

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

EUROPEAN CONNECTIONS &
TOURS, INC.)

Plaintiff,)

v.)

ALBERTO GONZALES in his
Official capacity as Attorney General
of the United States and the UNITED
STATES OF AMERICA,)

Defendant,)

THE TAHIRIH JUSTICE CENTER,)

Defendant-Intervenor.)

CIVIL ACTION NO.
1:06-CV-0426

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
SUBMITTED BY THE TAHIRIH JUSTICE CENTER**

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Pursuant to the Court’s Order of April 3, 2006, Defendant-Intervenor

Tahirih Justice Center (“TJC”) hereby submits its Proposed Findings of Fact and
Conclusions of Law.

FINDINGS OF FACT

I. The Parties

1. Plaintiff European Connections & Tours, Inc. (“European Connections”) is an international marriage broker (“IMB”) with its principal place of business at 4080 McGinnis Ferry Road, Suite 1103, Alpharetta, GA 30005. Tr. 9:7-8. European Connections operates a range of businesses and websites, including www.russianladies.com, www.mailorderbrides.com, www.EastWestMatch.com and www.globaladies.com, that specialize in matchmaking and introduction services between American men and women from Eastern Europe and the former Soviet Union. Tr. 11:5-12:2. European Connections is an IMB as that term is used in connection with the federal legislation at issue in this lawsuit, described below. The American men who are clients of European Connections pay a membership fee and other fees in connection with the company’s introduction and ancillary services (such as translation services). The women from Eastern Europe and the former Soviet Union do not pay a fee and effectively are the product that European Connections offers to its male clients. Tr. 53:14-54:2. Until recently, European Connections also operated “romance tours” to enable male clients to travel to preview women in person in their home countries. Tr. 12:15-19; 25:14-26:18.

2. Defendant Alberto Gonzales is a defendant in his official capacity as Attorney General of the United States.

3. Defendant United States of America is a sovereign government. The Constitution vests plenary authority over all matters affecting immigration in Congress. *See Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) (“[P]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established”); *Galvan v. Press*, 347 U.S. 522, 531 (1954) (“That the formulation of [policies pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government”). At issue in this case, when an American man wishes to bring a foreign woman to the U.S. for purposes of marriage, the man must obtain a “K1 Visa,” also known as a “fiancée visa” pursuant to regulations promulgated under the authority of the United States Department of Homeland Security pursuant to federal statutes enacted by Congress.

4. Defendant-Intervenor Tahirih Justice Center (“TJC”) is a nonprofit organization located at 6066 Leesburg Pike, Suite 220, Falls Church, VA 22041. TJC’s mission is to enable women and girls who face gender-based violence to access justice. Tr. 13:4-11. TJC engages in immigration services, litigation, public

policy advocacy, and education and outreach to ensure systemic change that protects women and girls from violence. Tr. 13:4-11. TJC has represented and currently represents approximately ten women who came to the United States through IMBs and who were abused by their American husbands. Tr. 92:14-25. TJC is aware of hundreds of additional cases of women exploited and abused through the IMB industry through: (i) women who sought TJC's services and who were referred to other counsel; and (ii) TJC's work with other victim advocacy and human rights organizations across the country. Tr. 93:1-11. TJC served as an expert consultant to Congress in its drafting of the federal legislation at issue in this lawsuit. Tr. 72:6-73:25; 151 *Cong. Rec. S* 17352 (2005) (Sen. Brownback on floor of Senate characterizing TJC as a "front line expert" on IMB industry).

II. Procedural Background

5. European Connections commenced this action on February 24, 2006, seeking a temporary restraining order ("TRO") to enjoin the International Marriage Broker Regulation Act of 2005 ("IMBRA" or the "Act"). A hearing was held on March 3, 2006, and the Court verbally entered the TRO. On March 7, 2006, the Court issued a written Order entering a TRO, which barred the United States from enforcing IMBRA against Plaintiff during the pendency of the TRO. Pursuant to

Federal Rule of Civil Procedure 65, the Court scheduled a preliminary injunction hearing.

6. On March 31, 2006, the Court granted TJC's Motion to Intervene as a party-defendant.

7. On April 3, 2006, the parties appeared for a preliminary injunction hearing. Pursuant to Rule 65, the Court announced its intention, over objections, to consolidate the preliminary injunction hearing with the final trial on the merits. Two witnesses testified at the April 3 hearing: (i) President of Plaintiff, Preston B. Steckel; and (ii) Jeanne L. Smoot, Public Policy Counsel for TJC (who testified as a Rule 702 expert witness in the field of IMBs and domestic abuse). At the conclusion of the hearing, the Court stated that it would take the Plaintiff's request for permanent injunctive relief under advisement. The Court ordered the parties to submit proposed findings of fact and conclusions of law on or before April 24, 2006.

III. Summary of Plaintiff's Claims

8. European Connections challenges two portions of the IMBRA statute related to (1) the disclosure of background information; and (2) the definition of IMBs covered by the Act.

9. First, Plaintiff claims that IMBRA's requirement that IMBs collect background data from its male clients and furnish this information to the female clients is an infringement of the IMBs' "speech" that offends the First Amendment of the United States Constitution. *See* Complaint ¶¶ 9-10; *see also* Plaintiff's Motion for Temporary Restraining Order at 11-21. Plaintiff alleges alternatively that the requirement is a (i) "prior restraint" on constitutionally protected speech; (ii) "content based" restriction of First Amendment protected speech; or (iii) regulation of "commercial speech." *Id.* Plaintiff also claims that the background information is more extensive than necessary to achieve Congress's purpose.

10. Second, Plaintiff asserts that IMBRA's definition of IMB, which excludes religious and cultural organizations operating on a nonprofit basis, as well as organizations that do not provide international dating services as the "principal" part of its business and operate on an "equal profit" basis (charging comparable rates and offering comparable services to all genders and nationalities), creates distinctions that offend the Equal Protection clause of the Fifth Amendment to the United States Constitution.

11. Plaintiff's Complaint does not challenge any other portion of the Act.

IV. Overview of the United States IMB Industry

12. The IMB industry has been the subject of extensive study by Congress and scholars at least since before the enactment of the 1996 “Mail Order Bride” Act, and a growing body of literature describes key attributes of the industry.

13. The IMB industry has grown rapidly in response to increasing demand by some American men for foreign “traditional” wives.¹ In 1999, the Immigration and Naturalization Service (“INS”) estimated that over 200 US-based businesses paired 4,000-6,000 American men each year with foreign women, primarily from Asia and Eastern Europe.² By 2004, those figures had more than doubled.³ As many as one-half of the more than 28,000 foreign fiancé(e)s and many of the

¹ Robert J. Scholes, *The “Mail-Order Bride” Industry and its Impact on U.S. Immigration*, in Commissioner of the Immigration and Naturalization Service and the Director of the Violence Against Women Office at the Department of Justice, *International Matchmaking Organizations: A Report to Congress* (1999), app. A, at 4. [hereinafter *Scholes Study*].

² Commissioner of the Immigration and Naturalization Service and the Director of the Violence Against Women Office at the Department of Justice, *International Matchmaking Organizations: A Report to Congress* (1999), at 12 [hereinafter *INS Report*]; see *Scholes Study*, app. A, at 2.

³ For explosive growth of industry, see e.g., Brocato, Vanessa, “*Profitable Proposals: Explaining and Addressing the Mail-Order Bride Industry Through International Human Rights Law.*” San Diego Int’l L.J. 2004, at 229 (citing 500 U.S.-based businesses); Donna M. Hughes, “*Role of Marriage Agencies in Trafficking in Women and Trafficking in Images of Sexual Exploitation* (report submitted to the Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking of Human Beings for the Purpose of Sexual Exploitation, Comm. for Equality Between Women and Men, The Council of Europe, Supp., Nov. 2001), at p. 5 (citing almost 500 marriage agency sites featuring women from the former Soviet Union alone).

thousands of foreign spouses entering the United States each year may have met their American husbands through IMBs.⁴

14. IMBs use websites to market women from developing and economically depressed countries⁵; and while Asia and Eastern Europe remain key markets, IMBs have expanded their recruiting operations all over the globe.⁶

15. The women typically do not have access to the Internet themselves (Tr. 15:13-16:7) and so are unable to understand the context in which they are marketed and the expectations thereby created in the IMB's male clients. These

⁴ The 1999 INS Report's estimate of 4-6,000 "mail-order brides" entering the U.S. each year was based on 1998 data. In 1998, 12,306 foreign fiancées were admitted to the U.S.: 4-6,000 represents 1/3 to 1/2 of those totals. See Table 24, "Nonimmigrants Admitted by Class of Admission, Selected Fiscal Years 1981-2004," in *USCIS Statistical Yearbook*, at <http://uscis.gov/graphics/shared/statistics/yearbook/>. In 2004, US Citizenship and Immigration Services reported 28,546 nonimmigrants admitted on foreign fiancé(e) visas, and 17,864 admitted on foreign spouse visas, that are issued to fiancé(e)s/spouses of US citizens. Carrying the same "1/3 to 1/2" formula forward to 2004, then, at least 9500-14,500 "mail-order brides" (rounded to the nearest 500) may enter the U.S. each year. The 1999 INS Report made no estimate of the percentages of "mail-order brides" who enter the U.S. each year as spouses of U.S. citizens, since that particular visa category (K3) did not exist until the Legal Immigration Family Equity Act ("LIFE" Act) of 2000, which was not implemented until August 2001 (see news release at <http://uscis.gov/graphics/publicaffairs/newsrels/life081401.htm>). Nonetheless, the K3 visa is now widely used by men seeking to bring women to the U.S. through the IMB industry. See, e.g., <http://www.getmarriednow.com/k1visa.shtml>.

⁵ European Connections' own website states: "Most qualified Russian women are working full time for a meager salary (as low as \$50/month!)." <http://www.mailorderbrides.com/russian-mail-order-brides.cfm>.

⁶ See e.g., <http://www.latinbrides.com/>; <http://www.heart-of-asia.com/> (see particularly <http://www.heart-of-asia.com/least/ethi30.html> for 30 pages' worth of advertised women from

Footnote continued on next page

English-language websites are directed to the male client rather than the female recruits, who typically have limited or no English proficiency.⁷

16. IMBs typically charge their male clients fees of up to several thousand dollars to gain access to these foreign women.⁸

17. The women's lower socioeconomic standing makes it unlikely that they can travel to the U.S. to learn more about their American suitors;⁹ instead, the men travel to meet the women (an in-person meeting is one of the few pre-requisites of obtaining a fiancée visa¹⁰) in their home countries.

18. As a result of the detailed personal information provided about the women through the agencies' marketing efforts to the men and the extensive criminal and health background checks performed by the US government on

Footnote continued from previous page

Ethiopia). See also metasite <http://www.goodwife.com/> ("The Mail-Order Bride Warehouse") for lists of over 325 "reciprocal linked agencies" marketing women from around the globe.

⁷ For this reason, IMBs typically offer translation services. See, e.g., European Connections (Tr. 13:15-19:7); see also <http://www.anastasiaweb.com/>.

⁸ In addition to the fees charged for membership or particular women's contact information, most IMBs also offer a range of "add-on services" from translation help to gift/flower delivery to assistance with travel arrangements and visa applications. See, e.g., <http://www.anastasiaweb.com/>.

⁹ Cf. European Connections' affiliate visa advisory service, indicating 95% failure rates for tourist visa applications, particularly where the women do not have substantial assets or other compelling ties to their home countries. <http://www.k1-marriage-visas.com/>

¹⁰ See <http://uscis.gov/graphics/formsfee/forms/files/I-129F.pdf>, "Instructions" (1B) and question 18.

women applying for a fiancé visa to the US, the men typically have access to far more information about the women and their backgrounds, and are far more assured of their genuine intentions, than the women have about the men.¹¹

19. Other industry practices, from “satisfaction guaranteed” assurances to so-called “romance tours” during which a dozen men may be introduced to several hundred women at once, encourage the male client’s perception that he is “purchasing” a bride.¹² IMBs also have a vested interest in ensuring that women

¹¹ Cf. European Connections affiliate site <http://www.mailorderbrides.com/foreign-bride-dating-game.cfm> indicating that they “pre-screen” the women to ensure “genuine and quality foreign brides.” See also <http://foia.state.gov/FORMS/visa/ds0156k.pdf> (nonimmigrant fiancée visa form and <https://evisaforms.state.gov/ds156.asp?lang=1> (nonimmigrant visa application) which together require the production of police certificates and the provision of extensive information including whether, for example, the applicant has ever “been arrested or convicted for any offense or crime,” “unlawfully distributed or sold a controlled substance(drug), or been a prostitute or procurer for prostitutes”, or had a “communicable disease of public health significance or a dangerous physical or mental disorder, or ever been a drug abuser or addict.”

