

# FINDING A HOME FOR IMMIGRANT STORIES: A PLEA TO INCLUDE FICTION INVOLVING IMMIGRANT WOMEN IN LAW AND LITERATURE AND IMMIGRATION POLICY COURSES

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*Among its accomplishments, the study of law and literature introduces law students to the impact of law on marginalized individuals. Law and literature courses emphasize the impact of criminal law on minorities and other marginalized groups.<sup>1</sup> This essay proposes that immigrant stories should receive similar attention in students' legal education.*

*In this essay, I first discuss why immigration stories should be included in both law and literature and immigration policy courses.<sup>2</sup> Through fiction, the reader gains a visceral appreciation for the drastic consequences of immigration regime, including for example, policies that govern the deportation of those that have entered illegally or that restrict the entry of those seeking admission as refugees. Then, I discuss the perspective that women immigrants' stories bring to the classroom, stories which often showcase the double bind often experienced by women who are not only marginalized by immigrant status but also face the impact of patriarchal domination and intimate partner violence. Lastly, I discuss several short stories that illustrate women immigrants' struggle to overcome barriers to admission and restrictions on their exercise of autonomy.*

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1. For an early but still influential discussion of law and literature curricula, see Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. LAW REV. 65 (1995).

2. The scope of this essay is limited to stories of the U.S. immigrant population but some of the argument and analysis here may be appropriate to courses that address international migration.

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I. THE VALUE OF FICTION IN CONVEYING THE IMPACT OF U.S. IMMIGRATION POLICY ON THE LIVES OF IMMIGRANTS	

It is the special province of literature to convey the experience of someone other than ourselves, to enable us to have a vicarious understanding of the stresses, hopes, fears and life story of another. Martha Nussbaum, Robin West, and other feminist moral philosophers have advocated for a “normative justice,” criticizing legal studies for “a felt lack of responsibility for the moral or political consequences of existing law, a complacency bordering on complicity with law’s injustices,” or “a lazy satisfaction with the status quo.”<sup>3</sup> Insofar as is apparent from online posting of law school syllabi, immigration fiction is absent from the law and literature curriculum<sup>4</sup> as well as the syllabi of courses on immigration policy.<sup>5</sup> Immigration fiction encompasses the immigrant who entered legally, undocumented individuals who crossed the border illegally, and the refugee or asylum applicant who seeks entry to flee persecution. There is a place for all three categories, but I argue that the latter two categories of immigration fiction are especially significant in legal education.

3. ROBIN WEST, *NORMATIVE JURISPRUDENCE: AN INTRODUCTION* 107 (2011). See also MARTHA NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* (1995), a landmark work on the value of humanistic approaches to legal studies and the administration of justice.

4. See syllabi for law and literature courses offered by The George Washington University Law School, the University of Louisville School of Law, and the University of Washington School of Law. DANIEL SOLOVE, *LAW & LITERATURE SYLLABUS* (Geo. Wash. U. L. Sch. 2010), <https://www.danielsolove.com/wp-content/uploads/2015/09/Law-Literature-Syllabus-2010.pdf>; DONALD VISH, *LAW & LITERATURE SYLLABUS* (Louis D. Brandeis Sch. of L. 2010), <http://danzigusa.blogspot.com/2009/12/syllabus-law-literature-brandeis-school.html>; KATE O’NEILL, *LAW, LITERATURE, & FILM SYLLABUS* (U. of Wash. Sch. of L. 2012), [https://www.law.washington.edu/coursecatalog/syllabi/2012-spring\\_o\\_neillka\\_b577\\_law\\_literature\\_and\\_film\\_seminar.pdf](https://www.law.washington.edu/coursecatalog/syllabi/2012-spring_o_neillka_b577_law_literature_and_film_seminar.pdf).

5. See syllabi for immigration law courses offered by the Antonin Scalia Law School (George Mason), the University of Alabama School of Law, Cornell School of Law; New York University School of Law, University of California, Berkeley, School of Law, and The Washington University School of Law. JULIA FOLLICK, *IMMIGRATION LAW SYLLABUS* (Antonin Scalia L. Sch. 2018), [https://www.law.gmu.edu/assets/files/academics/schedule/2018/spring/Follick\\_235-S.pdf](https://www.law.gmu.edu/assets/files/academics/schedule/2018/spring/Follick_235-S.pdf); DAVID M. MCCONNELL, *IMMIGRATION LAW SYLLABUS* (U. of Ala. Sch. of L. 2017), <https://www.law.ua.edu/courseguide/files/syllabi/2017-Fall-93-001817.pdf>; STEPHEN YALE-LOEHR, *IMMIGRATION AND REFUGEE LAW SYLLABUS* (Cornell L. Sch. 2010), <http://lawprofessors.typepad.com/immigration/2011/03/cornell-professor-yale-loehr-immigration-and-refugee-law-fall-2010-syllabus.html>; ADAM B. COX, *IMMIGRATION LAW AND THE RIGHTS OF NONCITIZENS* (N.Y.U. 2016), <https://wagner.nyu.edu/files/courses/LAW%2011610%20%20Fall%202016.pdf>; LETI VOLPP, *IMMIGRATION LAW SYLLABUS* (U. of Cal., Berkeley, Sch. of L. 2013), <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fid=4828>; SIGNE DORTCH, *IMMIGRATION LAW CLINIC SYLLABUS* (U. of Wash. Sch. of L. 2014), [https://www.law.washington.edu/coursecatalog/syllabi/2014-winter\\_dortchsi\\_b531\\_immigration\\_law\\_clinic.pdf](https://www.law.washington.edu/coursecatalog/syllabi/2014-winter_dortchsi_b531_immigration_law_clinic.pdf).

