CHAPTER ONE

Trans/Migrant

Christina Madrazo's All-American Story

Alisa Solomon

> [E]veryone can, should, will "have" a nationality, as he or she "has" a gender.
>
> —Benedict Anderson, *Imagined Communities*

> I need justice. That's all. I need to be respected as a woman.
>
> —Christina Madrazo, asylum seeker

In April 2002, Christina Madrazo, a transsexual woman from Mexico seeking asylum in the United States, announced she was planning to sue the U.S. government for $15 million. She alleged that while she had been held in an immigration detention facility in Miami, Florida, in May 2000, a guard raped her. Twice.[1] The second assault occurred after she had already complained to authorities in the detention center about the first rape, yet the offending officer had been assigned to guard her again. Madrazo brought criminal charges first, and in August 2000 the guard, Lemar Smith, was indicted on two felony counts of rape and two misdemeanor counts of "sex with a ward," and he faced up to forty-two years in prison.[2] He copped a plea to the lesser charges and was sentenced to eight months in prison and a year's probation. Stunned and disappointed by the plea bargain, Madrazo pursued a civil suit under the Tort Claims Act as her only means of possible redress.[3]

These bare facts point to innumerable contradictions embedded within U.S. immigration policy, the American legal system, and the myths that underpin the dominant narrative of U.S. nationness. Why are asylum

seekers—people fleeing persecution in their homelands for freedom in the United States—locked up in detention centers? Why is rape so easy to commit in such a place and, on the rare occasions when it is prosecuted, so easily reduced to misdemeanor charges? Why are the arcane systems of tort claims more accessible than criminal or civil rights laws? How can Madrazo's all-American dream of having the freedom "just to live my life and be myself" be so thwarted, indeed, so trampled, by a range of bureaucracies representing a state that claims to be founded on such ideals? How can it be that the very persecution from which she is seeking refuge was taken up as a cudgel by the state to which she appealed?

The answers—complex and troubling—are obviously connected to Madrazo's status as a transsexual transmigrant from Mexico. Certainly she is hardly the only migrant to be mercilessly detained and abused. But because she has refused to remain inside the official borders of gender and nation, Madrazo's case magnifies the various ways the regimes of gender and nation reinforce and mutually constitute each other. Her case reveals, too, how communities in the United States that one might expect to embrace her—gays and lesbians, settled Latino/a immigrants—draw their own boundaries as part of their assimilationist bargain as they strive for "naturalization."

In elaborating Madrazo's story, I hope to show how the liberal state labors to fortify its borders by designating who is, and who may become, "natural," and how gendered and sexualized discourses of American nationalism legitimate and render invisible extreme forms of gender and sexual violence. I begin with a material and ideological analysis of the "scene of the crime"—the United States' ever-expanding immigrant detention system—for Madrazo's experience, and the ideological machinations it reveals, cannot be understood outside the context of this self-contradictory and often abusive "civil" regime, which, in fact, emblematizes American policy more generally. I then look at "the unseen of the crime"—the various legal, juridical, and civic spheres that structurally cannot recognize Madrazo's claim, or even her personhood—thus revealing the limits of the liberal state even in arenas (such as asylum law) where it often appears to be most generous. For taking America at its word—seeking refuge in this country as well as an identificatory place as a subject in America's myth of self-making—Madrazo was brutally punished. Yet I hope, finally, to demonstrate that Madrazo's own brave

and persistent pursuit of justice offers an important counterdiscourse in an era of narrowing national definition.

The Scene of the Crime

The alleged rapes took place at the notorious Krome detention center on the swampy outskirts of Miami. This is not the only site of ill-treatment in Madrazo's story. The first, arguably, is her home in Coatzacoalcos, a city in the Mexican state of Veracruz, where she was constantly bullied and beaten as a "maricón" (faggot); then various cities of Mexico where she endured more aggressive transphobic violence; then the punishing economic deprivations of Miami as she struggled to survive without the work authorization documented status provides; later, a psychiatric hospital where she was confined after alleging she'd been raped at Krome; and, finally, the courts that did not recognize the crimes she had suffered. But at Krome, all these injuries converged in an overdetermined and explosive manifestation of gender power as state power, and vice versa.