¹² Cf. “European Connections, Inc. has produced over 360 printed ladies photo catalogs, produced 44 live videos (including the “Free Tour Video”), and completed 130 successful Romance Tours resulting in over 7,000 marriages.” <http://www.mailorderbrides.com/russian-mail-order-brides.cfm>. For more on romance tours, see http://www.russianbrides.com/anastasia_tours/tours_dates.asp; <http://www.loveme.com/tour>; and <http://www.russiantours.com>. For an example of a website with a “shopping cart” feature, see <http://www.datingdepot.com/women/russia/russia-women.htm>. For agencies with “satisfaction guarantees”, see <http://www.getmarriednow.com/guarantee.shtml>; <http://www.encount.com/membership/>; <http://www.natashaclub.com>. For other ways in which the women profiled are compared to products, see www.armcandyinternational.com/services.htm (“Total cost for services: \$10,500.00 U.S. A beautiful woman to sleep with at night, kiss in the morning, and love all day long, for so little – *less than an economy car.*”); www.loveme.com/information/maxim.shtml (reprinted article from Maxim magazine boasts, “Luckily, AFA [A Foreign Affair] has made searching its voluminous database *as easy as ordering a pizza.*”) (emphases added).

remain in those relationships in order to preserve their profitable reputations for making “successful” matches.¹³ The profit incentives of IMBs are presently skewed to satisfy the male client rather than to safeguard the women they recruit. (INS Report, p.8)

V. Prior Federal Legislation and Legislative History

20. The enactment of IMBRA is the product of a decade and a half of investigation by Congress into abuses perpetrated by American men against foreign women, described below.

A. 1990 Battered Spouse Waiver Amendments

21. “In 1989, the House Judiciary Committee on Immigration, Refugees and International Law held a hearing on domestic violence in marriages between American citizens and foreigners. Representative Louis M. Slaughter testified that “many battered conditional residents had no viable legal options.” Scholes Study, at 11.

22. As a result, Congress in 1990 passed legislation to provide a unique remedy for battered foreign women known as the “battered spouse waiver.” This

¹³ See *Fox v. Encounters Int’l*, 2006 WL 952317 at *8 (Apr. 13, 2006) (finding that “EI intentionally withheld knowledge regarding the battered spouse waiver from [Nataliya] in an effort to preserve one of EI’s core promotional selling points, i.e., its 95% success rate.”)

allows a foreign woman who is in an abusive relationship with a U.S. citizen to leave the relationship and directly petition the immigration authorities for legalization of her status.

23. The battered spouse waiver is an exception or “waiver” from the ordinary rule that a foreign woman’s legal status in the United States is dependent upon her U.S.-citizen sponsor. *See* 8 U.S.C. § 1154; United States Citizenship and Immigration Services, *How Do I Apply for Immigration Benefits as a Battered Spouse or Child?*, at <http://www.bcis.gov/graphics/howdoi/battered.htm>.

B. 1994 Violence Against Women Act

24. Congress undertook substantial study and investigation in the months and years leading to the enactment of the 1994 Violence Against Women Act (“VAWA”), 108 Stat. 1296 (1994).

25. Congress noted with concern indications that domestic violence rates could be very high (77% in one study) in marriages between alien women and U.S. citizen or lawful permanent resident men. H.R. Rep. No. 103-395, 1993 WL 484760, at *34 (1993).

26. In particular, Congress found that an American man’s control over his foreign wife’s visa, together with her lack of knowledge about domestic abuse remedies kept many foreign women locked in abusive relationships:

[A] battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. *Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help.* They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.

....Under current law only the United States citizen or lawful permanent resident spouse is authorized to file a relative petition, and this spouse maintains full control over the petitioning process. He or she may withdraw the petition at any time for any reason. *The purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a mean to control or abuse an alien spouse.*

H.R. Rep. No. 103-395, 1993 WL 484760, at *33, 42 (1993) (emphasis added).

27. As part of VAWA, Congress created new means of legal protections for battered immigrants aimed at offering greater protections and benefits than the 1990 battered spouse amendments. In particular, VAWA created a self-petitioning process for battered immigrants who are spouses of US citizens or permanent residents. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1941-42.

C. 1996 Mail Order Bride Act

28. IMBRA superseded the “Mail-Order Bride Act,” 8 U.S.C. § 1375.

29. In enacting the 1996 Mail-Order Bride Act, Congress found that “*mail order brides find themselves in abusive relationships.*” *Id.* at § 1375(a)(3) (emphasis added). Congress also found that

Many mail order brides from the United States were ignorant of United States immigration law. Mail order brides who are battered often *think that if they flee an abusive marriage, they will be deported.* Often the citizen spouse threatens to have them deported if they report the abuse.

Id. at §1375(a)(4) (emphasis added).

30. The 1996 Mail Order Bride Act required IMBs to make disclosures to female recruits about domestic abuse remedies.

Each international matchmaking organization doing business in the United States *shall disseminate* to recruits, upon recruitment, such immigration and naturalization *information* as the Immigration and Naturalization Service deems appropriate, in the recruit’s native language, *including information regarding conditional permanent residence status and the battered spouse waiver* under such status, permanent resident status, marriage fraud penalties, the unregulated nature of the business engaged in by such organizations, and the study required under subsection (c) of this section.

8 U.S.C. § 1375(b)(1) (emphasis added).

31. The Mail Order Bride Act provided a \$20,000 civil penalty for international matchmaking agencies found to have violated the statute. *See id.* at (b)(2).

32. The Mail Order Bride Act also provided that the “Attorney General, in consultation with the Commissioner of Immigration and Naturalization and the Director of Violence Against Women Initiative at the Department of Justice shall conduct a study of mail-order marriages to determine, among other things . . . the extent of domestic abuse in mail-order bride marriages; and . . . the need for . . . *expanded* regulation . . . to implement the objectives of the Violence Against Women Act” *See id.* at (c)(4) and (c)(5) (emphasis added).

D. 1997 Notice of Proposed Rulemaking to Further Regulate IMBs

33. On July 16, 1997, the INS issued an Advance Notice of Proposed Rulemaking to the IMB industry, which put the IMB industry on express notice that the United States government was considering additional regulation of the IMB industry to safeguard against domestic abuse.

34. In its Notice of Proposed Rulemaking, 62 Fed. Reg. 38041, the INS indicated its intent to promulgate regulations pursuant to the Mail Order Bride Act, 8 U.S.C. § 1375, which itself already imposed regulations on IMBs (for example, requiring IMBs to tell all female recruits about domestic abuse remedies unique to foreign women). The INS Notice stated that the agency was considering “whether *additional* measures are needed to reduce the *incidence of abuse*” in relationships formed by IMBs. *Id.* (emphasis added).

E. 1999 INS Report to Congress Regarding IMBs

35. The INS prepared a report to Congress on abuses in mail-order bride relationships. This report was required under the Mail-Order Bride Act, 8 U.S.C. § 1375.

36. The report concluded that “with the burgeoning number of unregulated international matchmaking organizations and clients using their services, *the potential for abuse in mail-order marriages is considerable*”, and that “an unregulated international matchmaking industry presents *numerous opportunities for exploitation.*” INS Report, at 6-8 (emphasis added).

37. The report continued, “These are relationships fostered by for-profit enterprises, where the *balance of power between the two individuals is skewed to empower the male client who may be seen as ‘purchasing’ a bride* and a woman who has everything to gain from entering into this arrangement and staying in it, no matter what the circumstances.” INS Report, at 6 (emphasis added).

38. The report noted that the concern over this dangerous power imbalance is “not unique to the United States. Western Europe, Canada, and

Australia are witnessing similar patterns with regard to the use of these agencies and the domestic violence that can result.” INS Report, at 3.¹⁴

39. The report drew distinctions between “mail-order bride” agencies and other means to initiate international correspondence relationships: “***Unlike dating services or personal ads, the mail-order bride transaction is ‘one where the consumer-husband holds all the cards.’*** In using these services, the male customer has access to and chooses from a pool of women about whom personal details and information are provided, while the women are told virtually nothing about the male customer -- or only what he chooses to reveal about himself.” INS Report, at 4.

40. The report predicted that “Congressional response to this report may lead to additional steps in regulating this industry.” INS Report, at 8. The report lists a number of general statutes and regulations that could be applied to IMBs in appropriate circumstances. INS Report, at 17. These laws are punitive, providing

¹⁴ In fact, the Philippines’ concerns about the industry prompted them to outlaw it entirely in 1990. Rather than comply with the ban, however, agencies have continued to operate in the Philippines by changing their name to “pen-pal” agencies to nominally avoid its reach. See Louise Langevin and Marie-Claire Belleau, “*Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides*,” (Status of Women Canada: February 2000) Chapter 2, Part 1.1.2, n. 6 at http://www.swc-cfc.gc.ca/pubs/pubspr/066231252X/200010_066231252X_14_e.html. See also INS Report, App. B, at 5 (noting that Philippines’ ban of industry drove industry underground).

penalties or redress after harm has occurred, and not preventative of harm, which is IMBRA's purpose.

41. The INS was unable to determine statistically valid estimates of abuse rates in "mail-order marriages" because of the limits of the administrative sources of information available to them.¹⁵

42. The study commissioned of Professor Robert Scholes by the INS that underlies its report concluded that "[w]hile no national figures exist on abuse of alien wives, *there is every reason to believe that the incidence is higher in this population than for the nation as a whole*. Authorities agree that abuse in these marriages can be expected based on the men's desire for a submissive wife and the women's desire for a better life. At some point, after the alien bride has had time to adjust to the new environment, to make new friends, and to become comfortable

¹⁵ See INS Report at 16, noting that their approaches asked "what proportion of abuse cases [coming to INS attention via VAWA self-petitions] originated as mail-order brides, rather than what proportion of mail-order brides are abused, because no sampling frame of mail-order brides exists." See also *id.* at 11 (noting that "under-reporting of meeting through a matchmaking agency [on visa petition forms] would seem to be a significant possibility, since it might be perceived as a factor in a decision to deny the petition. The parties might also be embarrassed to disclose this fact."). The INS also noted that the number of VAWA self-petitions that they reviewed that definitely involved "mail-order matches" did "not reflect the full extent of domestic violence in mail-order marriages," expecting those numbers to climb in the future as, among other things, "awareness of the VAWA provisions grows" and further, acknowledged that "[i]t is not possible to estimate the number of mail-order marriages in which abuse has occurred but the alien spouse has not taken advantage of the self-petitioning provisions in the law." *Id.* at 15-17.

with the language, her new independence and his domination are bound to conflict.”¹⁶

43. The Scholes study concluded that problems of abuse in mail-order marriages required attention, and suggested that “potential husbands might need to be screened.” Scholes also urged that alien spouses be informed of their rights and resources available to them if they found themselves in trouble. Scholes Study at 11.

44. The technical appendix to the Report (Appendix B, prepared by the INS) acknowledged that the numbers of cases they were able to review were “too small to permit generalization to the larger population with confidence.” App. B. That said, the cases reviewed did indicate that “mail-order marriages” have higher rates of abuse than other types of international marriages. Two of eight cases identified as definitely or probably mail-order marriages included evidence of spousal abuse (or 25%); as compared with four cases of “spousal abuse of sufficient severity that the women were later granted LPR status under VAWA” in the other 45 cases that were not classified as mail-order marriages (or 8.9%). *Id.* at 5.

¹⁶ *Scholes Study*, at 8 (emphasis added).

F. 2000 Victims of Trafficking and Violence Protection Act

45. In 2000, Congress passed the Victims of Violence and Trafficking Protection Act of 2000, the purpose of which is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” 22 U.S.C § 7101.

46. The statute created two new forms of relief for battered immigrants – the T and U visa.

47. The “T visa” is designed specifically for those who have been subjected to sex trafficking or other severe forms of trafficking in persons (*e.g.*, involuntary servitude, peonage, debt bondage, or slavery).

48. The “U visa” or “U nonimmigrant status” permits certain noncitizen crime victims who have suffered substantial mental or physical abuse as a result of the crime to be in the U.S. Included in the enumerated crimes is domestic violence, regardless of marital status.

49. In passing this legislation, Congress specifically found that “[v]ictims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked [and] are often subjected to coercion and intimidation including physical detention and debt bondage, and . . .

often fear retribution and forcible removal to countries in which they will face retribution or other hardship.” 22 U.S.C. § 7102. Consequently, “these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.” *Id.*

50. Encapsulated in the Victims of Violent and Trafficking Protection Act of 2000 was the reauthorization for VAWA entitled VAWA 2000. Congress found “there are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.” VAWA 2000 §1502(a), 8 U.S.C. § 1101. Therefore, VAWA 2000 further refined and expanded the original VAWA to address some obstacles that had not come to the attention of the original VAWA drafters, or that had arisen from subsequent changes to immigration law.

51. The 1999 INS Report noted the possible connections between “mail-order marriages” and trafficking. Commenting on the “vast array of information” that existed on the subjects of “mail-order marriage” and domestic violence, including by trafficking experts, the report stated: “This attention to mail-order

marriages reflects growing concern regarding the global recruitment and transportation of women in a variety of exploitative ways. The information on trafficking suggests that mail-order brides may become victims of international trafficking in women and girls. . . . While not all mail-order brides would be considered trafficked, public policy is shifting to reflect the need to protect people from the exploitation and violence that results from all forms of trafficking.” INS Report, at 1.

52. The 1999 INS Report also remarked that “[a] recent documentary produced by the Global Survival Network (GSN) reveals how mail-order bride businesses are used as fronts to recruit and traffick Russian women to Germany, Japan, and the United States for the sex industry. Specifically, GSN reports that traffickers have become interested in sending women to the United States because fiancée visas are easily obtained.” INS Report, at 4.