Law and literature does its heaviest lifting when it conveys the impact of law on marginalized and disempowered members of society, thereby bringing home to readers the impact of statutes and judicial decisions that can have devastating consequences. While it is common for law professors to integrate law and economics in their curricula, they generally ignore the role of fiction. Fiction is a necessary complement to social science data. As Marjorie Camilleri writes: “The reader of a novel is a creative participant in the inner experience of the protagonist, gaining intimate knowledge about the protagonist’s history, joys, frustrations, agonies, reasons, and irrationalities.”<sup>6</sup>

Scholarship on “Outsider Narratives” emphasizes that “storytelling can serve as a platform . . . to challenge the legal status quo in order to effect change.”<sup>7</sup> Fiction can “bring to public attention the particular plight of the politically enfeebled, marginalized, and neglected segments of society.”<sup>8</sup> Famous examples of this include Harriet Beecher Stowe’s *Uncle Tom’s Cabin* or Upton Sinclair’s *The Jungle*.<sup>9</sup>

Immigration fiction is a subset of trauma studies. Many authors articulate how the immigrant experience directly confronts the challenge of communicating pain. Madelaine Hron notes: “[M]any immigrants may have experienced trauma in their home country or during their flight to the host country, and as a result may develop various traumatic sequelae, or symptoms of post-traumatic stress disorder, such as fear, hallucinations, depersonalization, or dysphoria.”<sup>10</sup> Hron argues that “the scarcity of a direct language of pain does not mean that there is no viable mode of expression for their pain; rather, like translators, writers must engage in a variety of representational tactics to render their suffering understandable to readers.”<sup>11</sup> As I explain to my students, such techniques may include focalizing the story on the viewpoint of immigrant women; emphasizing the limitations of language on self-advocacy; detailing the impact of abuse or confinement on the mother and her child; insertion of indifferent or malignant officials who add to the immigrant’s pain and frustration.

It is, now more than ever, critical to convey how our immigration regime impacts those who seek its protection. In 1981, William Boelhower characterized the genre of immigrant fiction as involving a protagonist “representing an ethnic world view,” who “comes to America with great expectation, and through a series of trials is led to reconsider them in terms of his final

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6. Marjane Camilleri, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 CATH. U. L. REV. 557, 564 (1990).

7. Nicole S. Futrell, *Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing*, 93 N.C. L. REV. 1597, 1599 (2015).

8. Camilleri, *supra* note 6, at 562.

9. HARRIET BEECHER STOWE, *UNCLE TOM’S CABIN* (New York 1994) (1852); UPTON SINCLAIR, *THE JUNGLE* (New York 2010) (1906).

10. MADELAINE HRON, *TRANSLATING PAIN: IMMIGRANT SUFFERING IN LITERATURE AND CULTURE* 36 (2009).

11. *Id.* at 41.

status.”<sup>12</sup> But this is a dated model - one that assumes a scenario of entry and integration into American culture. Today, the immigration story is often one of frustration and anguish, without hope of a happy ending. While earlier fiction often dealt with immigrants who entered legally, today many immigrant stories describe the traumas faced by those who entered illegally, or those who are fleeing persecution and are unable to obtain admission as a refugee or asylum applicant. For the undocumented, deportation is a constant threat.<sup>13</sup> Under the Trump Administration, a person seeking refugee or asylum status is much more likely to be rejected.<sup>14</sup> Even asylum seekers who gain admission to the United States may suffer significant physical or emotional pain from the trauma of the journey and, in the case of women, from sexual abuse or gender-motivated violence. Even immigrants who enter legally may find themselves the victim of discrimination or limitation in opportunities, based on race or ethnicity.

Immigrants' stories have a place in the syllabi of immigration law courses to supplement readings of statutes, judicial rulings, and policy papers. Courses in immigration law not only educate students about the current turbulent U.S. regime, but also spark debate about policy choices and potential reforms. In traditional courses or clinics, students are called upon to consider the day-to-day impact of current policies on visa programs, undocumented and “dreamer” populations, and those seeking asylum and refugee status. It is critical, then, to expose students to narratives that convey the actual impact of changing policies, such as expansion of criteria for deportation of undocumented immigrants and restrictions imposed on acceptance of applications for refugee status or asylum.

## II. THE ROLE OF STORIES BY WOMEN IMMIGRANTS IN EDUCATING LAW STUDENTS ABOUT THE IMPACT OF IMMIGRATION POLICY

As Susan Brody writes, fiction involving female protagonists move “the student-reader closer to experiencing the array of injustices (social, political, economic, and legal) that women have historically suffered. Stories, real or fictionalized, enable students to independently analyze and evaluate how the law has responded (or should respond) to these injustices in a way they could not otherwise do if they were reading law, legal commentary, or legal theory

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12. William Boelhower, *The Immigrant Novel as Genre*, 8 MELUS 3, 5 (1981).

13. U.S. IMMIGRATION AND CUSTOMS ENF'T, DEP'T OF HOMELAND SEC., FISCAL YEAR 2017 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT (2017), <https://www.ice.gov/removal-statistics/2017>; Exec. Order No. 02095, (2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>. President Trump's 2017 Executive Order significantly increased individuals considered priority for deportation from President Obama's prioritization of those with serious criminal convictions or gang-related activity to anyone with a conviction, anyone charged with a criminal offense (even if not convicted), and anyone who committed acts that could constitute a chargeable offense).