The Krome Service Processing Center of the Immigration and Naturalization Service (INS), about a forty-minute drive on the way to the Everglades from downtown Miami, is one of innumerable locations where the INS (as of March 2003, reorganized and renamed the Bureau of Immigration and Customs Enforcement) holds, on any given day, about twenty thousand individuals in deportation proceedings.[4] The INS has long been empowered to deport both those who are in the country illegally—either because they entered without documents or because they overstayed their visas—and those who, though here legally, have committed a crime classified as a deportable offense. The government explains that it must maintain custody of such individuals while their cases proceed to protect society from those it deems dangerous and to contain "flight risks," those it fears will slip out of the agency's radar and neglect to turn up for deportation hearings.

Unofficially—but perhaps more to the point when it comes to penning in traumatized asylum seekers—detention functions as a deterrent to other would-be immigrants. "If José's friends back home hear that José is sitting in Krome and not walking down streets paved with gold," a Miami district deportation officer once told me with a cocksure grin, "they might not be so quick to try sneaking over the border themselves."[5] (The invocation of "José"—as opposed to, say, Igor or Wang or

even Mohammed—suggests just how centrally the southern border lurks in the anxious imagination of INS enforcers.)

Such thinking was reasserted as official policy at Krome early in 2002 when the government insisted on penning up some 165 asylum seekers from Haiti after the grounding of their ship the previous December. In response to a lawsuit filed the following March by immigrant advocates, charging racist treatment by the Bush administration in its effort to make an object lesson for others who might seek refuge from the impoverished and unstable nation, U.S. attorneys said in court filings that the blanket detention of Haitians was intended "to discourage further risk-taking and to avoid an immigration crisis of the magnitude which existed during the early 1980s and 1990s with the Haitian and Cuban mass migrations."[6] Even the UN high commissioner on refugees weighed in, asserting that using detention as a deterrent is "contrary to international standards" and amounts to "arbitrary detention."[7]

The logic of this policy first surfaced during the Reagan administration specifically in response to that influx of Cubans and Haitians arriving by boat in the 1980s. Indeed, according to Jonathan Simon, "immigration imprisonment was reinvented in 1981 in response to the massive immigration flow to south Florida in the spring of 1980 that came to be known as the Mariel boatlift" during which nearly 100,000 Cubans landed along the Florida coast. That event marked a major shift in U.S. attitudes toward immigrants, Simon argues, from a 1950s image of brave, entrepreneurial refugees seeking freedom from Communist oppression, to a Reaganite framing of refugees as deviant and driven to prey on American society as welfare recipients or criminals. "Mariel itself," Simon writes, "provided the most powerful visual imagery that Reagan could have wanted to illustrate his thesis that years of liberalism and social democracy had weakened the ability of the nation to assert itself against the predation of criminals and deviants."[8]

By 1989, the INS announced it would detain all applicants for political asylum entering the country through Texas—in other words, from Mexico—to deter others from joining them. The INS commissioner at the time said the policy would send a message to would-be Central American refugees: they would be held in conditions that "won't be like the Ritz Carlton."[9]

To be sure, detention conditions have improved considerably since then, thanks in large measure to a series of lawsuits brought by immi-

grant advocates and to public pressure over the last two decades; indeed, in early 2001 the INS announced detention guidelines that are supposed to be thoroughly implemented by 2003.[10] Nonetheless, the sometimes tacit, sometimes blatant, and always southern-directed aim of making detention scare would-be migrants from attempting to enter the United States combines with the cost-cutting efforts of private-prison companies, the entrenched corruption in some sectors of the INS, and the general lack of accountability throughout the agency. As a result, detention conditions remain minimal at best.