53. In January 2001, the Department of State produced an advisory brochure (“Be Smart, Be Safe...”) targeted to potential victims that warned that

“mail-order bride” agencies among other seemingly legitimate businesses may actually be fronts for trafficking operations.¹⁷

G. 2004 Foreign Relations Committee Hearing Regarding Abuses in IMB Industry

54. On, July 13, 2004, the Senate Foreign Relations Committee held a hearing on the exploitation of mail-order brides entitled “Human Trafficking: Mail-Order Bride Abuses.”

55. Testifying at the hearing were Senator Maria Cantwell, George Washington Law School Professor Suzanne H. Jackson, Department of State Director of the Office to Monitor and Combat Trafficking and Persons John R. Miller, Michele A. Clark, Co-Director of the Protection Project, at the Johns Hopkins University School of International Studies, and Donna M. Hughes, Professor of Women Studies at the University of Rhode Island.

56. At this hearing, the Senate Foreign Relations Committee heard extensive testimony about abuses suffered by women recruited to come to the United States by IMBs and the need for regulation to stem the incidence of such abuse.

¹⁷ <http://www.state.gov/p/inl/rls/fs/2001/jan/4229.htm> (available at 27 U.S. embassies in 24 different languages).

H. 2003 Introduction and 2005 Reintroduction of IMBRA

57. IMBRA was initially introduced in the 108th Congress on July 25, 2003 by Rep. Rick Larsen (D-WA) (together with Rep. Mark Kirk (R-IL) and Rep. Jay Inslee (D-WA) in the House of Representatives, and Senator Maria Cantwell (D-WA) in the Senate). By the end of the 108th Congress, IMBRA had 17 co-sponsors in the House.

58. IMBRA was reintroduced in the 109th Congress on September 6, 2005 by Rep. Larsen and Rep. Frank Wolf (R-VA) and by Sen. Cantwell and Sen. Sam Brownback (R-KS) on September 7, 2005 in the Senate. By the end of December 2005 (only four months after reintroduction), IMBRA had 15 co-sponsors in the House.

59. Although refinements were made in the bill between its introduction in the 108th Congress and its reintroduction in the 109th Congress, including the requirement of additional criminal history disclosures (additional violent crimes, as well as prostitution and alcohol-related offenses), the essence of the disclosure requirements imposed on IMBs remained the same.

I. 2005 Department of Justice and Violence Against Women Reauthorization Act (“VAWA 2005”), incorporating IMBRA

60. Over late Summer and early Fall 2005, Congress began to consider the reauthorization of VAWA, with the House and Senate taking up different versions of a bill to accomplish that purpose.

61. On July 22, 2005, HR 3402 (“Department of Justice Appropriations Authorization Act”) was introduced in the House of Representatives. HR 3402 incorporated provisions from IMBRA (requiring petitioners for fiancée visas to disclose any criminal convictions for domestic violence, sexual assault, or child abuse; placing limits on how many times and how frequently petitioners could sponsor fiancées; and mandating the creation of a pamphlet on the rights and resources of domestic violence victims). HR 3402 was referred to the Committee on the Judiciary, and reported out of Committee on September 27, 2005. *See* House Report 109-233, Sections 916(c) and 922.

62. On September 28, 2005, HR 3402 passed the House by a vote of 415 to 4.

63. On June 8, 2005, S 1197 (“Violence Against Women Act of 2005”) was introduced in the Senate. It was referred to the Committee on the Judiciary, and during Committee consideration on September 8, 2005, IMBRA was

incorporated as Title VIII, Subtitle D. S 1197 was reported out of Committee on September 12, 2005.

64. On October 4, 2005, S 1197 passed the Senate by unanimous consent.

65. Thereafter, the House and Senate versions of these bills to reauthorize the Violence Against Women Act were “conferenced” to reconcile their differences.

66. On December 16, 2005, IMBRA (as incorporated as Title VIII, Subtitle D of the Department of Justice and Violence Against Women Reauthorization Act of 2005 (the conferenced version of HR 3402)) was passed by the Senate by unanimous consent. The bill passed the House by voice vote. It was signed into law on January 5, 2006, and became Public Law No. 109-162.

VI. Foreign Women Who Come to the United States Through IMBs Face a Heightened Risk of Abuse

A. Academic Studies Describe and Document the Heightened Risk of Abuse in IMB Relationships

67. In addition to the 1999 INS Report and the congressional materials, the IMB industry has been the subject of intense scholarly inquiry, and these materials describe the heightened risk of domestic abuse that women face in IMB relationships.

68. Examples of relevant academic publications include: Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, Center for the Study of Intelligence (Nov. 1999); Donna M. Hughes, *Role of Marriage Agencies in Trafficking in Women and Trafficking in Images of Sexual Exploitation (The Impact of the Use of New Communications and Information Technologies on Trafficking in Human Beings for Sexual Exploitation)*, Council of Europe (Nov. 2001); *The Willingness of 'Mail-Order Bride' Companies to Provide Services to Violent Men*, Equality Now, New York; Donna M. Hughes, *The Role of "Marriage Agencies" in the Sexual Exploitation and Trafficking of Women from the Former Soviet Union,* International Review of Victimology (Vol. 11, 2004); Kohl-Welles, Costa and Veloria, *Mail-Order Bride Law Protects Vulnerable Women*, Puget Sound Business Journal (July 5-11, 2002); Donna M. Hughes, *Short Report on Trafficking in Women from Ukraine Research Project*, University of Rhode Island (Aug. 2001); Linda Kelley, *Marriage for Sale: The Mail-Order Bride Industry and the Changing Value of Marriage*, 5 J. GENDER, RACE & JUST. 175 (2001); Tiffany E. Markee, *A Call for Cultural Understanding in the Creation, Interpretation and Application of Law: Is the United States Meeting the Needs of Russian Immigrant "Mail-Order Brides?"*, 31 CAL. W. INT'L L.J. 277 (Spring

2001); Christine S.Y. Chun, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 7 U. PA. J. INT'L ECON. L. 1155 (Winter 1996); Beverly Encarguez Perez, *Woman Warrior Meets Mail-Order Bride: Finding an Asian American Voice in the Women's Movement*, 18 BERKELEY WOMEN'S L.J. 211 (2003); Kate O'Rourke, *To Have and To Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT'L L. & POL'Y 476 (Summer 2002); Ryah Lilith, *Buying A Wife But Saving a Child: A Deconstruction of Popular Rhetoric and Legal Analysis of Mail-Order Brides and Intercountry Adoptions*," 9 BUFF. WOMEN'S L.J. 225 (2000-2001); Suzanne H. Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides*," 70 GEO. WASH. L. REV. 475 (June 2002); Vanessa Brocato, *Profitable Proposals: Explaining and Addressing the Mail-Order Bride Industry Through International Human Rights Law*, 5 SAN DIEGO INT'L L.J. 225 (2004); Stephanie Earls, *From Russia, with Love Romance and Risk Intertwine in the Booming Business of "Mail-Order Brides"*, TIMES UNION (Aug. 22, 2004); Janet Calvo, *A Decade of Spouse-Based Immigration Laws: Coverture's Diminishment, But Not Its Demise* 24 N. ILL. U. L. REV. 153 (Spring 2004); Jeanne Kohl-Welles, *International Matchmaking Organizations: Washington State's Public Policy Response to Providing Protections to Mail-Order Brides*, Wellesley Centers for Women 2001

International Research & Action Conference (April 25-28, 2004); Glodava, Mila, and Richard Onizuka, *Mail-Order Brides: Women for Sale* (1994) Fort Collins, Colorado: Alaken, Inc.; Eddy Meng, *Mail Order Bride: Gilded Prostitution and the Legal Response*, 28 U. MICH. J. L. REFORM 197 (Fall 1994); Marie-Clarie Belleau, *Mail-Order Brides in a Global World*, 67 ALB. LAW REV. 595 (2003).

B. The Foreign Women Are Vulnerable

69. A foreign woman who comes to the United States through an IMB is particularly vulnerable to domestic abuse.

70. Traditional factors in domestic abuse settings that cause woman to remain in such relationships, *e.g.*, out of a sense of fear and financial dependency, are compounded in “mail-order bride” relationships by numerous factors. *See* Jeanne Smoot and Anjum Kapoor-Sikka, " Working With Women Abused by Clients of International Matchmaking Agencies" in *The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook*, 2nd Edition (ABA Commission on Domestic Violence: 2004), pp. 131-139. These factors include the woman's:

- lack of familiarity with the language, laws and customs of the United States;

- separation from her family, friends, and other support network¹⁸;
- unfamiliarity with legal and social-service remedies in the United States devoted to helping battered women;
- their legal status is entirely dependent on her U.S. citizen sponsor, who is sometimes her abuser;
- cultural background that discourage abused women from leaving their husbands and discourage reporting of domestic abuse;
- false confidence in IMBs, which have a skewed financial incentive to favor the male client over the female.

71. The women who use “mail-order bride” agencies typically believe that American men will “make good husbands” and are thought to be “faithful to their wives, while the native men are cruel and run around with other women.” Scholes Study, at 3. The men who use “mail-order bride” agencies typically seek “traditional” wives, and tend to “have control in mind more than a loving,

¹⁸ This is truer of “mail-order brides” than other types of immigrant wives, since “mail-order marriages” are almost by definition cross-cultural; the exoticization of the foreign bride is a key marketing tactic. (See Scholes Study at p. 4, citing Jedlicka study finding that 94% of male clients are white); see also Tr. 36:24-42:11 (Steckel testifying about isolation of brides) and Joanne Alcantara, “Findings from Washington State on Internationally-Matched Filipinas,” in *Washington State Coalition: A Model for Inclusiveness to Combat Human Trafficking* (University of Washington Women’s Center: 2004) (reporting research that revealed the majority of male IMB clients reside outside of urban centers, and noting that “[i]solation contributes to women’s vulnerability to domestic violence.”).

enduring relationship.’’ Scholes Study at 4-7.¹⁹ The Centers for Disease Control and Prevention has identified belief in “[t]raditional gender norms (e.g., women should stay at home and not enter workforce, should be submissive)” as well as desire for power and control in relationships as being risk factors for abuse. *See* <http://www.cdc.gov/ncipc/factsheets/ipvfacts.htm>.

72. Appendix B to the 1999 INS Report indicates substantial age differences between the husbands and wives in the 41 cases they reviewed and classified as “definitely” or “probably” mail-order cases, with a mean age difference of 15 years and a maximum of 41 years. Appendix B, at 2. Scholars have pointed to the fact that male IMB clients are typically older and looking for younger brides as evidence that they seek women “they can mold”, which is critical to their desire for power and control. *See* Glodava and Onizuka 1994: 27

¹⁹ Studies indicate that male-dominated / power-imbalanced marriages can lead to greater violence. *See*, Gisele Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, ([http:// legalmomentum.org/legalmomentum/files/dvusc.pdf](http://legalmomentum.org/legalmomentum/files/dvusc.pdf)) (April 2006), at 5-6 (“The power structure of the marriage and the cultural or gender-related values of the couple in the marriage have been found to be factors that in many cases perpetuate, facilitate and increase the domestic violence. When the man is the designated head of the family and the decision maker, it is inevitable that the unequal levels of power and control in the relationship make the woman a more vulnerable target of violence and automatically create a situation of powerlessness in the woman....Coleman and Straus's (1986) study of 2,143 couples described the relationships among couples as fitting into one of four groups - male-dominated, female-dominated, divided power, and egalitarian. They found that male-dominant couples were the type of relationship that most experienced a high level of marital conflict (39%). In fact, they were twice as likely to have high conflict as egalitarian relationships.”).

(noting that out of 30 mail-order bride couples, only 2 were between 4-6 years' apart in age and the rest were marked by a 20 to 50 year age difference).

73. Newly analyzed and published empirical data from the 1994 Ayuda study on which Congress relied in passing the VAWA suggests that “when U.S. citizens are married to foreign women the abuse rate is approximately three times higher than the abuse rate in the general population in the United States.” Gisele Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, ([http:// legalmomentum.org/legalmomentum/files/dvusc.pdf](http://legalmomentum.org/legalmomentum/files/dvusc.pdf)) (April 2006).

C. High-Profile Examples of Abuse and Murder of Mail Order Brides in the United States

74. There have been notable cases of extreme violence committed by U.S. citizens toward “mail-order brides.” Prominent examples presented to the Senate included in the *Congressional Record* include the following:

75. Alabama: Thomas Robert Lane was charged with the murder of his estranged Filipina wife, Teresa Lane. Teresa's body was discovered in a bathtub filled with running water. Authorities found evidence that Lane drowned his wife by pinning her under the water with his foot. A forensic physician determined that Teresa was also subjected to blunt force trauma. During the couple's separation,

Lane had been trying to arrange to marry yet another woman from the Philippines. 151 *Cong. Rec.* S 17352 (2005).

76. California: Marilyn Carroll married Steffan Carroll in the Philippines in 1988. One year later, he traveled to Thailand to marry another young woman, Preeya. Before marrying his second wife, Carroll assured her that it was legal in California to have two wives. The bigamous marriage ended when Marilyn called the police to report that Carroll had sexually assaulted her—restraining her with handcuffs and other devices during the attack. Carroll was charged with bigamy and false imprisonment. 151 *Cong. Rec.* S 17352 (2005).