14. AMERICAN IMMIGRATION COUNCIL, ASYLUM IN THE UNITED STATES FACT SHEET 5-6 (2018) <https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

in a vacuum.”<sup>15</sup> Fiction incorporates emotion that is generally “excluded from the law” and brings out the voice of “silenced people,” including women suppressed in immigrant communities.<sup>16</sup> “True-life stories” can bring home “the sufferings of women, and their relationship to injustices and inequalities.”<sup>17</sup>

While of course not limited to immigrant communities, male dominance oppresses the lives of many immigrant women limiting their ability to learn English, seek higher education, work outside the home, and control their reproductive destiny. Patriarchy has been defined as “the social system in which men’s interests trump women’s whenever they conflict.”<sup>18</sup> Patriarchal control silences women by inhibiting them from expressing their identity, pursuing life goals, and reporting abuse of themselves or of their children.

Patriarchy in many immigrant populations assigns women to socially-established roles and behaviors believed to be gender-appropriate. Gloria Anzaldúa in her landmark work, *Borderlands*, focused on the plight of the *chicana*, whose everyday experience is repressed by “cultural tyranny,” whether or not she is an immigrant:

[. . .] Culture is made by those in power – men. Males make the rules and laws, women transmit them. [. . .] Men were enforcing this traditional behaviour, without truly understanding it, and women followed and obeyed in order to avoid physical punishment, shame, or simply to avoid the social tag of a “mujer mala.” How many times have I heard mothers and mothers-in-law tell their sons to beat their wives for not obeying them, for being “bociconas” (big mouths), for being “callajeras” (going to visit and gossip with neighbours), for expecting their husbands to help with the rearing of children and the housework, for wanting to be something other than housewives? The culture expects women to show greater acceptance of, and commitment to, the value system than men.<sup>19</sup>

Domestic violence is often “ethno-gendered”: immigrant women are especially vulnerable to violence due to cultural norms, limited language proficiency, financial dependence on their husbands, and ignorance of the legal

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15. Susan L. Brody, *Law, Literature, and the Legacy of Virginia Woolf: Stories and Lessons in Feminist Legal Theory*, 21 TEX. J. WOMEN & L. 1, 6 (2011).

16. *Id.* at 7. Women are often “invisible victims” of the legal system—“nonheroic, non-villainous, real people suffering serious but invisible injury.” ROBIN WEST, *CARING FOR JUSTICE* 257 (1997).

17. Brody, *supra* note 15, citing Colleen Sheppard & Sarah Westphal, *Narratives, Law and the Relational Context: Exploring Stories of Violence in Young Women’s Lives*, 15 WIS. WOMEN’S L.J. 335, 353 (2000). While law and literature courses will focus on fiction, nonfiction first person accounts can serve many of these same goals and this author would argue, similarly enrich the syllabi of immigration studies courses.

18. WEST, *CARING FOR JUSTICE*, *supra* note 16, at 132.

19. GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 38 (1999).

regime.<sup>20</sup> Intimate partner violence has been characterized as a “silent crisis,” underreported as a taboo topic in Arab American communities due to cultural norms involving honor and shame, and patriarchal systems that influence behavior and expectations.<sup>21</sup> Studies of African immigrant women attribute the prevalence of intimate partner violence to cultural acceptance of gender-based violence, stigmatization of divorce, feelings of shame, a sense of loyalty to husband and community, fear of retaliation and/or deportation, and lack of means to independently support themselves or their children.<sup>22</sup> Female immigrants are often invisible victims; if law students expand their understanding of the challenges these women face, they are more likely to consider and advocate changes in immigration policy and our social safety net.

### III. EXAMPLE TEXTS ADDRESSING IMMIGRATION CONTROL AND INADEQUACY OF LEGAL PROTECTIONS

In both my law and literature and my immigration studies courses I assign stories that convey the impact of the current U.S. immigration regime and its consequences for a generally underrepresented and under-resourced population.<sup>23</sup> I offer five such stories as examples.

In “American Embassy,” the Nigerian author Chimamanda Adichie examines the asylum seeking process from the perspective of a woman waiting in a long line of individuals who hope to obtain asylum and thereby escape a brutal and oppressive regime.<sup>24</sup> “American Embassy” draws from a real experience in the life of the author’s family: Adichie’s brother was summarily rejected when he applied for a visa while he lived in London.<sup>25</sup> In Adichie’s story, as 200 hopeful applicants wait in line, they offer each other tips and advice on how to give the right answer to the probing questions that they will be asked as they apply for visitors’ or refugee visas. While peddlers offer

20. Soma Chaudhuri, Merry Morash, & Julie Yingling, *Marriage Migration, Patriarchal Bargains, and Wife Abuse: A Study of South Asian Women*, 20 *VIOLENCE AGAINST WOMEN* 141, 143 (2014); Cecilia Menjivar & Olivia Salcido, *Immigrant Women and Domestic Violence: Common Experiences in Different Countries*, 16 *GENDER & SOCIETY* 898 (2002).

21. Anahid Kulwicki, Barbara Aswad, Talita Carmona, & Suha Ballout, *Barriers in the Utilization of Domestic Violence Services among Arab Immigrant Women: Perceptions of Professionals, Service Providers & Community Leaders*, 25 *JOURNAL OF FAMILY VIOLENCE* 727 (2010). See also SALAM ABOUHASSAN, *SHIFTING PERSPECTIVES ON INTIMATE PARTNER VIOLENCE? PERCEPTIONS OF SECOND GENERATION ARAB AMERICAN WOMEN* 15 (Wayne State University Thesis 2015), [https://digitalcommons.wayne.edu/oa\\_theses/423](https://digitalcommons.wayne.edu/oa_theses/423).