Absorbing the ideology of detention as deterrence, employees at detention centers come to understand that it is part of their job to make the lives of detainees as miserable as possible. As working-class government employees (many of whom are immigrants), INS guards and deportation officers may not be able to afford Ritz-Carlton conditions themselves (though that is often the hotel of choice for the conventions of the private-prison companies that run many of the INS facilities). Edward Stubbs, the officer in charge of Krome from 1998 to 2000, told me during his tenure, "Meaning no disrespect for my officers, they could change uniforms with the detainees and you couldn't tell one from the other."[11]

But through their labor, Krome's employees can assert their own American legitimacy—often precisely by emphasizing the differences between themselves and those they guard. Aggressive behavior is often the most available means of doing so, and it works most efficiently when deployed across a clear axis of power differential—such as gender or sexuality. Deportation officers and INS guards I've interviewed over the last eight years have often peppered their remarks about their charges with misogynist and homophobic language. Harassment and abuse of female detainees (who constitute less than a third of INS detainees nationwide) are rampant in INS jails.

INS detention functions ideologically in another way, too, as it fuels America's prison boom: the INS is building and expanding its own detention facilities around the country, signing ever more voluminous contracts with private-prison companies, and farming out detainees to dozens of county corrections departments. These facilities are harsh symbols of how America produces and protects its wealth. They stand at the crossroads of anti-immigrant anxiety and the roaring economy of incarceration, raking in profits and, at the same time, barring the supposed

threat of teeming masses coming to snatch those profits away.[12] In emblematic terms, INS detention is a veritable fortress of American prosperity. In Miami, the iconography of what Jean Comaroff and John L. Comaroff call "millennial capitalism"—whose fastest-growing industries are prisons and gambling—is most stark. The Comaroffs show that the triumphalism of "*the* market" rests, among other things, on a cultural revaluation of gambling, both in the valorizing of the stock market and in the surge in the gambling industry.[13] The only other institutions in the isolated area where Krome is situated are just up the highway from the turnoff to Krome: casino hotels.

Since September 11, 2001, of course, the demand for security has poured more fuel into the economic engine of detention, adding a popular rationale for even further incarceration of immigrants—even for the racial profiling and blanket roundup of Muslim and Arab men. In a conference call with colleagues at the end of 2001, the CEO of the Houston-based private-prison company Cornell Companies noted with glee that INS detainees are excellent business for the company and gloated that "the events of September 11 are increasing that level of business."[14]

But even before September 2001, immigrant detainees were the fastest-growing segment of America's exploding jail population. Their daily numbers tripled between 1994 and 1999 to 16,400, and by 2001 had hit close to 24,000, at an annual cost to taxpayers of some $500 million.[15]

The detainee population began to swell in the early 1990s as Congress tightened immigration policy, and then skyrocketed after 1996 when the Newt Gingrich–led Congress passed a series of stringent immigration and "anti-terrorism" laws in 1996 as a direct response to Timothy McVeigh's bombing of the federal building in Oklahoma City. Although he was, of course, a home-grown terrorist, Congress promised that the new laws would help thwart violent attacks on America by getting tough on immigrants (as well as on drugs).[16] The 1996 laws made detention *mandatory* for almost everyone in deportation proceedings, taking away the agency's long-standing discretion to release immigrants on bond on a case-by-case basis. The legislation also broadened the definition of "aggravated felony"—the level of crime that leads to deportation—to include numerous nonviolent offenses. *And* it made the law retroactive. Thus, even permanent residents who had committed minor crimes years ago, had served out their sentences, and had gone on to lead productive,

law-abiding lives, suddenly found the INS slapping them with deportation orders and hauling them off to detention.

Much to her shock—and illegally since she was never accused, much less convicted, of a felony—that happened to Christina Madrazo. Two old misdemeanor charges came back to haunt her when she appeared at an asylum hearing on May 4, 2000, anticipating—on the basis of an encouraging letter she'd received from the INS—that her request for asylum had been approved. In the early 1990s, Madrazo had been arrested twice for soliciting—one charge she calls routine harassment that trans women often face, the other a measure of "how desperate [for income] I was"—and these minor infractions were enough to thwart her aslyum claim and provoke an INS functionary to order her detention. After the judge gave her the heartbreaking news that her application had been denied, she left the courtroom to find two guards waiting for her. They put her in handcuffs and carried her right to Krome. "I'm ashamed of it," Madrazo says of the misdemeanor. "But do I deserve to be deported or raped because of it?"