77. Georgia: Shortly after Katerina Sheridan, a young woman from Siberia, married Frank Sheridan, he kept her a virtual prisoner, forbidding her to keep her own set of house keys, and taking away her visa, passport, and birth certificate. Later, he also took away her cell phone and cut all the phone lines in the house. He flew into violent rages, on one occasion beating Katerina and dragging her around the house by her legs. After several such incidents, Katerina told him that she wanted to go back to Russia. In retaliation, Sheridan stabbed himself and then accused her of doing it to get her thrown in jail. Later, Katerina managed to make it to a women's shelter, but Sheridan stalked her relentlessly and tried to get her detained and deported. When police went to arrest Frank for

aggravated stalking, they discovered he was in Russia looking for a new bride. Months later, when an officer went to arrest Sheridan for another stalking-related crime, he shot the officer. The deputy returned fire and killed Sheridan. 151 *Cong. Rec. S 17352* (2005).

78. Hawaii: The mutilated body of a young Filipina woman, Helen Mendoza Krug, was found in a garbage dumpster behind her high-rise apartment building. The murder was committed in front of her 2-year-old son by her husband, Robert Krug, whom she had met through an IMB. Krug was sentenced to life in prison. 151 *Cong. Rec. S 17352* (2005).

79. Kentucky: “Dina” corresponded with her husband “Paul,” an anesthesiologist, for several months before she agreed to marry him when he visited her and her family in Ethiopia. When she came to the United States, however, Paul took Dina’s money and passport, brought her to a motel (the first of five), and kept her drugged and imprisoned for weeks while he subjected her to horrific physical, sexual, and mental abuse. Paul also threatened Dina that she, not Paul, would be arrested and jailed if she reported him to the police. Only when Paul left to attend a conference for a few days did she regain enough consciousness and strength to drag herself to the motel office for help. Paul killed himself before

he could be prosecuted. Dina received protection under US trafficking laws. 151 *Cong. Rec. S 17352* (2005).

80. Minnesota: Soon after “Medina,” a Ukrainian college professor, married “Thomas,” a well-respected doctor, Thomas turned controlling and violent. Among other outbursts, he threatened Medina with a knife; kicked her in the chest; and even attempted to push her out of a moving car. Thomas also slept with an ax in his drawer and threatened to have her deported if she ever called the police. Medina left Thomas after he broke her son’s finger. Today, Medina continues to live in constant fear of Thomas, who stalks and harasses her. Despite knowing about Medina’s abuse, the IMB facilitated a new match between Thomas and another Ukrainian woman who also later fled because of abuse. Medina was Thomas’ third wife; he had also abused at least one of his prior wives. 151 *Cong. Rec. S 17352-53* (2005).

81. New Jersey: A 26-year-old Ukrainian engineer named Alla bled to death on the floor of her car after her husband Lester Barney, 58, slashed her throat in front of the couple’s 4-year-old son, Daniel. Barney fled with Daniel from the scene, the parking lot of the boy’s daycare center, but after an Amber Alert was triggered he turned Daniel over to a friend and was himself taken into custody by police. Alla had been granted a restraining order against Barney a few months

before and had been given temporary custody of Daniel. 151 *Cong. Rec. S 17353* (2005).

82. New York: Andrew Gole, a former policeman from Long Island, was convicted of murdering Martha Isabel Moncada on a trip back to her home country, Honduras, after she told him she did not want to return with him to the United States. Martha had tried to leave the abusive Gole before, but had feared losing custody of their newborn son to him. Gole strangled and dismembered Martha in their hotel room in front of their baby and Martha's disabled son from her first marriage, then dumped her remains along the roadside. Police arrested Gole as he tried to flee the country after abandoning the older boy at a gas station. 151 *Cong. Rec. S 17353* (2005).

83. Pennsylvania: Though she was trained as an accountant, Norman McDonald compelled his Ukrainian wife to take several waitress jobs and rely on him for transportation so he would have long stretches of time alone with her daughter, who was only 3 when the couple married. With his wife securely out of the house, McDonald showed the toddler pornographic videos of what he wanted to do to her and then raped her. Two years after the abuse started, his wife discovered what McDonald was doing and immediately contacted the police. Authorities found more than 10,000 images of child pornography in McDonald's

computer and hundreds of video clips that depicted him having sex with his stepdaughter. McDonald's 28-year-old daughter from a previous marriage testified that her father had also abused her as a child. *Id.*

84. Texas: Jack Reeves, a retired U.S. Army officer, was convicted of killing his fourth wife, Emelita Reeves, a 26-year-old from the Philippines whom he met through an IMB called "Cherry Blossoms." Emelita had confided to family and friends that Reeves physically and sexually abused her, and told friends she planned to leave him a day before she disappeared. Two of Reeves' previous wives also died under suspicious circumstances (drowning and suicide). During the investigation into Emelita's death, the State re-opened the investigation into Reeves' second wife's death, and obtained a further conviction against him. The State did not have enough evidence to re-open the investigation into the third wife's murder because Reeves had cremated her body. Reeves was also suspected in the mysterious disappearance of a Russian woman with whom he had lived with in 1991. 151 *Cong. Rec. S 17353* (2005).

85. Virginia/Maryland: A young Ukrainian medical student named "Nina" married "John," a U.S. military officer residing in Virginia whom she met through a Maryland-based IMB with a "satisfaction guaranteed" policy. Throughout their one-year marriage, John repeatedly physically and emotionally

abused Nina, shaking her violently and insisting that she repeat the commands he gave her. He choked, raped, and beat her on several occasions, ripped a tooth out of her mouth, and threatened her with a knife. When Nina informed the president of the IMB about the abuse, the president said that Nina's experience was normal and that many girls had the same problem. The president said domestic violence is "just the American culture," and abuse is "very hard to prove." 151 *Cong. Rec.* S 17353 (2005).

86. Washington: Susanna Blackwell met her husband through an IMB called "Asian Encounters" and left the Philippines to settle with him in Washington state in 1994. Blackwell physically abused Susanna, including one incident in which he choked her the day after their wedding. Susanna reported the abuse to the police and obtained a protection order against him. While awaiting divorce/annulment proceedings in a Seattle courtroom many months later, the pregnant Susanna and two of her friends were shot to death. Blackwell was convicted of murdering all three women. 151 *Cong. Rec.* S 17353 (2005).

87. Washington: Anastasia King, a young woman from Kyrgyzstan, was found strangled to death and buried in a shallow grave in Washington state in December 2000. At the age of 18, Anastasia was selected by her husband, Indle King, out of an IMB's catalogue of prospective brides. Two years later, wanting

another bride and allegedly unwilling to pay for a divorce, King ordered a tenant in their Washington home to kill Anastasia. Weighing nearly 300 pounds, King pinned Anastasia down while the tenant strangled her with a necktie. Both were convicted of murder. King's previous wife, whom he had also met through an IMB, had a domestic violence protection order issued against him and left him because he was abusive. 151 *Cong. Rec. S 17353* (2005).

VII. IMBs Attract Predators

A. IMB Marketing Practices

1. To the Men: Marketing Women As “Product”

88. The marketing practices of many IMBs attract predatory abusers with a history of violence against women and children. IMBs charge their American male clients significant fees to meet foreign women from developing countries who often are depicted as submissive and obedient. IMBs often market women as merchandise, with “satisfaction guaranteed” promises to their paying male clients and so-called “romance tours” that may assemble as many as 2,000 women at a time for the benefit of only a dozen men.²⁰ Also, agencies do not screen their male clients for violent histories, may repeatedly pair new women recruits with violent

²⁰ For data on “romance tours,” see INS Report, at 5.

men, and frequently fail to advise – and may even mislead – women about what they can do to escape abuse.

89. Examples of advertising claims made by IMBs include the following:

- (i) “In Russia, she doesn’t have a choice to stay home to take care of her husband, house, and children—for her, it is a dream. . . she is the weaker gender and knows it.” www.chanceforlove.com (last visited 12/19/05)
- (ii) “Welcome to Intimate Submissives®™, where Western Men can find sexy submissive Asian women ... selected for their loyalty and zero tolerance for divorce... who want a man to serve and to please. . . .” (www.submissives.net) “Our registered trademark is: It’s Good to be the King!” (www.submissives.net/order.htm) (last visited 12/19/05)
- (iii) “Total cost for services: \$10,500.00 U.S. A beautiful woman to sleep with at night, kiss in the morning, and love all day long, for so little – less than an economy car.” www.armcandyinternational.com (last visited 12/19/05)

2. To the Woman: Marketing American Men As Superior

90. IMBs lull foreign women into participating in their service with promises of a new life in a better country, and with a better man. IMBs go to economically depressed areas of the world with their promise to introduce foreign women to wealthy, nurturing, and well-educated men. The women who use IMBs believe that American men will “make good husbands” and are thought to be “faithful to their wives, while the native men are cruel and run around with other

women.” See Scholes Study, at 3. See also *Fox v. Encounters Intern.*, 2006 WL 952317, at *2 (4th Cir. April 13, 2006) (IMB touted American man).

B. European Connections’ Marketing

91. The European Connections website known as “russianladies.com” features photographs of young women in seductive poses. The website states “Browse thousands of Russian ladies’ photos and select those you want to email.”

92. The website makes a direct appeal that older, unattractive American men can meet the younger, beautiful woman because of depressed conditions in the former Soviet Union. The website states as follows:

Email beautiful Russian women nowThey are seeking romance and/or marriage with foreign men because most Russian men do not treat Russian ladies very well. Email beautiful Russian girl today Also, Russian men only live to an average age of 56. Meet beautiful Russian brides online Russian men also are not healthy, drink too much and are not interested in marriage. Contact beautiful Russianbrides now. There is a great shortage of men in Russia.

Beautiful women on Russian dating site The 2000 census compiled by the Ministry of Statistics revealed that there are 12 million more Russian ladies than men. Mailorderbrides want to hear from you. Therefore Russian brides have no choice but to look overseas for a partner. European Connections Russian brides introductions Russian ladies seeking to become Russian mail order brides are students, doctors, engineers, ballet dancers, teachers, etc. Find your mail order bride today

They are highly educated, feminine, and *starved for affection*. Search for Russian mail order brides now Most of these hopeful Russian brides come from the middle and upper class and speak conversational English. Find your Russian mail order bride now

Age difference is not an issue with Russian ladies. Find your future Russian wife. They are very mature and view older men as more reliable and interesting. Find Russian wives online today. The average age difference of all Russian-foreign marriages is 20 years. Beautiful Russian singles online *You don't have to be rich or handsome* to find potential loving, devoted Russian brides. Foreign brides waiting for your email. Why? Because most Russian ladies are simply looking for a "normal" life. Russian girls want to contact you. Simply reach out to the thousands of Russian ladies who are waiting for you on this russianladies.com email network. Find your Russian bride online Change your life - - email beautiful Russian ladies tonight.

VIII. IMBs Have a Common Law Duty to Investigate Male Clients for Violent History and to Tell Female Recruits About Their Domestic Abuse Rights

93. Given the heightened risk of domestic abuse in relationships formed through IMBs, the industry standard has emerged in which responsible IMBs have taken steps to address the domestic abuse threat. IMBs have a common law duty to comply with these emerging standards.

94. For example, in the recent tort action in Virginia brought by a "mail order bride" against an IMB, the "mail order bride" won a \$433,500 verdict against

the IMB, which failed to screen a violent American man and failed to tell the woman about her domestic abuse rights. *See* Judgment, *Fox v. Encounters Int'l*, No. WDQ-02-cv-1563 (D. Md. 2004).

95. The jury verdict was recently affirmed *in toto* by the U.S. Court of Appeals for the Fourth Circuit. *Fox v. Encounters Int'l, et al.*, 2006 WL 952317 (Apr. 13, 2006). In denying the IMB's motion to dismiss, the Chief Judge of the District Court issued a published decision that described the common law duty of the IMB:

Ms. Spivack owns and operates a marriage bureau. The women she introduces to her male clients are foreign and often barely speak the English language. Ms. Spivack should also know that they are vulnerable to the domestic violence that besets too many American women today.

The United States Congress knows that such women are particularly vulnerable to such abuse and noted in 1998, by passing the Mail Order Bride Act, that "anecdotal evidence suggests that mail-order brides find themselves in abusive relationships. . . . Many mail-order brides come to the United States unaware or ignorant of United States immigration law. Mail-order brides who are battered often think that if they flee an abusive marriage, they will be deported." 8 U.S.C. § 1375(a)(2-4).

As discussed previously, the Mail Order Bride Act mandates that international match-making organizations disclose information that negates the misconceptions frequently held by the women regarding domestic violence and deportation. Although this Court has found

that the Act did not specifically subject Ms. Spivack to fraud liability for concealing the information in the Act, the existence of the Act charges Ms. Spivack with the knowledge and notice of the information contained in the Act. On that basis, a reasonable jury could find that Ms. Spivack breached her fiduciary duty by failing to disclose this information, as it may constitute information that may have affected her decision “whether or how to act.” *Allen Realty Corp.*, 318 S.E.2d at 595. Thus, she cannot now argue that her statements made in direct conflict with the Act did not breach her fiduciary duty owed to Mrs. Fox.

Fox v. Encounters Int’l, 318 F. Supp. 2d 279, 295 (D. Md. 2002).