22. Carolyn West, *African Immigrant Women and Intimate Partner Violence*:

*A Systematic Review*, 15 *J. OF AGGRESSION, MALTREATMENT & TRAUMA* 4, 11 (2016).

23. Novels could be used for the same purpose but I prefer to assign short stories to allow the students to read a greater number of stories reflecting different ethnicities and a range of legal/social policy issues. I also expose students to poetry; the writings of Arab-American poets such as Suheir Hammad and Mohja Kahf are especially moving. See Sirène Harb, *Perspectives on Violence and Reconciliation: Arab-American Women’s Writing about September 11*, 4 *DISSIDENCES*, Article 14 (2012), <http://digitalcommons.bowdoin.edu/cgi/viewcontent.cgi?article=1045&context=dissidences>.

24. Chimamanda Ngozi Adichie, “The American Embassy,” 40 *PRISM INTERNATIONAL* 22 (2002).

25. Chimamanda Ngozi Adichie, *The Diary*, *FINANCIAL TIMES* (July 10, 2009), <https://www.ft.com/content/624d5a28-6ce0-11de-af56-00144feabdc0>.



refreshments, those in the queue observe a soldier brutally beating a man to death. The woman—she is unnamed, perhaps because she is subject to erasure by government authorities—faces an agonizing choice about how much of her traumatic story she will tell to the immigration officer to gain asylum. As a matter of legal right she presents a compelling case for asylum (technically, refugee status).<sup>26</sup> Her husband wrote articles about the regime's corruption and killings; she was a journalist and protest leader. The husband is forced to flee when he receives word of his imminent arrest. When soldiers come to search for him in their home, one soldier loses his head and kills her young child. These events, by themselves, should constitute grounds for asylum, but the story grows more complicated.

Two events in Adichie's story are particularly chilling: the brutal and unnecessary slaughter of a toddler and the officious and insensitive questioning by the visa officer. The visa officer barely responds to the woman's report that government agents entered her home and killed her son. The officer checks off the boxes as if the woman was applying for an insignificant governmental license. Acting by rote, the bureaucrat instructs the woman to provide proof of the government's involvement: evidence in the form of her child's body. But the woman refuses to use her son's body as a means for a "new life" in America; she has lost the child that to her represented a meaningful new life.

We consider this story in the context of discussing the requirements for refugee status or asylum: a well-founded fear of persecution due to race, religion, nationality, political opinion, or membership in a particular social group. I challenge students to consider why the woman refuses to document the death of her child. One can read the woman's decision as resignation—life is not worth living without her son—or as resistance to a cold and condescending asylum process that is at its essence insensitive to human suffering. To appreciate the practical difficulties of applying these complex criteria, students are exposed to a hypothetical exercise in which they are asked to evaluate asylum applications based on limited information<sup>27</sup> and a documentary

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26. While colloquially applicants often speak of seeking asylum, under Section 101(a)(2) of the Immigration and Nationality Act, one seeks refugee status from outside the country while asylum protection is available to those already in the United States or who seek admission at the port of entry. In either event, the test is whether the individual has a well-grounded fear of persecution on account of race, religion, nationality, and/or membership in a particular social group or political opinion.

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . .

Immigration & Nationality Act § 101, 8 U.S.C. § 1101(a)(42) (2014). Upon grant of asylum, a person is entitled to a green card (lawful permanent resident status) within one year, and to apply for naturalization five years later. 8 C.F.R. § 209.2 (2011).

27. Constitutional Rights Foundation, "Seeking Asylum in the United States," BRIA 10.2 (2000), <http://www.crf-usa.org/bill-of-rights-in-action/bria-10-2-c-seeking-asylum-in-the-u-s>.

that shows actual interviews between applicants and officials.<sup>28</sup> I ask the students to imagine a sequel to the story. What happens to the woman in Adichie's story when she leaves the embassy? Does she resume a life of political resistance? Is her life the price for her decision not to use her son's body as a means of obtaining asylum?

"American Embassy" resonates in the present moment, when the Trump Administration has taken so many actions to discourage refugee and asylum applicants.<sup>29</sup> Immigrant rights groups have filed a class action in the U.S. District Court of California, alleging that Customs and Border Protection officials implementing Administration policy have misinformed individuals at the border that "Donald Trump has just signed new laws saying there is no asylum for anyone."<sup>30</sup>

However, these problems pre-date the Trump Administration. According to the American Immigration Council, it is more difficult for a woman than for a man to convince decision makers that she has engaged in political actions or opinions that would lead a reasonable person to fear persecution.<sup>31</sup> A threshold requirement relates to documentation of persecution. While challenging for both men and women, public claims are easier to prove than private claims. Public claims occur in a public sphere where it is relatively easier to find evidence showing that the asylum applicant is a victim of persecution on account of his political beliefs; newspaper articles about a protest, photographs, and membership cards can be enlisted to support the claim.<sup>32</sup> In private claims such as intimate partner violence, the asylum seeker is likely to need to rely on affidavits from individuals in their home countries such as family and friends, individuals who may have facilitated or at least acquiesced in the abuse from which the asylum seeker is fleeing.<sup>33</sup>

Refugee and asylum applicants who are victims of trauma face the additional hurdle of remaining consistent in their narratives of persecution. Studies of Bosnian refugees who suffer from post-traumatic stress disorder show that it is difficult for victims of physical and emotional trauma to reliably recall the details of their experience.<sup>34</sup> Plus, an asylum seeker who lacks written documentation of her claim must rely on convincing the decision

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28. WELL-FOUNDED FEAR (Epidavros Project 2000).