Such cases have overwhelmed the INS, which has not been able to keep up with the surge in detainee population, even as it expands its own detention centers like Krome (where the number of beds increased from four hundred to eight hundred between 1998 and 2000, according to Edward Stubbs), while it also contracts out more detention services to private-prison companies and, when even these facilities overflow, rents more and more beds from county jails across the country, where the agency cannot exercise much oversight.[17] Detainees frequently languish for months, even years, in facilities meant to house people for no more than a week or two. And some four thousand of those who have been ordered deported are enduring de facto life sentences because the United States has no diplomatic relations with their home countries—Cuba, Laos, and Libya, among others—and thus can't secure travel documents for them. In June 2001 the Supreme Court ruled against such indefinite detention, yet thousands in this predicament have yet to be released.

People in deportation proceedings are administrative, not criminal, detainees—even those who are being deported because they committed crimes. In such cases, they have already served out criminal sentences before being turned over to the INS. Nonetheless, the regimented schedules of life in detention, the barbed wire and armed guards, the lack of

freedom of movement, the regular use of handcuffs and ankle shackles when detainees are transported to immigration courts for hearings, the constant and sometimes arbitrary assertion of power by guards—all add up to a punitive atmosphere that does not differ from criminal prisons. "This is definitely a corrections environment," Edward Stubbs said of Krome.

In some ways, INS detention is even worse. Many times when I have interviewed "criminal aliens" turned over to the INS after completing a criminal sentence, they have told me they preferred state penitentiaries to INS detention. If nothing else, at least in prison inmates know when they can expect to get out: they have a sentence. But in INS detention, detainees have no idea how long they may remain, and depression, desperation, and even suicide attempts are not uncommon. Madrazo, for one, recalls that she was overcome by feelings of helplessness and acute anxiety throughout her detention ordeal—all exacerbated by Krome's notoriety. "I was afraid I could disappear in there," she says, "and anything could happen."

Krome has had a long-standing and well-earned reputation for abuse and corruption, and Edward Stubbs was brought there in 1998 expressly to clean it up. Authorities believed that the reform-minded officer with twinkling eyes and shiny shoes could help lift the facility out of the muck. Recruited by the INS from his position running the West Palm Beach office of the U.S. Marshall's Service, Stubbs brought a much-ballyhooed demand for more accountability and openness at Krome. He pushed through a $20 million renovation of the facility and, when he showed me around the grounds in March 2000, spoke enthusiastically about the "paradigm shift" he was trying to institute by creating a culture in which Krome's three hundred employees would "treat people with respect and human dignity." He admitted that "the place was in turmoil when I got here."

"Turmoil" is a perpetually good descriptor for the INS in general, of course. The beleaguered agency's many shortcomings were broadcast widely after the tragedy of September 11—the most egregious instance of INS incompetence, perhaps, being the revelation that a Florida flight school received notification that visas had been approved for hijackers Mohamed Atta and Marwan al-Shehhi, six months after they crashed jets into the World Trade Center. But the INS had long been—in the words

of Congress member Zoe Lofgren, saying she was expressing bipartisan accord—"the worst-performing agency in government."[18] In addition to being, by the government's own report, a staggeringly inept bureaucracy that remains unaccountable to the public and even to the Congress that sets its agenda, the INS has a contradictory job: charged with facilitating immigration as well as containing it, the INS mirrors the schizophrenia of U.S. immigration policy. It's the paradigmatic American agency, embodying the nagging question of the liberal state: is government's role to provide services to people—or to police them?

The blundering, bunker-minded agency is under a constant barrage of accusations of misconduct. Between October 1, 2000, and March 31, 2001, the Justice Department fielded more than 3,200 allegations that INS personnel had committed, among other infractions, sexual assault, drug smuggling, theft, and even murder.[19] Many of those complaints involve INS detention centers. The charges, which range from denial of toiletries to threats, beatings, and sexual abuse—are not so different from the sort of grievances filed by inmates in prisons. But detainees, unlike people in criminal proceedings, are not guaranteed attorneys. Many don't understand English. It's easy, then, for INS personnel to abuse detainees—to coerce favors with promises of release, warnings of transfer to far-flung prisons, or threats of deportation (even when the officials don't really have the power to make such decisions). Madrazo recounts hearing of such intimidation from the moment she entered the facility.