96. After the jury verdict, the IMB (Encounters International) appealed the verdict to the Fourth Circuit. In its decision upholding the jury verdict, the Fourth Circuit stated that the IMB “intentionally withheld knowledge” about domestic abuse remedies because they had a financial incentive to do so. *Fox v. Encounters Int’l*, 2006 WL 952317, at *8. The Fourth Circuit also held that the IMB exploited Ms. Fox’s vulnerabilities: “Plaintiff’s vulnerabilities while in the United States, including language barriers, being very far from her friends and family in the Ukraine, and being subject to the complexities of immigration laws were all known to the [IMB] and, therefore, support the existence of a fiduciary relationship.” The Court concluded that the IMB’s superior position of knowledge, the heightened risk of abuse in IMB relationships, and the unique vulnerabilities of

the women who are recruited through the IMB all contributed to a common law duty to protect Ms. Fox from abuse. The evidence at trial showed that the American man with whom the IMB matched Ms. Fox was not an upstanding citizen as the IMB suggested; instead, he had a history of serious violence toward women with whom he was involved, including violence his first wife.

IX. State Legislation Regulating IMBs

97. Several states have enacted laws regulating IMBs to remedy the risk of domestic abuse; others are considering similar legislation. To date, Washington, Texas, Hawaii, and Missouri have all enacted laws requiring agencies to apprise the women they recruit of the marital and criminal backgrounds of their prospective husbands under certain circumstances.

98. Texas also requires that the women be given information about “basic rights” applicable to a non-citizen.

99. In Washington State and Hawaii, an agency’s violations trigger the state consumer protection statutes, which provide for a private right of action. In Washington State and Hawaii, an international matchmaking agency must provide marital and criminal history information only upon request by a recruit. In Texas and Missouri, the agency is under an affirmative obligation to provide such information, as well as information about “basic rights” applicable to a non-citizen,

to all recruits. In all four states, an international matchmaking agency must refrain from facilitating the relationship any further until these information obligations have been fulfilled.

100. WA. REV. CODE § 19.220.010 requires “Each international matchmaking organization doing business in Washington state shall disseminate to a [foreign] recruit . . . state background check information and personal history information relating to any Washington state resident about whom any information is provided to the recruit, in the recruit’s native language. . . . the Washington state resident shall obtain from the state patrol and provide to the organization the complete transcript of any background check . . . based on a submission of fingerprint impressions and . . . shall provide to the organization his or her personal history information.”

101. HAW. REV. STAT. § 489N-2 requires IMBs to “notify all recruits that criminal history record information and marital history information is available upon request” and upon such request to obtain from the client a “complete transcript of any criminal history record or a statement that there is no record of convictions.”

102. MO. REV. STAT. § 566.221 makes it a felony for client of IMB to fail to “obtain a copy of his or her own criminal history record information; Provide

the criminal history record information to the international marriage broker; and Provide to the international marriage broker his or her own marital history information” or providing false information therein.

103. TEX. BUS. & COM. CODE ANN. § 35.122 requires IMB to “provide each recruit with the criminal history record information and marital history information of its clients and with basic rights information.”

104. California has also considered legislation to regulate IMBs (AB 634) that passed the Assembly in 2005 and is awaiting a hearing before the Business and Professions Committee of the California Senate. The bill proposes a licensure scheme that, among other things, would have required that brokers themselves submit to criminal background checks.

X. Provisions of IMBRA That Are At Issue in This Lawsuit and Their Justification

A. IMBRA Requirement For IMBs to Collect Background Information

105. IMBRA requires a U.S. petitioner applying to sponsor a foreign fiancée or spouse to report certain arrests and/or criminal convictions for violent crimes, including domestic violence, sexual assault, and child abuse.

106. Section 833(d)(2)(A)(ii) requires the IMB to collect the background documentation or an attestation signed by the United States client accompanied by

documentation concerning certain information regarding, without limitation, the following:

- (1) temporary or permanent civil protection orders or restraining orders issued against the United States client;
- (2) arrests or convictions of the United States client for, inter alia, homicide, assault, sexual assault, torture, trafficking, kidnapping, or stalking;
- (3) arrests or convictions of the United States client for engaging in prostitution, attempting to procure prostitutes or persons for the purpose of prostitution, or receiving the proceeds of prostitution;
- (4) arrests or convictions of the United States client for offenses related to controlled substances or alcohol;
- (5) marital history of the United States client;
- (6) the ages of any of the United States client's children who are under the age of 18; and
- (7) all States and countries in which the United States client has resided since the client was 18 years of age.

107. The Act prohibits an IMB from disclosing the “personal contact information” of a foreign national client to a United States client or representative without first obtaining the foreign national client’s “informed consent.” See Section 833(d)(3)(A).

108. To obtain informed consent from a foreign national client, the IMB must search the national or state sex offender registry, collect the background information of the United States client specified supra, provide to the foreign national client the information retrieved about the United States client, provide to the foreign national client an information pamphlet on legal rights and resources

for immigrant victims of domestic violence, and receive from the foreign national client a signed written consent to release the foreign national client's personal contact information to the United States client. *See* Section 833(d)(3)(A).

109. European Connections has claimed that information regarding "arrests" is not reliably connected to Congress' remedial purpose (to avoid or minimize instances of domestic abuse) because the person can be arrested for a violent crime that he did not commit. Tr. 101:17-105:12.

110. However, the TJC expert testified that domestic abuse is often not prosecuted because the victim is fearful and unwilling to cooperate with law enforcement and prosecuting attorneys:

... domestic violence situations very rarely result in a report, and very rarely result in an arrest. Sometimes once upon arrest, can't go forward to conviction because either she won't cooperate with the prosecutor or the way that the domestic violence statutes are written . . . where we don't always have in our society, sadly, the information to identify a potential batterer because of the way his history may be coming up, a violent history is a fair proxy for it.

Tr. at 80:7-81:12,

B. Definition of International Marriage Broker and Exceptions

111. IMBRA excludes from the definition of IMBs nonprofit organizations and companies such as Match.com that operate domestic dating services where the

principal business is not international matchmaking. Section 833(e)(4)(A) defines an IMB as follows:

(4) INTERNATIONAL MARRIAGE BROKER. —

(A) IN GENERAL. — The term “international marriage broker” means a corporation, partnership, business, individual, or other legal entity, whether or not organized under any law of the United States, that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens or nationals or aliens lawfully admitted to the United States as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.

In Section 833(e)(4)(B), the Act provides for two exceptions to this definition of IMB, including the following:

(i) a traditional matchmaking organization of a cultural or religious nature that operates on a nonprofit basis and otherwise operates in compliance with the laws of the countries in which it operates, including the laws of the United States; or

(ii) an entity that provides dating services if its principal business is not to provide international dating services between United States citizens or United States residents and foreign nationals and it charges comparable rates and offers comparable services to all individuals it serves regardless of the individual’s gender or country of citizenship.

112. TJC’s expert, Ms. Smoot, testified about the rationale for these exceptions from the definition of IMBs. Ms. Smoot testified that Congress was

specifically concerned with for-profit enterprises whose incentives were skewed to disregard women's safety. Tr. 70:18-71:10; 107:11-115:5.

113. In addition, Congress was concerned with companies that collected their membership fees from men and not from women. This distinction characterizes the IMBs, where the man pays and the woman is the "commodity." This is different from Match.com and similar of domestic matchmaking services where men and women pay equally to participate in the service.

114. Ms. Smoot testified "Congress expressed its concern . . . because of the skewed power dynamics." Tr. 109:12-13. Ms. Smoot explained that the companies are more concerned with the satisfaction of the men "who are the paying customers over safeguarding female customers." Tr. 109:22-24. The IMBs "charge differential rates to different clients so that their true client is the male" Tr. 111:25-112:1.

115. In addition to the member fee, Ms. Smoot testified that IMBs offer substantial "add-on services" – once again, these add-on services are offered to the men, and not the women. Tr. 112:18-22. Ms. Smoot explained that Congress intended to except an organization that "charges comparable rates to all genders regardless of country of nationality, then they are not in the business of supplying

men in the U.S. with foreign women from overseas whom they don't charge fees to." *See* Tr. 114:23-115:2.

116. In addition, Ms. Smoot testified that Congress was looking to regulate "business that primarily deals . . . with recruiting women who would be . . . substantially vulnerable to abuse." Tr. 116:23-25.

CONCLUSIONS OF LAW

I. The Permanent Injunction Standard Requires Plaintiff to Actually Succeed on the Merits

117. The standard for permanent injunction is essentially the same as the standard for a preliminary injunction, except that the plaintiff must show *actual* success on the merits, instead of a "likelihood of success" on the merits. *See, e.g., Klay v. United Health Group, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004). Thus, the district court may enter a permanent injunction only if the movant (European Connections) shows (i) actual success on the merits; (ii) that European Connections would suffer irreparable injury absent issuance of an injunction; (iii) the threat of harm to European Connections outweighs harm that the proposed injunction may cause to other parties; and (iv) issuance of the permanent injunction is in the public interest. *See id.*; *Spottsville v. Barnes*, 135 F. Supp. 2d 1316, 1318 (N.D. Ga. 2001) (denying injunction).

II. Overview of Conclusions of Law

118. European Connections has failed to carry its high burden to prove a constitutional infirmity with the IMBRA statute. The IMBRA statute affects IMBs' First Amendment rights, at best, at the margin. The IMB simply transmits background data from its male clients to its female clients as a prerequisite to releasing the woman's personal information. The IMB is not precluded from, or compelled to, saying anything, and the IMB expressly does not vouch for the man's background information. The Court's standard of review should be highly deferential, *not* the "intermediate" standard of review required under *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980), which is used for legislation that actually restricts commercial speech (*i.e.*, the IMBs' advertising of the quality and characteristics of its services).

119. In any event, under either standard, Congress has a substantial interest in protecting foreign women against domestic abuse and its plenary authority over immigration and the well-studied – and deadly – risks in IMB relationships are more than sufficient to justify the incidental impact on the IMB industry.

120. In addition, Congress' decision to target "for-profit" IMBs that are primarily focused on matching American men with foreign women is rationally related to Congress' remedial purpose and must be upheld under the rational basis

standard required by the Supreme Court. Congress' exception for nonprofits and "Match.com"-type companies (domestic dating services where men and women pay equally) is rationally based and consistent with commonplace legislative classifications. Congress is entitled to draw the line where it did, and this Court lacks authority to second-guess Congress' policy judgment.

121. The other permanent injunction factors also weigh heavily against entry of a permanent injunction. Whatever harm IMBRA poses to European Connections, such harm is greatly outweighed by the harm of domestic abuse and murder that Congress has observed for more than a decade in IMB relationships. It is a matter of vital public interest that Congress remediate this growing problem to protect the health, safety, and lives of foreign women who come to the United States.

III. The First Amendment Does Not Apply Because IMBRA Does Not Regulate Speech

A. European Connections Has Not Asserted, and Does Not Have, Standing to Raise First Amendment Claims of Its Members

122. IMBRA requires men who wish to use IMBs to provide background information that the IMB then transmits to the female recruits. To the extent that IMBRA implicates any First Amendment right to male clients who wish to use IMBs, those First Amendment rights have not been asserted in this case. No male

client has appeared, and European Connections has not purported to assert any First Amendment right on behalf of the male clients. *Wine and Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 48-50 (1st Cir. 2005).²¹

B. IMBRA Does Not Regulate Speech

123. “Commercial speech” entitled to First Amendment protection is limited to communications about the availability and characteristics of products and services, and which are intended to propose a commercial transaction. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557 (1980); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980) (holding that activities “not primarily concerned with providing information about the characteristics and costs of goods and services” is not commercial speech). Commercial speech – statements made by an advertiser about the qualities or characteristics of its own, or another’s, products or services – does *not* encompass every communication related to commerce. *See id.*

²¹ In any event, the male clients would not be able to challenge IMBRA on the basis of First Amendment rights for reasons similar to those described in these Findings. Provision of background information in this setting does not offend the First Amendment any more than provision of background information in a variety of other settings, such as in purchasing a firearm; applying for international adoption; or applying for any number of public employment positions where background information is required.

124. In this case, IMBRA does not regulate commercial speech. IMBs are not restricted from touting their services. To the contrary, under IMBRA IMBs remain free to make all sorts of claims – as distasteful as they may be – about how a man can marry a much younger, beautiful, “submissive,” “exotic” foreign woman who will submit to a man’s leadership. Nowhere in the IMBRA statute are there any provisions attempting to regulate the content of these types of commercial messages in which IMBs tout their service in an attempt to induce commercial transactions.

125. Instead, IMBRA requires the IMB merely to perform a transmittal role – that is, transmitting background information supplied by the man to the woman. This is not commercial speech.

126. Merely because an activity is “carried out by means of language, either spoken, written, or printed,” does *not* mean that the First Amendment applies. *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 437, 456 (1978). Congress regulates numerous communicative activities without implicating the First Amendment at all, including “the exchange of information about securities, corporate proxy statements, the exchange of price and production information among competitors, and employers’ threats of retaliation for the labor activities of employees.” *Id.* at 456 (citations omitted). “Each of these examples illustrates that

the State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is an implement of that activity.” *Id.*

127. When commercial speech is not at issue, a First Amendment analysis is not required. *See Wine & Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 49 (1st Cir. 2005) (provision of advertising and licensing services was not speech directed at potential consumers that proposed a commercial transaction); *American Future Systems, Inc. v. State University of New York College at Cortland* 565 F. Supp. 754, 768 (D.C.N.Y., 1983) (“plaintiffs may not utilize the First Amendment protection accorded to the dissemination of information . . . to pave the way for commercial conduct which is not speech. If there is a right to conclude the transactions, it is found in a source other than the freedom of speech clause in the First Amendment.”).