29. Muzaffar Chisti and Jessica Bolter, *The Trump Administration at Six Months: A Sea Change in Immigration Enforcement*, MIGRATION POLICY SOURCE, July 19, 2017, <http://www.migrationpolicy.org/article/trump-administration-six-months-sea-change-immigration-enforcement>; Mica Rosenberg and Reade Levinson, *Exclusive: Trump targets illegal immigrants who were given reprieves from deportation by Obama*, REUTERS, June 9, 2017, <https://www.reuters.com/article/us-usa-immigration-deportations-exclusiv-idUSKBN190214>.

30. *Al Otro Lado, Inc. v. Nielsen*, Case No. 3:17-cv-02366-BAS-KSC (S.D. Cal. filed July 12, 2017).

31. Cecilia Menjivar & Olivia Sacido, *Gendered Paths to Legal Status: The Case of Latin American Immigrants in Phoenix, Arizona*, AMERICAN IMMIGRATION COUNCIL 6-7 (2013), <https://www.americanimmigrationcouncil.org/sites/default/files/research/genderedpaths052813.pdf>.

32. Stephanie Robins, Note, *Backing It Up: Real ID's Impact on the Corroboration Standard in Women's Private Asylum Claims*, 35 WOMEN'S RTS. L. REP. 435, 457 (2014).

33. *Id.*

34. *Id.* at 489.



maker with an oral presentation. If she has been the victim of sexual or physical abuse, or has suffered a loss as terrible as the death of a child, the asylum seeker may be unable to articulate a convincing and coherent narrative in a way that conveys its truth and the reasonableness of her existential fear if she is not granted safe haven. This is a critical problem, because inconsistency is one of the most common reasons applicants are rejected.<sup>35</sup>

Another story, written by a Nigerian author, illustrates how even the most well-intended remedial legislation is inadequate. In Chimela Okparanta's "Shelter," an eleven-year-old girl describes her mother's efforts to escape her physically abusive husband.<sup>36</sup> A counselor who sees the injured mother tries to help and gives the mother a card identifying a shelter, but that card sinks lower and lower in her purse, apparently forgotten. Finally, the beatings became so bad that the mother takes her child to a shelter. As they walk towards the shelter, dressed in their Salvation Army Sunday best, the mother opines on how lucky they are to live in a country surrounded by a kind community with churches and foodbanks. "Ah, what a country!" she marvels.<sup>37</sup> When they arrive at a row house, with a sign that reads "Fresh Start," they receive a warm welcome. The room is inviting. There is soft music and comfortable seats. Slogans about stopping domestic violence are posted on the walls. But, juxtaposed against the pleasant ambiance is the counselor's unfortunate news. He cannot help the mother and her child because the abuser against whom they seek protection is an engineering student at Boston University, admitted on a student visa. The mother's exclamation "Ah, what a country" rings with cruel irony.

Okparanta's story presents an interesting counterpart to "American Embassy" in which the asylum caseworker lacked an appreciation for the applicants' suffering. In "Shelter" a caring social worker wants to rescue the mother and the child, but she is helpless because of a gap in the law. "Shelter" exposes a loophole in remedial legislation intended to stop violence against mothers and children. The Violence Against Women Act (VAWA) allows individuals battered by U.S. citizen or legal permanent resident (LPR) spouses to petition for lawful immigration status without the necessity of a signature from their abuser.<sup>38</sup> An abused or formerly abused wife must show that she a) was married to an individual who is or was a U.S. citizen or lawful permanent resident; b) currently resides in the United States; c) resided with the abuser now or in the past; d) experienced battery or extreme cruelty while married; e) displays good moral character; and f) was married in good faith.<sup>39</sup>

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35. Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 476-77 (2016).

36. Chinelo Okparanta, *Shelter*, in HAPPINESS, LIKE WATER: STORIES 109-21 (2014).

37. *Id.* at 116.

38. Immigration & Nationality Act, § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii) (2015).

39. U.S. Citizen and Immigration Services, *Battered Spouse, Children, Parents* (February 16, 2016), <https://www.uscis.gov/humanitarian/battered-spouse-children-parents>. See, e.g., Kaitlin O'Neill, *The 2012 Battle for the Reauthorization of the Violence Against Women Act: Lessons Learned and Questions*

However, the woman seeking to escape domestic violence in Okparanta's story cannot obtain relief since her husband holds a student visa. Because "Shelter" is told from the point of view of a young child whom both her mother and the caseworker seem inclined to help, the lack of recourse is especially disappointing.

A noncitizen victim of crime, such as the protagonist of "Shelter," can apply for a "U" non-immigrant visa if she aids in the criminal prosecution of her abuser.<sup>40</sup> This avenue for relief, although ostensibly a solution to the dilemma faced by battered immigrant women, in actual practice remains problematic. The noncitizen crime victim may be understandably reluctant to cooperate in criminal prosecutions, especially given cultural norms, predisposition to patriarchal domination, distrust of governmental authority, concern over vulnerability to her own deportation, unfamiliarity with English language, lack of financial resources, and lack of access to legal counsel. Even if these barriers are surmounted, there is a statutory need for relevant law enforcement officials to certify cooperation.<sup>41</sup> In many areas of the country U Visas are as a practical matter rarely or never granted. Local law enforcement officials may lack protocols for processing such visas or discourage applications to discourage immigration or out of prejudice.<sup>42</sup>