From the day it opened, Krome has been at the center of allegations of abuse and misconduct. The site—an abandoned guided missile base—was first used by the INS to process refugees on the Mariel boat lift. Soon after, the INS began detaining all Haitians who arrived without documents, and Krome was in permanent business as an INS "Special Processing Center"—a bureaucratic euphemism for a detention camp surrounded by razor wire, just down the road from an INS pistol range. Gunshots reverberate across the compound throughout the day—an especially unsettling sound for asylum seekers fleeing violence. Over the last two decades, Krome has been built up. It now comprises six "pods"—dormitories—where detainees sleep and spend the better part of the day, especially in inclement weather. The older pods are cavernous rooms with sloping roofs, sheetrock walls, and green linoleum floors. They

are crammed with bunk beds, and when there's an overflow problem, as is now permanently the case, cots are squeezed into the narrow spaces between the beds. A TV perched on a wall overhead blares throughout the day; a wall at one end has a line of pay phones—detainees can work in the cafeteria, laundry, the grounds, or other jobs for $1 per day to earn money for phone cards—and along another wall stand vending machines full of candy bars and soda. Toilet stalls line a third wall. They lack doors for "security reasons," so detainees must use them in public view. Newer pods, though outfitted in the same minimalist style, take advantage of developments in penal design, using metal caging along the hallways.

In 1985 detainees rioted to protest conditions, and twenty-four of them escaped. So did the chief administrator, who requested a hasty transfer. A year later, confrontation erupted again when officials tried to break up an extortion ring operating inside the facility, and 150 Mariel refugees pelted guards with rocks and set mattresses on fire.[20]

In 1990 the FBI was called in to Krome after detainees swore complaints that guards there routinely coerced sexual favors from them. Its findings were never disclosed, and, as far as advocates know, no disciplinary actions were taken. INS employees cited by detainees remained on the job—and their names came up again when scandal erupted a decade later. Meanwhile, detainees frequently protested their confinement by whatever means they could—45 Chinese detainees went on a hunger strike in 1990, saying that guards egged on Haitian detainees to beat them. Some 170 detainees started a hunger strike in 1991, claiming that officers were abusing them and that parole was not being granted fairly. Haitians went on hunger strike in 1993, objecting to increasingly punitive immigration policy, and Cubans refused to eat in 2000 to bring attention to the plight of indefinite detainees. A former officer pleaded guilty in 1996 to viciously beating a detainee a few years earlier, and later that year a Justice Department investigation found that some INS district managers had misled a congressional fact-finding mission about overcrowding by suddenly transferring detainees to other facilities; nine officials were demoted and transferred as a result. The health facility on the grounds—operated by the federal Public Health Service, not by the INS—was closed for renovation in 1999 after detainees complained of roach infestations, unwashed floors, lack of ventilation, and other substandard conditions.

When Christina Madrazo asserted that a guard raped her at Krome in 2000, her forthrightness emboldened about a dozen of the roughly one hundred women held there to come forward with further stories of sexual abuse as well as of drug trafficking by guards, prompting an investigation involving then U.S. attorney general Janet Reno, the Office of the Inspector General, and the FBI's civil rights division.[21]

In affidavits collected by attorneys and government officials, the women told myriad tales of sexual misconduct, ranging from adolescent-style flirtations to downright assault. Women told advocates that guards rubbed up against them or fondled them during searches. They said guards and deportation officers propositioned them, often promising gifts of cosmetics or other contraband in exchange for sexual favors. The women described barely concealed encounters between INS personnel and detainees, from a guard masturbating while a detainee danced for him to ongoing affairs. Many who weren't involved in such liaisons said they were threatened with deportation if they snitched. Two women got pregnant at Krome that year—one after sex with a guard, another after sex with a male detainee. All told, some fifteen officers were named. Nine were transferred from Krome to desk jobs after the allegations surfaced. Edward Stubbs abruptly resigned.[22]

Since George W. Bush's ascendancy to the White House—and the replacement of Janet Reno with John Ashcroft—the Justice Department has refused to comment on the ongoing investigation, and advocates for detainees fear that the government has turned down the heat and stopped far short of uncovering—and rooting out—widespread corruption and abuse.