128. Thus, federal statutes that require potential participants in a commercial transaction to submit “background” information does not even implicate the First Amendment.

129. For example, federal regulations require a consumer to provide extensive background information as a prerequisite to purchasing a firearm. *See, e.g., 27 C.F.R. § 478.124; see also U.S. Bureau of Alcohol, Tobacco, Firearms,*

and Explosives (“BATFE”) Form 4473.²² BATFE 4473 requires a potential purchaser of a gun to disclose all sorts of personal information, including whether the purchaser has used drugs, has been “depressed,” or has been dishonorably discharged. *See id.* These procedures have neither been invalidated under the First Amendment nor have they dissuaded potential consumers from purchasing firearms or put gun manufacturers and distributors out of business.

130. The European Connections president, Mr. Steckel, testified that he obtained a firearm only after submitting to this background procedure and was not dissuaded from consummating the transaction given the prerequisite. Tr. 52:19-53:3 (testimony of P. Steckel). Nevertheless, Mr. Steckel’s Declaration states that European Connections “*will no longer be able to stay in the business* of serving U.S. men and foreign women” because “the requirement of asking for such [background] information *will cause potential clients not to use our company.*” Feb. 23, 2006 Steckel Declaration ¶ 16 (emphasis added). Mr. Steckel’s own experience shows that potential participants in a commercial transaction are not necessarily dissuaded by a requirement to submit background information.

²² Sample form available at <http://www.atf.gov/forms/4473/>.

131. Another example is federal legislation requiring background checks for international adoption. The Intercountry Adoption Act of 2000, 42 U.S.C. § 14923, requires detailed background checks and home visits before a person can participate in international adoption transactions.²³

132. Like IMBRA, the purpose of the Intercountry Adoption Act is to prevent abuses. *See* 42 U.S.C. § 14901. The Intercountry Adoption Act requires international adoption agencies to assess the suitability of prospective adoptive parents through several mechanisms, including a home study with a personal interview, a fingerprint check, and a record check of available child abuse registries. *See* 8 C.F.R. § 204.382. Prospective adoptive parents also must furnish evidence of U.S. citizenship, a marriage certificate (if applicable), and evidence of legal termination of all previous marriages. 8 C.F.R. § 204.3(c). The home study includes an interview with each adult member of the prospective adoptive parents' household; an assessment of each adult's mental and emotional capabilities; a check on available child abuse registries; and responses to questions about history of substance, child or sexual abuse, and domestic violence. *See id.*

²³ The Intercountry Adoption Act implements the Hague Convention on protection of children and cooperation and respect to intercountry adoption, S. Treaty Doc. No. 105-51 (1994), which was approved in 1993 and signed by the United States on March 31, 1994.

133. There has been no First Amendment challenge to the Intercountry Adoption Act of 2000 or any of its implementing regulations. Neither has an international adoption agency has gone out of business because of the existence of these regulations.

C. The Rationale for Affording Constitutional Protection to Commercial Speech Is Not Present in This Case

134. In establishing limited First Amendment protection to commercial speech, the Supreme Court has explained that “advertising, though entirely commercial, may often carry information of import Commercial speech serves to inform *the public* of the availability, nature, and prices of products and services [and therefore assures] informed and reliable decisionmaking.” *Bates v. State Bar of Arizona*, 433 U.S. 350, 364 (1977) (emphasis added). “Robust debate between competitors on matters of opinion, and claims that one product or services is far superior to that of rivals, are encouraged as part of the hurley-burley inherent in a free market system.” *Licata & Co., Inc. v. Goldberg, Inc.*, 812 F. Supp. 403, 408 (1993). The Court has been particularly suspicious of content-based regulations that *restrict or prohibit* commercial speech. *See, e.g., 44 LiquorMart, Inc. v. Rhode Island*, 517 U.S. 484, 497 (1996) (holding that the

“paternalistic assumption that the public will use truthful, nonmisleading commercial information unwisely cannot justify a decision to suppress it”).

135. Here, as noted previously, IMBRA does not prohibit European Connections or any IMB from explaining the attributes of its service or distinguishing itself from commercial rivals or doing anything to explain to “the public” information about the availability of products and services.

136. Instead, IMBRA conditions the IMB’s *release of personal information* from one individual client to another individual client without informed consent.

137. Thus, IMBRA regulates a part of a commercial transaction that does not involve any advertising or commercial claims but instead concerns the release of private information in order to protect the health and safety of foreign women. There simply is not credible argument that the rationale that animates the commercial speech doctrine are present with regard to IMBRA’s background check provision.

D. Even If Considered to Regulate Speech, IMBRA Merits Highly Deferential Review, Not “Intermediate” Review Under *Central Hudson*

138. Even to the extent that IMBRA could be argued to regulate speech, there are several lines of authority to indicate that the “intermediate” scrutiny

under *Central Hudson* is not applicable, and the statute would, at best, be subject to diminished scrutiny requiring Congress to merely have a rational basis.²⁴

1. IMBRA Compels Disclosure; It Does Not Ban Speech

139. Because IMBRA *requires disclosure* of information (from the male client, not the IMB) and does *not bar* commercial speech, diminished First Amendment scrutiny is all that is required. *See Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985). In *Zauderer*, a state regulation required attorney advertising to be accompanied by a disclaimer that the client is responsible for the costs of litigation. The Supreme Court held that because the regulation compelled disclosure of additional information, as opposed to preventing commercial speech, the First Amendment interests are “*weak*” and that the State *need not use the least restrictive means.*” *Id.* (emphasis added); *see also Borgner v. Brooks*, 384 F.3d 1204, 1214 (11th Cir. 2002) (holding that courts have been more tolerant of regulations mandating disclosures than they are of regulations that bar affirmative commercial speech). In *Borgner*, the Court made

²⁴ This section will show that the “intermediate” standard of review under *Central Hudson* is too high and that a more deferential standard applies in this case. Plaintiff’s Motion for TRO confusingly alludes to various cases applying the even higher “strict scrutiny” standard for content-based restrictions on core speech. *See* TRO Motion at 9-11. Of course, no basis for application of strict scrutiny exists and Plaintiff itself has conceded that strict scrutiny does not apply. Tr. 143:25-150:21.

clear that the level of judicial scrutiny is deferential and that the regulation could be upheld as long as they “are reasonably related” to a governmental interest. *Id.* at 1214.

140. In a 2005 opinion upholding a Maine regulation compelling disclosures from pharmacy benefit managers (“PBMs”), Chief Judge Boudin observed that the *Zauderer* standard is akin to a “rational basis” standard – *not* the “intermediate scrutiny” standard of Central Hudson:

What is at stake here ... is simply routine disclosure of economically significant information designed to forward ordinary regulatory purposes—in this case, protecting covered entities from questionable PBM business practices. There are literally *thousands of similar regulations on the books* -- such as product labeling laws, environmental spill reporting, accident reports by common carriers, SEC reporting as to corporate losses and (most obviously) the requirement to file tax returns to government units who use the information to the obvious disadvantage of the taxpayer.

The idea that these thousands of routine regulations require an extensive First Amendment analysis is mistaken. *Zauderer* makes clear “that an advertiser’s rights are adequately protected as long as disclosure requirements are reasonably related to the State’s interest in preventing deception of consumers.” This is a test akin to the general *rational basis test* governing all government regulations under the Due Process Clause. The test is so obviously met in this case as to make elaboration pointless.

Pharmaceutical Care Mgmt. v. Rowe, 429 F.3d 294, 316 (1st Cir. 2005) (Boudin, J. concurring, citations omitted).

2. Congress Could Ban IMBs Pursuant to Its Plenary Immigration Power and Has the Lesser Power to Broadly Regulate IMB Advertising

141. Congress enacted IMBRA pursuant to its “plenary” authority over immigration matters. *See, e.g., Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (“Over no conceivable subject is the legislative power of Congress more complete than it is over immigration.” Because Congress’ power over immigration matters is so absolute, the Supreme Court has “long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.” *Id.* (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953)).

142. This plenary authority to expel or exclude aliens necessarily includes the power to regulate and establish policies that govern the methods and circumstances under which they will be admitted, excluded, or expelled. The Supreme Court in *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986), held that the greater power to highly regulate or ban a particular type of business (*Posadas* concerned the gambling industry) includes the lesser authority to enact broad restrictions on commercial speech of such industries.

143. The Court in *Posadas* distinguished other types of commercial speech cases and held the following: “The Puerto Rico legislature surely could have prohibited casino gambling by the residents of Puerto Rico altogether The greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling.” *Id.* at 345.

144. As in *Posadas*, the Court must consider the industry at issue and the strength of the legislative power with regard to that industry. IMBs could not exist without the fiancée visa and the myriad of statutes and regulations governing immigration. Congress could ban the fiancée visa and greatly restrict or eliminate the availability of foreign women to gain access to the United States. This authority is fundamentally different than legislative authority affecting other industries. Congress’ plenary authority over immigration is a factor that must be considered in the Court’s analysis of the constitutionality of IMBRA. As in *Posadas*, the “greater power to completely ban [IMBs] necessarily includes the less power to ban advertising of [IMBs]. Of course, here, IMB advertising is not affected at all; instead, IMBs merely are required to transmit adequate information as a prerequisite to the release of the foreign woman’s personal information.

3. IMBRA Is An “Informed Consent” Statute

145. As an “informed consent” statute, IMBRA ensures that women have access to more, not less, information, which is a substantial governmental interest. For example, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), doctors required to make “informed consent” disclosures to women considering abortion challenged the statute on the basis that it infringed the doctors’ First Amendment rights. The United States Supreme Court rejected this challenge, even though the Court was balancing a countervailing constitutional right of reproductive privacy. *Id.* at 884. Here, there is no countervailing constitutional right at stake, so this Court should be more inclined to validate the statute than the one in *Casey*.

IV. Background Information Men Must Disclose Is Reasonably Related to Congress’s Remedial Purpose

A. If Evaluated As “Advertising,” Disclosure of Background Information Ameliorates Potential Deception to “Listener” – The Foreign Woman

146. As noted, IMBs lull women into participating in the IMB service by an express advertising claim that American men are superior to men from the native country. Plaintiff’s own website makes this claim express — it tells foreign women that American men live longer, are healthier, and are generally better

husband material. IMBRA is designed to “assure truthful and adequate disclosure of all material and relevant information in advertising.” *See Tillman v. Miller*, 917 F. Supp. 799, 801 (N.D. Ga. 1995). By equipping foreign women with background information supplied by the men, the foreign women will have additional information to make a responsible choice.

147. In the *Tillman* case, this Court held that where there is a potential for the “listener” of an advertisement to be misled, a legislature can satisfy the *Zauderer* test by showing that the compelled disclosure will reduce the “possibility that a listener would be misled about plaintiff’s services by plaintiff’s advertisements” In *Tillman*, this Court evaluated a compelled disclosure in attorney advertising that warned consumers that filing a false workers’ compensation claim can be punished. The Court found that this disclosure is directed to something improper the *listener* of the ad might do, and does not address any advertising claim that might be deceptive in the lawyer’s advertising.

148. Plaintiff’s heavy reliance on *Tillman*, therefore, is misplaced. Unlike *Tillman*, the evidence in this case shows that the “listener” to the IMB pitch – *i.e.*, the foreign women -- can be misled by explicit advertisements such as those on the plaintiff’s website claiming that Russian men are inferior to American men. Many foreign women also have preconceived notions that America is the “land of plenty”

and that its men here are superior — and it is this preconceived notion that IMBs are exploiting in their efforts to lull women into participating in such services. Foreign women “idealize the American man the brides “see American males as their 'Knights in shining armor' who will snatch them away from their life of poverty and oppression.”²⁵ The requirement that the men furnish background information is calculated to provide women with more information, and a more realistic

B. The Types of Information Disclosed Is Rationally Connected to Domestic Abuse

149. Plaintiff has not challenged all categories of information, but instead has sniped at particular items. Each challenge fails.

1. Arrest Records Are Public Records and Must Be Disclosed in Many Circumstances

150. Plaintiff has argued that IMBRA is “completely overbroad”²⁶ because it requires disclosure of “arrest” records and that an arrest does not mean that a

²⁵ Louise Langevin and Marie-Claire Belleau, *Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides*, CHAPTER II: MAIL-ORDER BRIDES IN CANADIAN LAW, PART 1.3.2 “Profiles of Brides” (Status of Women Canada Policy Research Fund: 2000) available at http://www.swc-cfc.gc.ca/pubs/pubspr/066231252X/200010_066231252X_1_e.html.

²⁶ The overbreadth doctrine is “strong medicine” that is used “sparingly and only as a last resort.” *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). A statute is considered facially invalid only if it is “substantially overbroad, that is, its application would be unconstitutional in a

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person is “guilty.” Tr. 133-134. Plaintiff’s argument is flawed in several significant respects.