Mohja Kahf's "Spiced Chicken Queen of Mickaweaquah, Iowa" presents an interesting contrast to "Shelter." However, in Kahf's story there is a very different outcome. Two women with little in common forge an unlikely "bond of sisters" in response to domestic abuse—unlikely because of the vast difference in identity, ethnicity, and socio-economic status between the two principal characters.<sup>43</sup> Dr. Rana Rashid is an affluent, upper-class Syrian American nuclear physicist who is called upon as a translator when an Omani woman takes refuge from her abusive husband. Rana eats New Orleans étouffée and considers herself fully assimilated. She looks down on "the huddled masses of the Greater Jersey mosque, reeking of incense and henna and wearing their *jubbas* everywhere," asking the waiter "is there pig

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Left Unanswered, 35 WOMEN'S RTS. L. REP. 243 (2014); Moira Fisher Preda et al., *Preparing the VAWA Self-Petition and Applying for Residence*, in BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS 3.3 (Kathleen Sullivan & Leslye Orloff eds., 2013), <http://library.niwap.org/wp-content/uploads/2015/pdf/FAM-Manual-Full-BreakingBarriers07.13.pdf>.

40. Victims of Trafficking and Violence Prevention Act, Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000) (codified at 8 U.S.C. § 1101(a)(15)(U) (2011)).

41. An applicant must obtain a certification from a certifying law enforcement agency that she "has been helpful, is being helpful, or is likely to be helpful" in the "investigation or prosecution" of the crime. 8 U.S.C. § 1101(a)(15)(U) (2011); 8 C.F.R. § 214.14 (2013).

42. See Imogene Mankin, *Abuse-in(g) the System: How Accusations of U Visa Fraud and Brady Disclosures Perpetrate Further Violence Against Undocumented Victims of Domestic Abuse*, 27 BERKELEY LA RAZA L.J. 40 (2017); Trevor R. Larkin, *Sex and Gender Violence in Asylum Law: Expanding Protection Beyond Domestic Violence*, 9 DREXEL L. REV. 227 (2016).

43. Mohja Kahf, *The Spiced Chicken Queen of Mickaweaquah, Iowa*, in DINARZAD'S CHILDREN: AN ANTHOLOGY OF CONTEMPORARY ARAB AMERICAN FICTION 137 (Pauline Kaldas & Khaled Mattawa eds., 2004).

in this dish?”<sup>44</sup> Rana, an elegant and well-dressed woman, surprisingly finds herself drawn to a woman in a caftan.

As Mzayyan unfolds her tale of abuse, Rana listens with empathy and begins to translate Myazan’s narrative by referring to what happened to “me” rather than what happened to “her.”<sup>45</sup> The shelter is able to obtain an order temporarily incarcerating Mzayyan’s husband, but he will be released unless Mzayyan agrees to press charges. Like many battered women, Mzayyan is very reluctant to do this because she will be disgraced in the eyes of her family and community. In an urgent appeal to Mzayyan to protect herself, Rana quotes the Prophet’s exhortation that women should be treated with kindness. Further abuse follows and finally Mzayyan acts. Smarter than Rana thought, Mzayyan brings papers showing that her husband is a con artist guilty of tax fraud. Mzayyan suggests that she would like to take title to her husband’s property.

Finally, the domestic abuse case comes to trial and the husband claims that he was first attacked by his wife. Although this is a “he said/she said” scenario, the judge has no difficulty in deciding whether to credit Mzayyan or her husband. Affirming the prevalence of ethnic stereotypes, the judge credits the wife’s story because “it is generally known that Arab women are submissive” and that “aggressive behavior is not believable of an Arab woman.”<sup>46</sup> The “black-bearded” husband threatens his wife as he is hauled off by the police. Unfortunately, he is released after a single night in jail, and his only punishment was a \$500 fine and community service. With her husband out of jail, Mzayyan fears for her life.

The next day is September 11, 2001. Ironically, prejudice against Arabs rescues Mzayyan from her husband’s threatened retaliation. INS authorities send her husband to a detention camp, along with several thousand Arabs, and then deport him. Mzayyan takes over his truck and his market and sets up a successful spiced chicken franchise, becoming the “spiced chicken queen” of her remote Iowa town. Mzayyan’s harrowing story of domestic abuse ends on this triumphant humorous note.

What are we to make of this story’s unexpected ending? The reader’s expectations have been overturned. Mzayyan, the sobbing, apparently passive victim of abuse has contrived an escape route that will not only keep her safe but make her rich. Unlikely as it seemed at the opening of the story, she becomes an American success story, an entrepreneur. Rana is also transformed. She connects with an Arab woman from a very different ethnicity and milieu.<sup>47</sup> Rana and the reader learn that a Muslim of low socioeconomic status can be resourceful, inventive, and ambitious. Mzayyan could have

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44. *Id.*

45. *Id.* at 138.

46. *Id.* at 151.

47. CAROL FADDA CONREY, CONTEMPORARY ARAB-AMERICAN LITERATURE: TRANSNATIONAL RECONFIGURATIONS OF CITIZENSHIP AND BELONGING 149 (2014).

plotted how best to acquire the property of the husband who beat and humiliated her. We also feel contempt for the judicial system, as the judge's ruling is based on ethnic stereotyping, and the punishments meted out to the husband bears no relationship to his offense. The husband simultaneously receives a slap on the wrist for the abusive crime that he did commit as well as an excessive and undeserved punishment of deportation when he posed no risk to U.S. security.