In the meantime, Krome has stopped housing women altogether. As the investigation intensified, most of the women who gave testimony were released for their own safety, and in December 2000 all of Krome's remaining female detainees were transferred. Most were moved to a local high-security prison called the Turner Guildford Knight Correctional Center, where some were put into solitary confinement. Amnesty International summed up the move in the title of a statement on the scandal: "Women asylum seekers punished for state's failure to protect them."[23] Some witnesses to the alleged misconduct were deported. Many of the alleged abusers remained in their jobs.

Christina Madrazo was thrust into this environment without warning. That she chose to bring charges is a measure of the urgency of her

own quest for justice as well as a radical intervention that breaks open the multiple enforcement apparatuses that govern her life in the United States—and that in more diffuse ways govern everyone's.

The Unseen of the Crime

It's hard to imagine a person less recognized by U.S. legal regimes than a transsexual undocumented migrant from Mexico. In myriad ways, her very humanness is disavowed by the limitations of civil rights and immigration laws and the policy principles that underlie them. Christina Madrazo's plight and plea were illegible, even invisible, to the guardians of these realms.

In recent years, a spate of new scholarship on transgender experience (much of it taking place within the field of legal studies) has examined ways in which, as Darren Rosenblum puts it, transgender people, who occupy "society's bottom rung," encounter "an array of intermingled and overwhelming legal dilemmas" that are crystallized especially when they are behind bars.[24]

Though two states and forty-three cities and counties have passed legislation that explicitly includes transgender people in human rights laws (and another seven jurisdictions prohibit discrimination against transgender people in public employment), to date transgender people are not included in the panoply of federal civil rights protections.[25] Indeed, proponents of legislation to extend federal workplace protections to prohibit discrimination on the basis of sexual orientation have worked hard to reassure legislators that the bill would expressly not apply to transphobic discrimination.[26] Case law is, predictably, erratic: In July 2001, for instance, a New Jersey appeals court found that a transgender physician may pursue sex and disability claims against a former employer that terminated her when she began to undergo the process of sex reassignment. Less than a year later, the supreme court of Kansas declared the marriage of a transsexual invalid.[27]

Within the criminal justice system—and particularly when it comes to incarceration—the rights of transgender people are frequently abused even, or especially, by those responsible for their protection. As Rosenblum points out, "Acts by the guards cross the line from deliberate indifference to acts of hostility and aggression. Not only do authorities turn a blind eye to abuse . . . of transgendered inmates [by other prison-

ers], but they permit and occasionally encourage the mistreatment of transgendered inmates by prison employees."[28]

Katrina Rose analyzes an especially hair-raising case in "When Is an Attempted Rape Not an Attempted Rape? When the Victim Is a Transsexual."[29] The case, *Schwenk v. Hartford,* was a civil rights action brought by a transsexual prisoner, Crystal Schwenk, alleging that her Eighth Amendment rights—not to be subjected to cruel and unusual punishment—had been violated by a guard who sexually assaulted her repeatedly. Rose argues that the judicial approach in the case—most of all the judge's assertion that Title VII barred discrimination not just on the basis of sex, but also on the basis of gender—has far-reaching significance for transgender rights in general. But she expresses alarm at the guard's defense put forward by the state: that his alleged actions—among them, pulling out his penis, demanding oral sex, grabbing Schwenk and turning her around forcibly, pushing her against the bars and grinding his exposed penis into her buttocks—constituted at worst "'same-sex sexual harassment' and not sexual assault." Rose suggests that the state's claim that such actions do not constitute violent assault derive directly from the victim's status as transsexual. Though absurd, the state's conclusion follows a certain legalistic logic: Schwenk filed charges under the Gender-Motivated Violence Act (GMVA), part of the (soon revoked, and thus no longer applicable) Violence Against Women Act; the state of Washington (where Schwenk was doing time) insisted that the GMVA does not apply to transsexuals or men, even though it declares that "All persons within the United States shall have the right to be free from crimes of violence motivated by gender."[30] Thus, the state assumed that an assault that occurs because of a victim's transsexuality is not an assault because of gender and thus, under this law, not an assault at all. Under such a routine interpretation, in other words, violence against transsexuals does not register. The law simply does not recognize it.