151. First, numerous statutes and regulations require disclosure of arrest records and courts have easily rejected challenges to such requirements indistinguishable from the challenge Plaintiff mounts here. For example:

- a) For example, disclosure of arrests is required in order to obtain a job in Georgia public schools. *See, e.g., Dougherty County School System Application for Employment*, available at http://www.dougherty.k12.ga.us/PDFs/apppacks/app_pack_noninst.pdf
- b) Public colleges and universities require that arrests be disclosed on the application as a prerequisite for admission. *See, e.g., University of South Florida, Disclosure of Arrest and/or Conviction*, <http://www.coedu.usf.edu/main/sas/disclosureofConviction> (“Any candidate who has an arrest record must disclose the *arrest* record on the Application for Admission to the College of Education. This includes, but is not limited to, *juvenile arrests*, dismissed charges, and/or sealed records.”) (emphasis added).
- c) Individuals who wish to become members of a public securities exchange must comply with Securities and Exchange Commission requirements by disclosing on a questionnaire whether they have a “record of any *arrest*

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substantial portion of cases.” *Ward v. County of Orange*, 217 F.3d 1350, 1355 (11th Cir. 2000); *Bama Tomato Co. v. Dep’t of Agriculture*, 112 F.3d 1542, 1546 (11th Cir. 1997); *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982).

or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate . . . fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting, or extortion.” 17 C.F.R. § 240.17a-3.

- d) The federal government also requires the military to acquire, review, and keep criminal history record information (including arrests) of all recruits. *See* 32 C.F.R. § 96.5.
- e) Applicants seeking admission to practice law must disclose any arrests (as well as convictions) in order for the Bar to determine that they have the requisite character and fitness to practice law. *See, e.g.*, Pennsylvania Board of Law Examiners Application for Character and Fitness Determination, available at http://www.pabarexam.org/Application_Information/Applications/PDFS/231/231AppPacket.pdf (requiring disclosure of “all criminal arrests and/or prosecutions” of Bar applicant); Rule 4.3 of West Va. Rules for Admission of Practice of Law (“An applicant shall be required to state in the application whether or not he or she has been convicted of any criminal offense *or has been arrested on any criminal charge.*”) (emphasis added).

152. The United States Equal Employment Opportunity Commission has acknowledged that records of mere arrest can be valuable evidence of prior conduct upon which an adverse employment decision may be made: “As with conviction records, *arrest records may be considered* in the employment decision as *evidence of conduct* which may render an applicant unsuitable for a particular

position.” United States E.E.O.C., *Policy Guidance on the Consideration of Arrest Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, available at 1990 WL 1104708, at *2 (emphasis added).

153. Courts that have permitted disclosure of arrest records. *See Behrens v. Regier*, 422 F.3d 1255, 1264 (11th Cir. 2005) (upholding “Florida’s adoption application requires information on a variety of private matters, including an applicant’s physical and psychiatric medical history, previous marriages, **arrest record**, financial status, and educational history.” (emphasis added)).

154. Contrary to Plaintiff’s intimations, arrest records are not private or protected information. In *Paul v. Davis*, 424 U.S. 693, (1976), for example, the police distributed fliers to area stores alerting them to possible shoplifters during the holiday shopping season. *Id.* at 694-95. The fliers printed the name and mug shot of the plaintiff who had been arrested, though not yet convicted, for shoplifting. *Id.* Shortly after the distribution of the flyers, the shoplifting charges against the plaintiff were dismissed. *Id.* at 696. The Supreme Court denied the challenge to publication of official acts like arrest records, notwithstanding the lack of a finding of guilt. *Id.* at 713.

155. Courts generally have held that there is no right to keep arrest records confidential because they are public reports. *See, e.g., Paul P. v. Verniero*, 170

F.3d 396, 403 (3d Cir. 1999) (holding “specifically that *arrest* records and related information are not protected by a right to privacy.”) (emphasis added); *Cline v. Rogers*, 87 F.3d 176, 179 (6th Cir. 1996) (no privacy in one’s arrest record because “*arrest* ... information are matters of public record.”) (emphasis added); *Fraternal Order of Police v. City of Philadelphia*, 812 F.2d 105, 117 (3d Cir. 1987) (same).

156. In *City of Philadelphia*, the court upheld the constitutionality of the city’s use of a questionnaire used to selecting applicants for special investigations unit that asked for information concerning any arrests of the police officers’ family members. 812 F.2d at 117. The court noted that “Arrest records are not exempted from the Freedom of Information Act, and even investigatory records prepared prior to arrests are accorded only limited protection.” *Id.* (citing 5 U.S.C. § 552(b)(7)). In upholding the city’s requirement that the applicants provide this information, the court went on to find that “it is unlikely that anyone could have a reasonable expectation that an arrest will remain private information. . . .” *Id.*

157. In light of this authority, Plaintiff’s feigned concern that arrest records be disclosed is disingenuous. Ironically, the foreign women who use IMBs must

disclose whether they have been arrested.²⁷ There is no constitutional infirmity in requiring the men to disclose the same arrest information that the women are required to disclose.

2. Studies Link Substance Abuse and Prostitution to Domestic Violence

158. Plaintiff has vaguely complained that an American man's history of substance abuse or prostitution cannot be linked to domestic abuse and therefore IMBRA is overbroad.

159. As an initial matter, to the extent that Plaintiff seeks to invalidate IMBRA on this basis, Plaintiff has failed to sufficiently plead these complaints (aside from vague references to them at the hearing).

160. Even if the Court were to consider Plaintiff's offhand comments as a constitutional challenge to the IMBRA statute, contrary to Plaintiff's speculation, there is evidence to substantiate the link between substance abuse and prostitution on the one hand and domestic abuse on the other. Regarding substance abuse, *see, e.g.*, U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, "Experts Assess Links Between Substance Abuse

²⁷ *See, e.g.*, <https://evisaforms.state.gov/ds156.asp?lang=1> (nonimmigrant visa application), which asks if the applicant has ever "been **arrested** or convicted for any offense or crime."

and Domestic Violence,” (news release dated January 21, 1998) (announcing panel of experts’ finding that “there is a *statistical association between domestic violence and substance abuse*” and identifying “research indicating that from one quarter to one half of men who commit acts of domestic violence also have substance abuse problems...”), available at <http://www.samhsa.gov/news/newsreleases/980121t.html>).²⁸

161. Regarding prostitution, *see, e.g.*, Ann Cotton, et al., “Attitudes Toward Prostitution and Acceptance of Rape Myths,” 2002 *Journal of Applied Social Psychology* Vol. 32, at 1-8 (reporting the association between prostitution and attitudes of men toward women regarding superiority and license to be sexual aggressors; “attitudes which justify violence against women”); *see also* Melissa Farley, “Prostitution Is Sexual Violence,” *Psychiatric Times*, Oct. 2004, at 7-10 (reporting result of study indicating that men who use prostitutes “perpetrated more sexually coercive acts with their partners than the other men” and significantly differed in their attitudes or behaviors toward women); *see generally* Testimony of

²⁸ *See also* In National Crime Victimization Survey data, (“alcohol was used by 67 percent of persons who victimized an intimate.”) “In other research, investigators found that half of alcoholic men who were receiving treatment had been violent toward an intimate partner in the year before alcoholism treatment.” *Chapter 1: Alcohol and Violence*, in 10th Special Report to the U.S. Congress on Alcohol and Health (U.S. Dep’t. of Health and Human Services: June 2000), p. 57, available at <http://pubs.niaaa.nih.gov/publications/10report/intro.pdf>.

Suzanne Jackson before the Senate Foreign Relations Committee (testifying about individuals who use IMBs for prostitution purposes).²⁹

162. Congress rationally may use these “indicators” (arrests, substance abuse, prostitution) of domestic abuse potential, particularly given that domestic abuse is so underreported and, when it is reported, it rarely results in prosecutions and convictions.³⁰ Given the data on the underreporting of domestic abuse,

²⁹ Christopher Maxwell, Joel Garner, and Jeffrey Fagan, “The Preventive Effects of Arrest on Intimate Partner Violence: Research, Policy and Theory,” *Criminology and Public Policy* 2002; 2 (1): 51-80, at pp. 67-68 (“Having one or more prior arrests for any offense against any victim was consistently associated with greater quantity of incidents [of intimate partner violence].”); See Lauren Cattaneo and Lisa Goodman, *Risk Factors for Reabuse in Intimate Partner Violence: A Cross-Disciplinary Critical Review* in TRAUMA, VIOLENCE AND ABUSE, Vol. 6, No. 2 (April 2005), p. 161 (noting a “number of studies that found criminal history to be a significant factor”).

³⁰ See Center for Disease Control, National Center for Injury Prevention and Control, “Intimate Partner Violence: Fact Sheet”: “Most IPV incidents are not reported to the police. About 20% of IPV rapes or sexual assaults, 25% of physical assaults, and 50% of stalkings directed toward women are reported.” See <http://www.cdc.gov/ncipc/factsheets/ipvfacts.htm>; see also Patricia Tjaden and Nancy Thoennes, Executive Summary, *Extent, Nature and Consequences of Intimate Partner Violence: Findings for the National Violence Against Women Survey*, Washington DC: Department of Justice, available at <http://www.ojp.usdoj.gov/nij/pubs-sum/181867.htm> at v. (reporting results of study based on telephone survey of nationally representative sample of 8000 men and 8000 women: “Most intimate partner victimizations are not reported to the police. Approximately one-fifth of all rapes, one-quarter of all physical assaults, and one-half of all stalkings perpetrated against female respondents by intimates were reported to the police.”) (at p. v). A majority of victims who do not report abuse “thought the police would not or could not do anything on their behalf.” (*id.* at v). When reported, “violence perpetrated against women by intimates is rarely prosecuted. Only 7.5 percent of the women who were raped by an intimate, 7.3 percent of the women who were physically assaulted by an intimate, and 14.6 percent of the women who were stalked by an intimate said their attacker was criminally prosecuted....less than one-half of the intimate partner perpetrators who had criminal charges files against them were convicted of a crime.” See “Victims’ Involvement with the Justice System,” at 51-52.

Congress would fail in its purpose if it limited background information to “convictions” as Plaintiff has suggested

V. Congress Had A Rational Basis To Make Distinctions in the Definition of IMBs

A. IMBRA’s Definition of IMBs Must Be Upheld Unless Congress Had No Conceivable Rational Basis

163. European Connections claims that the express definition of IMBs violates due process because it excludes religious and cultural organizations and organizations that do not target American man-foreign woman relationships as the principal part of its business. This definition does not involve any “suspect classification” (such as race or gender) and therefore this Court must uphold the definition unless European Connections can prove that Congress could have no conceivable state of facts that could justify the distinction.

164. The United States Supreme Court has “repeatedly held that ‘a classification neither involving fundamental rights nor proceedings along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate government purpose.’” *Central State Univ. v. American Ass’n of Univ. Professors*, 526 U.S. 124, 127-128 (1999); quoting *Heller v. Doe*, 509 U.S. 312, 319-321 (1993); *see*

also *Gary v. City of Warner Robbins*, 311 F.3d 1334, 1337 (11th Cir. 2002); *Price v. Tanner*, 855 F.2d 820, 828-30 (11th Cir. 1988).

165. This Court's review of European Connections' equal protection challenge is strictly limited to determining whether Congress had "any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993); see also *Doe v. Moore*, 410 F.3d 1337, 1346 (11th Cir. 2005) ("A statute is considered constitutional under the rational basis test when there is any reasonably conceivable state of facts that could provide a rational basis for it."). "[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Beach Communications*, 508 U.S. at 313. Thus, if there are any "plausible reasons for Congress' actions, the inquiry is at an end." *Id.* at 313-14 (quoting *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980)).

166. Because the distinctions within IMBRA that determine whether a dating service is covered by the Act are presumed to be constitutional, European Connections has "the burden to negative every conceivable basis which might support" the rationality of IMBRA's classification scheme. *Id.*

167. European Connections' burden is considerable. "[B]ecause we never require a legislature to articulate its reasons for enacting a statute, it is entirely

irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. Thus, the absence of ‘legislative facts’ explaining the distinction . . . has no significance in rational-basis analysis. In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *Id.* at 315 (citations omitted); *see also Georgia Cemetery Ass’n, Inc. v. Cox*, 403 F. Supp. 2d. 1206, 1210 (N.D. Ga. 2003) (same).

168. Thus, European Connections cannot prevail by showing that the distinction drawn by IMBRA is not supported by sufficient data or research; nor may European Connections prevail by arguing, as it did at trial, that Congress is required to investigate the validity of sociological evidence presented to it before legislating in that field.

169. Rather, European Connections must affirmatively prove that Congress acted arbitrarily and irrationally. In contrast, the government “has no obligation to produce evidence to sustain the rationality of a statutory classification.” *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993).