In another recent story, Christina Henríquez's "Everything is Far from Here," a young widow seeks refuge in America after she has been raped, taking along her little boy in an urgent need to secure a safe haven.<sup>48</sup> The protagonist is unnamed, and we do not know if she comes from Mexico or Central America. In an interview about her story, Henríquez explains that the omission of a point of origin is deliberate because whenever one talks about refugees or immigrants, the first questions generally relate to identification and point of origin.<sup>49</sup> For Henríquez, "[a] person is so much than where they are from." Indeed, many migrants are nameless, having drowned at sea or been lost in deserts.<sup>50</sup>

"Everything is Far from Here" recounts the woman's vain search for her son who was separated from her during the woman's flight. The man who led them out, commonly referred to as a *coyote*, separated the men and children from the women. The coyote takes the woman to a warehouse, a virtual prison, with no means of locating her child or finding what has become of him. She meets with a lawyer who reviews whether she meets the "well-founded fear" criterion for asylum. When she tells him she has been raped, he responds in cavalier fashion that "after all, she is pretty" and "boys will be boys."<sup>51</sup> The woman finds no one to help her locate her son. When she screams in despair, authorities put her solitary confinement, a spider-filled detention box. The woman is punished for no offense; she is a victim, not a criminal. Her neighbor in the adjacent box is a woman who has similarly been confined for no good reason; her only crime was that she threw up. One day the woman who has lost her son spots a small boy of similar appearance. She grabs the child thinking that it is Gabriel, but instead it is another woman's son. The cruelty of this woman's position is underscored by a lack of sympathy from Americans who picket outside the facility with posters saying, "illegal is a crime" and "send them back with birth control."<sup>52</sup>

I invite my students to compare the woman fleeing violence in "Everything is Far from Here" to Cleófilas in Sandra Cisneros's "Woman Hollering Creek."<sup>53</sup> Cleófilas, fortunate to grow up in a home in Mexico

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48. Christina Henríquez, *Everything is Far from Here*, NEW YORKER, July 24, 2017, at 52.

49. Interview by Cressida Leyson with Christina Henríquez, NEW YORKER, July 17, 2014, <http://www.newyorker.com/books/page-turner/fiction-this-week-cristina-henriquez-2017-07-24>.

50. *Id.*

51. Henríquez, *supra* note 48, at 54.

52. *Id.*

53. SANDRA CISNEROS, WOMAN HOLLERING CREEK AND OTHER STORIES 219 (1991).

where she has a loving father, weds a young man who takes her across the border to Según Texas—a marriage that proves disastrous. A creek near her new home is known as “Woman Hollering Creek.” As the story evolves, Cleófilas will find her voice and exercise autonomy. When her husband becomes abusive and her despair increases, Cleófilas decides to escape with her child back across the border, returning to the protection of her nurturing father. In Cisneros’s story, the archetype of the guilty mother figure in Mestiza literature, *La Llorona*, is transformed from a “wailing woman” to a “hollering woman.”<sup>54</sup> When Cleófilas crosses the bridge with her friend (aptly named Felice) to return to Mexico, Felice hollers out a loud yell. For Cleófilas, this yell represents a woman crying out with newfound self-assertion, a woman who has found a power within herself to resist domestic abuse. When comparing this woman in “Woman Hollering Creek” with the protagonist of “Everything is Far From Here,” the latter is in a far poorer place: at the end of the story she remains in deep sorrow, unable to find a haven where she can avoid abuse, raise her child, establish an identity, and make a home. We suspect that she will never find her lost child. For all she (and we) knows, he is no longer alive.

The rape event in “Everything is Far From Here” reflects the drastic conditions that currently oppress women in the Northern Triangle (Guatemala, Honduras, El Salvador and parts of Mexico).<sup>55</sup> A claim of rape will not necessarily satisfy the asylum criteria given that asylum law requires proof that the persecution was motivated by the survivor’s race, religion, nationality, membership in a particular social group, or political opinion.<sup>56</sup> Rape may well be regarded as an incident of common crime, unless there is indication that the assault arose from the victim’s political views or membership in a social group.<sup>57</sup> Moreover, the asylum applicant must show that the foreign government was responsible for the persecution or was unwilling or unable to protect the applicant.<sup>58</sup>

As in Henríquez’s story, in spring 2018 the Department of Homeland Security implemented a policy of separating undocumented parents and

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54. See Alexandra R. Fitts, *Sandra Cisneros’s Modern Malinche: A Reconsideration of Feminine Archetypes in Woman Hollering Creek*, 29 *THE INTERNATIONAL FICTION REVIEW* 2 (2002); Jacqueline Doyle, *Haunting the Borderlands: La Llorona in Sandra Cisneros’s. Woman Hollering Creek*, 16 *FRONTIERS: A JOURNAL OF WOMEN STUDIES* 53 (1996); GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987).

55. For a description of the crisis faced by women in the Northern Triangle, see U.S. Civil Society Working Group, *Violence and Insecurity in the Northern Triangle of Central America; Dangerous Choices for Women and Girls* (December 31, 2016), <https://www.usip.org/sites/default/files/US-CSWG-Policy-Brief-Violence-in-the-Northern-Triangle.pdf>; see also UNHCR, *Women on the Run*, <http://www.unhcr.org/5630f24c6.pdf>.

56. Immigration & Nationality Act § 101, 8 U.S.C. § 1101 (2014).

57. *Menendez-Donis v. Ashcroft*, 360 F.3d 915 (8th Cir. 2004); see also Megan Galicia, *Fits and Starts: Towards recognizing Gender as a Basis for Asylum in the Eighth Circuit Court of Appeals*, 85 *U.M.K.C. L. REV.* 1013 (2017).