Neither Rosenblum nor Rose discusses the differences between criminal prisons and INS detention for transgender inmates, but in some respects, INS detention is arguably worse insofar as it exaggerates many of the problems that plague penal institutions. Though prisons are increasingly built in backwaters, sensationalistic crime reporting and a constant barrage of TV cop shows keep the fact of prisons in the public eye (albeit in exactly the wrong way). Despite the spotlight shined briefly

on the practice after the post–September 11 roundups, INS detention remains largely invisible. Detention facilities are typically unmarked, nondescript buildings on the outskirts of cities—for instance, two New York City–area detention centers are cinderblock former warehouses, one near JFK airport, another near Newark; a third occupies the fourth floor of a Manhattan federal office building from which detainees have no access to outdoor recreation or fresh air. Only family members or attorneys of detainees ever have reason to find these places. As for Krome, David Reiff calls it "an ulcer in Miami; apart from a few civil liberties activists and Haitian community leaders . . . it is never mentioned—as taboo a subject for dinner as one's recent colostomy or a new recipe for broiled dachsund."[31] Detainees are literally unseen by the American public. The government's insistence on holding secret hearings for post–September 11 detainees, barring their families and the press, hides them even more deeply.

Meanwhile, guards in prisons express their power by threatening violence or writing inmates up for infractions; guards in INS facilities, for example, can threaten detainees with immediate deportation, transfer to faraway places, or other reprisals if they report guards' advances or fail to comply with sexual demands. Though guards don't really hold such power, there's often no way for the detainees to know that, and affidavits from women harassed at Krome repeatedly refer to precisely such threats.

Detainees without attorneys are particularly vulnerable. What is more, because immigrant detainees don't have any idea how long they might be held, when they are harassed they live with the dread—again, attested to over and over in the Krome affidavits—that the persecution might go on indefinitely. Fearing exactly that, at one point during her confinement Madrazo actually "signed out"—agreed to be deported to Mexico—rather than remain at Krome for one more moment.

Worst of all, immigration law and policy erase the humanity of undocumented migrants, even in the very nomenclature these regimes use to describe such individuals: "illegal alien." There's a long-standing debate among legal scholars—and, worse, among policy makers and judges—over whether constitutional protections even apply to immigrants. Though the Supreme Court has ruled in a range of cases that immigrants are covered by the Bill of Rights, which expressly apply to "persons" not to "citizens," the history of U.S. immigration policy has

always been a tense struggle between the principle of constitutional protections for immigrants and the broad discretion granted the executive and legislative branches of government to defend borders and sustain national security under the plenary power doctrine.[32] In the name of preventing sedition, Communist revolution, or terrorism, the government has often restricted the rights of immigrants. And again and again, their rights have been reestablished as challenges to restrictive laws have percolated through the courts—but not always. Sometimes, especially in times of fear, the courts wobble. The Supreme Court, after all, upheld actions against those speaking out against American involvement in World War I and also permitted the internment of Japanese immigrants during World War II. Advocates today caution that the government can use immigration civil proceedings, where standards of proof are lower and technicalities broader, to accomplish what cannot be accomplished through the criminal justice system. Immigration laws can be manipulated to circumvent the Constitution.

As the post–September 11 sweeps of Muslim, Arab, and South Asian men have demonstrated, it is not difficult to lose detainees in the system. They can effectively be denied phone calls, attorneys, family visits. Even before 9/11, attorneys had long complained that their clients in INS detention have been moved abruptly to different jails, often hundreds of miles away, often without their attorneys being notified.