170. Courts have consistently upheld regulations that make distinctions between similar or overlapping business. *See, e.g., Fitzgerald v. Racing Ass’n of Central Iowa*, 539 U.S. 103, 108-09 (2003) (holding that Iowa statutes taxing

riverboat slot machines at 20 percent rate but racetrack slot machines at 36 percent rate did not violate equal protection by treating the businesses differently); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268, 1297 (5th Cir. 1988) (city ordinance imposing licensing and zoning restrictions on certain sexually oriented businesses, including topless bars, did not deny topless bar owners equal protection merely because the ordinance did not regulate adult bookstores and theaters, which were specifically exempt from state enabling act allowing city to regulate certain sexually oriented businesses); *DLS, Inc. v. City of Chattanooga*, 894 F. Supp. 1140, 1149 (E.D. Tenn. 1995) (City ordinance providing for regulation of adult-oriented establishments did not violate equal protection on ground that it did not target other sources of sexual displays such as cable television, adult magazines, adult books, sexual stimulation devices, and pornographic movies); *Top Shelf, Inc. v. Mayor and Aldermen for City of Savannah*, 840 F. Supp. 903, 907 (S.D. Ga. 1993) (Municipal ordinance barring nude dancing in establishments licensed to serve alcoholic beverages did not violate equal protection clause by differentiating between mainstream and nonmainstream performances, with non mainstream defined as “legitimate” plays, operas, etc. in which less than 20 percent of the venues gross receipts are from the sale of alcohol, as such distinction was rationally related to city’s legitimate interest on health, safety, and welfare);

Spudich v. Smarr, 931 F.2d 1278, 1281 (8th Cir. 1991) (Missouri legislature could rationally differentiate between family oriented sports facilities such as bowling alleys and soccer stadiums and facilities such as billiards parlors and, thus, did not violate equal protection when it allowed Sunday sales of intoxicating liquors at bowling alleys and soccer stadiums, but not at billiards parlors).

B. IMBRA’S Classification of IMBs

171. IMBRA exempts from its regulatory scheme two categories of matchmaking businesses: (1) “traditional matchmaking organizations of a cultural or religious nature that operate[] on a nonprofit basis; and (2) those businesses whose principal whose “principal business is not to provide international dating services . . . and [that] charges comparable rates and offers comparable services to all individuals regardless of the individual’s gender or country of citizenship.” 119 Stat. 3075.

172. European Connections argues that Congress had no rational basis for carving out these exemptions, especially for large online dating companies such as “Match.com” whose “principal business is not to provide international dating services between United States citizens . . . and foreign nationals *and* charge comparable rates and offer[] comparable services to all individuals it serves regardless of the individual’s gender or country of citizenship.” 119 Stat. 3075.

European Connections also complains that Congress had no basis to carve out an exception for nonprofit matchmakers. European Connections' challenge fails because Congress may have had a host of reasons for making such distinctions – but only one is required for IMBRA to be valid.

C. Congress Had a Rational Basis to Exclude Traditional Cultural/Religious Non-Profit Organizations from the Definition of IMBs

173. At trial, Ms. Smoot explained that the absence of a profit-motive removes many of the incentives for a marriage agency to prefer the male client's satisfaction over the female client's safety and discourages the male's sense of "ownership" over his imported bride, thus reducing the potential for domestic abuse. Tr. 113:11-113:22. This motivation forms a rational basis for IMBRA's distinction between for-profits and non-profits. *See Ad-Express, Inc. v. Kirvin*, 516 F.2d 195, 197-98 (2d Cir. 1975) ("there is a rational basis for distinguishing between advertising materials distributed for profit and materials distributed by charitable or non-profit organizations"); *Lykins v. Hohnbaum*, 2002 WL 32783973, at *5 (D. Or. 2002) (legislative classification based on non-profit/for profit entity upheld); *Thurmond v. Block*, 640 F. Supp. 588, 594 (W.D. Tenn. 1986) (same).

174. Cultural and *religious* non-profits are not targeted by IMBRA for regulation because, like non-profits, such entities lack the same customer-centric

motivation that the commercial IMBs possess. Congress reasonably could assume that without this motivation to keep its male customers satisfied, as discussed in more detail below, traditional religious and cultural matchmaking agencies are not as likely to be complicit in developing abusive relationships.³¹

D. Congress Had a Rational Basis to Exclude Domestic Dating Services, Whose Business Is Not Principally International, from the Definition of IMBs

175. The distinction between those dating services that whose *principal* business is providing international dating services as opposed to domestic services is clear. Congress sought not to regulate all dating services, but to protect foreign women, who it found to be particularly vulnerable to harm from this industry, from potentially violent American men. Congress rationally sought to regulate only those businesses whose main function is to facilitate these international matches, rather than painting *all* dating services with a broad brush.

176. European Connections is on one side of the regulatory line established by Congress, while other dating services like Match.com fall on the other based upon the different focus of their business models. “Defining the class of persons

³¹ Whether or not Congress actually had this reasoning in mind is “constitutionally irrelevant.” *Flemming v. Nestor*, 363 U.S. 603, 612 (1960). It suffices to uphold the classification because this reasoning is not irrational.

subject to a regulatory requirement . . . inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.” *Beach Communications*, 508 U.S. at 315-16. Congress was entitled to draw a line between those entities that specialize in international matchmaking and those where foreign introductions are merely incidental. *Cf. City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52-53 (1986) (upholding ordinance which reflected city’s choice to “address the potential problems created by one particular kind of adult business” without regulating others).

177. Moreover, even if the harms Congress sought to address exist with dating services that incidentally provide international matchmaking services, the statute’s failure to bring these organizations within its reach does not offend the Constitution. “[T]he reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others.” *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 489 (1955); *see also, e.g., Fullilove v. Klutznick*, 448 U.S. 448, 485 (1980) (affirmative action); *Califano v. Jobst*, 434 U.S. 47, 57 (1977) (Social Security disability marriage rule);

City of New Orleans v. Dukes, 427 U.S. 297, 305 (1976) (per curiam)

(grandfathered pushcart vendors); *Geduldig v. Aiello*, 417 U.S. 484, 495 (1974)

(disability benefits).

E. Congress Had a Rational Basis to Exclude Entities that Provide Comparable Services at Comparable Prices Without Regard to Gender or Nationality from the Definition of IMBs

178. Congress' rationally distinguished between those dating services that charge comparable rates and offer comparable services to both the American men and the foreign women. Congress was concerned with the power imbalance that results in a business model where the American male pays for services, but the woman does not. As a report from INS to Congress put it, "[u]nlike dating services or personal ads, the mail-order bride transaction is one where the consumer-husband holds all the cards." INS, *International Matchmaking Organizations: A Report to Congress*, at 4. The INS explained: "These are relationships fostered by for-profit enterprises, where the balance of power between the two individuals is skewed to empower the male client who may be seen as 'purchasing' a bride and a woman who has everything to gain from entering into this arrangement and staying in it, no matter what the circumstances." *Id.* at 8; Tr. 125:23-126:3.

179. Other practices endemic in the realm of IMBs but not domestic dating service providers include so-called “romance tours” during which a dozen men may be introduced to several hundred women at once, encourage the male client’s perception that he is “purchasing” a bride.³² International marriage brokers also have a vested interest in ensuring that women remain in those relationships in order to preserve their profitable reputations for making “successful” matches.³³ The profit incentives of international marriage brokers are presently skewed to satisfy the male client rather than to safeguard the women they recruit. INS Report, at 8.³⁴

³² Cf. “European Connections, Inc. has produced over 360 printed ladies photo catalogs, produced 44 live videos (including the “Free Tour Video”), and completed 130 successful Romance Tours resulting in over 7,000 marriages.” <http://www.mailorderbrides.com/russian-mail-order-brides.cfm>. For more on romance tours, see http://www.russianbrides.com/anastasia_tours/tours_dates.asp; <http://www.loveme.com/tour>; and <http://www.russiantours.com>. For an example of a website with a “shopping cart” feature, see <http://www.datingdepot.com/women/russia/russia-women.htm>. For agencies with “satisfaction guarantees”, see <http://www.getmarriednow.com/guarantee.shtml>; <http://www.encount.com/membership/>; <http://www.natashaclub.com>. For other ways in which the women profiled are compared to products, see www.armcandyinternational.com/services.htm (“Total cost for services: \$10,500.00 U.S. A beautiful woman to sleep with at night, kiss in the morning, and love all day long, for so little – *less than an economy car.*”); www.loveme.com/information/maxim.shtml (reprinted article from Maxim magazine boasts, “Luckily, AFA [A Foreign Affair] has made searching its voluminous database *as easy as ordering a pizza.*”) (emphases added).

³³ See finding that “EI intentionally withheld knowledge regarding the battered spouse waiver from [Nataliya] in an effort to preserve one of EI’s core promotional selling points, *i.e.*, its 95% success rate.” *Fox v. Encounters Int’l*, 2006 WL 952317 at *8 (Apr. 13, 2006).

³⁴ While IMBs catalogue women entirely from developing countries (where gross national income per capita is significantly less than in the U.S.), the vast majority (80%) of women who post their profiles on a site such as Friendfinder from the high income countries (including the

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180. These reasons are rationally related to governmental interest advanced by IMBRA, and European Connections has not carried its burden to negative them. It is not enough for European Connections to snipe at the evidence presented to Congress demonstrating this power imbalance. Congress is permitted to legislate on nothing more than “rational speculation.” *Beach Communications*, 508 U.S. at 315. Thus, the evidence before Congress was more than enough to establish the rational basis for this legislation. The distinctions between types of entities drawn by IMBRA are constitutionally valid.

VI. European Connections Fails to Satisfy the Other Elements of the Permanent Injunction Standard

A. European Connections Will Not Suffer Irreparable Injury

181. The fact that European Connections must comply with government regulations is not evidence of “irreparable harm.” The IMB industry has been on notice for a decade that Congress was considering substantial regulation of this

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U.S.). “[A] marriage between two people who do not possess equal power risks abuse of the less powerful spouse....The MOBI [mail-order bride industry] institutionalizes further power imbalances by deliberately matching men at the top of the global power spectrum with women who reside at the bottom.” Vanessa Brocato, *Profitable Proposals: Explaining And Addressing The Mail-Order Bride Industry Through International Human Rights Law*, 5 SAN DIEGO INT'L L.J. 225 (2004).

industry.³⁵ Plaintiff's only evidence that it would suffer harm under IMBRA is the conclusory and speculative testimony of Plaintiff's president, who predicated "just the requirement of asking for such [background] information will cause potential clients not to use our company." Steckel Declaration ¶ 16. However, just as the requirement to provide background information as a prerequisite to purchasing a firearm has not put gun manufacturers out of business, there is no reason to believe that IMBs will be driven from the marketplace by IMBRA. *See SEG Sports Corp. v. State Athletic Com'n*, 952 F. Supp. 2d 202, 204-05 (S.D.N.Y. 1997) (speculative evidence of irreparable harm is not sufficient to obtain injunctive relief).

182. The only individuals who may no longer use IMBs under IMBRA are those American men who have a significant history of violence toward women – the very type of person that Congress is concerned about. Thus, to the extent that any men will be driven from the IMB market, it will effectuate Congress' remedial purpose. If Congress is successful in reducing abuses in the IMB industry, the industry may actually **grow**. This scenario is just as likely, if not more likely, than the doomsday scenario that Plaintiff suggests. In any event, Plaintiff has failed to prove that it would face imminent and irreparable harm under IMBRA.

³⁵ *See, e.g.*, 62 Fed. Reg. 38041 (notice of IMB rulemaking).

B. Any Incidental Harm to European Connections Is Substantially Outweighed by the Risk of Domestic Abuse Without IMBRA

183. IMBRA is highly likely to reduce domestic abuse – and may actually save lives. The health and safety of foreign women that IMBRA seeks to protect substantially outweighs any pecuniary harm that IMBRA may cause to some IMBs. Had IMBRA been in effect sooner, women like Anatasia King, Susanna Blackwell, and Alla Barney may have been able to escape the cold-blooded murder at the hands of their American-citizen spouse. When balancing the harms in this case, the Court is confronted with the classic “blood-versus-money” analysis, and the safety of foreign women coming to the United States clearly is the more vital interest.

C. IMBRA Advances Substantial Governmental Interests and Its Enforceability Is a Matter of Vital Public Concern

184. In this case, the public interest has been vindicated – through the public’s representatives in Congress – through the enactment of IMBRA. The public has a keen interest in having its representatives enact legislation to protect women from domestic violence, and the public also has an interest in avoiding the wisdom of such legislation second-guessed in a judicial forum. Domestic abuse is a significant public concern. It did not always used to be the case. Domestic violence used to be something that was considered a “private” matter. Thankfully,

this is no longer the case, and legislative bodies across the country and around the world have worked hard to enact legislation aimed at reducing violence toward women. A maturing body of law now exists to combat spousal abuse and other degradation and violence toward women. The public interest will be vindicated by denying Plaintiff's request for a permanent injunction that would bar the enforcement of IMBRA.

[PROPOSED] ORDER

Upon consideration of Plaintiff European Connections' Motion for Injunctive Relief and in consideration of the parties' arguments and materials presented at the April 3, 2006 preliminary injunction hearing, it is hereby ORDERED:

1. Plaintiff's request for permanent injunctive relief is DENIED.
2. The temporary restraining order entered in this matter on March 7, 2006 is hereby vacated.
3. Constitutional and other challenges to the International Marriage Broker Regulation Act of 2005 are hereby overruled, and the United States may enforce the statute.

SO ORDERED THIS _____ DAY OF _____, 2006

CLARENCE COOPER
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

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DATED: April 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2006, I electronically filed the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW with the Clerk of the Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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CERTIFICATE OF FONT AND POINT SELECTION

I hereby certify that the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF INTERVENOR TAHIRIH JUSTICE CENTER were prepared in Times New Roman font, in 14-point type in compliance with Local Rule 5.1

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