or how many lights will bounce off my bald dome.⁸⁴

Ms. Marrero was called to testify for what the INS would describe as a successful prosecution of immigration marriage fraud. Here, Marrero's "innocence" is a necessary formulation in the INS's attempt to define fraud. A just and fair process for prosecuting fraud relies on the assurance of two kinds of legal figures, a definitive innocent victim and a knowing fraud. Ms. Marrero's innocence is articulated twice in this hearing. The first occurrence takes place when she is recognized for her cooperation in the investigation, rendering her role as a snitch to be the definition of her "one-innocent" position. In the second occurrence, she is repeatedly asked to state she married an immigrant *only* for monetary exchange and *not* a desire to trick the nation-state. The exchange of money cancels out fraud and her cooperation with the INS prosecution repositions her as a "one-innocent" willing to help and not trick the nation-state, "But the money was, I am certain, a great part of that [decision], was it not?" Thus, whereas Marrero's monetary exchange stood in for innocence, the noncitizen immigrant husband's exchange for citizenship was read as fraud. If immigration marriage fraud can be defined from what it is not—the "bona fide" love of the spirit of marriage—the law claims it is able to determine clearly and justly what "innocence" and "fraud" are. But as Carol's, Sara's, Elaine's, and Terry's stories have shown, this is indeed a legal fiction.

CONCLUSION

I thank the legal advocates whose stories appear in this Article and who participated in the legal ethnography I conducted on immigrant women, violence, criminalization, and the law. The writings for this Article came to fruition after many years of hearing and reading about immigration marriage fraud in the context of violence against women and immigration law. I have throughout, argued that immigration marriage fraud is a legal fiction based on the measurement of whether an immigrant spouse can prove an absence of desire for

84. *Id.* at 54–56.

citizenship or legal status. The legal figure of immigrant woman is continually spoken, written, and translated through whiteness or more accurately the protection of the heteronormative white subject against fraud. This form of protection builds the rule of law upon violence in women's lived experiences and then establishes what survivors of violence are unable to obtain when seeking relief from the legal system. Immigration marriage fraud not only requires us to theorize legal fiction but to do so in order to address gender and sexual violence, racism, and the law.