58. *Aladana-Ramos v. Holder*, 757 F.3d. 9, 17 (1st Cir. 2014); see Joseph Hassell, *Persecutor or Common Criminal? Assessing a Government’s Inability or Unwillingness to Control Private Persecution*, 8 *IMMIGRATION LAW ADVISOR* 1, 1 (2014).

children at U.S. borders in an effort to deter illegal immigration. Announcing a policy of “zero tolerance immigration prosecutions,” the Administration directed the Border Patrol to separate children from their families in cases where apprehended individuals are believed to have illegally entered or committed other crimes.<sup>59</sup> Attorney General Jeff Sessions defended the policy as a needed deterrent to unlawful immigration.<sup>60</sup> The Border Patrol advised reporters that 2,342 children were separated from their parents between May 5 and June 9, 2018.<sup>61</sup> Although the policy promised to provide care for separated children and to attempt to locate suitable relatives or sponsors, press reports and photos showing children held in penal conditions and cages sparked outrage. On June 20, 2018, President Trump reversed course and ended the policy of separating undocumented immigrant families at the border, blaming Congress for the Administration’s decision to separate children from their parents.<sup>62</sup> On June 26, 2018, U.S. District Court Judge Dana Sabraw issued an injunction in San Diego, California barring immigration authorities from separating parents and children at the border, and ordered reunification of immigrant families whose children had been taken away.<sup>63</sup> Fact follows fiction in that the experience described in “Everything is Far From Here” is sadly confirmed as a real life impact of policies designed to discourage border crossing.

#### IV. CONCLUSION

My syllabus includes well-known law and literature texts (Sophocles’s *Antigone*, Shakespeare’s *Merchant of Venice*, Susan Glaspell’s *Jury of Her Peers*, Harper Lee’s *To Kill a Mockingbird*, Truman Capote’s *In Cold Blood*), as well as utopian and dystopian fiction and stories addressing important topics in the administration of criminal justice (control of vengeance, self-defense, and capital punishment). I frequently pair stories involving male and female protagonists who take actions to kill an unwanted child or

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59. US Customs and Border Protection, *Zero Tolerance Immigration Persecutions, Family Fact Sheet* (June 15, 2018), <https://www.cbp.gov/newsroom/zero-tolerance-immigration-prosecutions-family-fact-sheet>.

60. Eli Rosenberg, *Sessions Defends Separating Immigrant Parents and Children: “We’ve Got to Get this Message Out”*, WASH. POST, June 5, 2018, [https://www.washingtonpost.com/news/post-politics/wp/2018/06/05/sessions-defends-separating-immigrant-parents-and-children-weve-got-to-get-this-message-out/?utm\\_term=.93f0a4b1e92d](https://www.washingtonpost.com/news/post-politics/wp/2018/06/05/sessions-defends-separating-immigrant-parents-and-children-weve-got-to-get-this-message-out/?utm_term=.93f0a4b1e92d).

61. Rafael Bernal, *HHS Official Says Family Separation Policy Will Have Deterrent Effect*, THE HILL (June 19, 2018), <http://thehill.com/latino/393000-hhs-official-says-family-separation-policy-will-have-deterrence-effect>.

62. Exec. Order No. 13,841, 83 Fed. Reg. 29435 (June 20 2018). A further complication arises from a 2015 court order, the *Flores* Settlement, which bars the government from holding minors more than 20 days. *See Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016). The Administration has requested that the court grant emergency relief to enable undocumented minors to be kept with their families in ICE family facilities. Defendant’s Memorandum of Points and Authorities in Support of Ex Parte Application for Relief from the *Flores* Settlement Agreement, *Flores v. Sessions*, No. 85-cv-4544 DMG AGR, 2017 WL 6060252 (C.D. Cal. 2017).

63. Order Granting Plaintiff’s Motion for Classwide Preliminary Injunction, *Ms. L. v. U.S. Customs and Immigration Enforcement*, 302 F. Supp. 3d 1149 (S.D. Calif. June 26, 2018) (No. 18-cv-0428).



who commit murder to revenge serious wrongs.<sup>64</sup> These stories invite discussion of how differences in the social and legal positioning of women motivate them to perpetrate violent crimes in their desperation or out of revenge for abuse suffered.

The law and literature syllabus engages students because these texts allow for a broader discussion of legal policy and justice theory than the typical law school course, and immigration stories have especially great impact as students gain an appreciation of the traumatic experience that have precipitated the decision to come to the U.S. or result from the aftershock of dealing with alien status. The liveliest class discussions ensue when we are discussing these immigration stories involving women. Law students familiar with injustices in the criminal system are generally ignorant of and shocked by the plight of women immigrants. In addition to requiring students to write response papers and essays for the texts that we read, I invite students in my law and literature and immigration studies courses to submit a work of original fiction. In a recent course evaluation one student wrote that reading immigration stories and writing her own immigration fiction had encouraged her to think about the impact of law on individuals whose lives she had never experienced. Such empathetic response has been a frequent reaction.

I hope that this essay will spark consideration of including the stories of women immigrants in law and literature and immigration studies classes.

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64. Compare, for example, Guy de Maupassant's "Rosalie Prudent" with "A Father's Confession" (both involving infanticide), and Andre DuBus's "Killings" with Maupassant's "Vendetta" and Margaret Atwood's "The Stone Mattress" (all involving revenge killings). GUY DE MAUPASSANT, *Rosalie Prudent, A Father's Confession, & Vendetta*, in COMPLETE SHORT STORIES (1947). ANDRÉ DUBUS, *Killings*, in IN THE BEDROOM: SEVEN STORIES (2002); MARGARET ATWOOD, *The Stone Mattress*, in STONE MATTRESS: NINE WICKED TALES (2014).