Immigration law distinguishes among three types of immigrant prisoners, each governed by a distinct set of harsh and byzantine laws: "deportable aliens," who entered the country legally and then violated the terms of their entry by, say, overstaying a visa, or got in and stayed illegally; "criminal aliens," who lost their status when convicted of a crime; and "excludable aliens," those who were intercepted at a port of entry. The INS defines this last category as never having entered the country, and this legal fiction means they are not entitled even to the most basic rights that apply to anyone who touches down in America. (This is why it is in the government's interest to wade into the ocean to round up immigrants on ships like the *Golden Venture* before they can make it ashore.) An asylum seeker caught with a false passport at a U.S. airport and taken to an INS detention center is not, technically, in the United States—even if she has languished at Krome for months and months. Rights to due process do not apply.

When Madrazo was taken into INS custody on May 4, 2000, she was "deportable," having lived in the United States without documents on and off for six years before her arrest. But on top of her transgender and undocumented status, there was one more attribute calling into play another entrenched U.S. bias that made her humanity—her individuality—difficult to see: her country of origin is Mexico. The overwhelming majority of undocumented migrants entering the United States come in from Mexico; the numbers are so high that when the INS collects statistics, its charts distinguish between two categories: Mexicans and OTMs (Other Than Mexicans). For anti-immigration alarmists, Mexico is nothing more—or less—than a launching pad for the unwashed masses who want to invade America, take away our jobs, supplant our language, and corrupt our culture. (Who, precisely, is encompassed by that "our" is precisely the issue for these nativists.)[33] Mexico stands so centrally in the official American imagination as the source of its immigration "problem" that when the Bush administration supported extending a provision under which undocumented residents of the United States can apply to regularize their status, media coverage—and critics—presented it as a special plan for Mexicans, though the policy never named Mexicans and would have applied equally to people from dozens of nations.[34]

In 1993, an aggressive U.S. campaign to shore up the border with Mexico—Operation Hold the Line—invoked the specter of the "vestidas," the transgender sex workers who labor in the liminal space between Ciudad Juárez and El Paso, crossing the border each night to work. As Jessica Chapin has powerfully shown, the state mobilized the vestidas as an emblem of menacing excess and indeterminacy. "Homophobic and xenophobic sentiments converged in statements that cast the presence of transvestite prostitutes as an index of social disorder," she writes, and U.S. officials repeatedly cited the prostitutes' absence after the blockade as a sign of its success. Popular attitudes toward the vestidas fused the powerful discursive constructions of "illegal alien" and "homosexual." Chapin argues:

> During a period of heightened anxiety about the phantasmic integrity of the nation-state, the body of the Mexican transvestite border crosser emerged as a switch point, securing a link between civil law and natural law and endowing the former with the authority of the latter. The transvestite prostitutes became a potent cultural symbol because the visibility

> of this small group allowed them to stand in for the much larger and less easily apprehended populations of immigrants and lesbians and gays, whose existence threatens naturalized hierarchies of gender and nation by undermining the illusion of self-evidence that sustains them.[35]

Madrazo walked into Krome, then, preceded by a potent rhetorical and juridical mindset that made her impossible to recognize outside these easily triggered tropes. They are so forceful, so automatic, that in reporting on the rape allegations the *Miami Herald* repeated a rumor that Madrazo had tried to hustle male detainees almost immediately after her arrival at Krome.[36] In the article, this accusation is attributed to an unnamed source—an appallingly low journalistic standard, especially for such a potentially libelous remark—and Madrazo is given no opportunity to reply. (I asked her about it later and she denied the accusation, expressing indignation at its being printed.) With alacrity and unexamined conviction, the reporter and, as a result, his readers put into play a syllogism that says: Mexican tranny equals perpetually sex-crazed prostitute, bringing perversion and pecuniary lust to America; therefore, she solicited sex. And therefore (though this is only tacitly implied) she could not have been raped.

The crooked reasoning seemed to work in the criminal case Madrazo brought against the guard Lemar Smith as well. Though she had reported the first alleged rape to Krome officials and others, and was so distraught after the second that the INS gave her the choice of either going to a psychiatric hospital or being deported to Mexico, Smith was able to plead to the misdemeanor charge of "sex with a ward"—in other words, his defense attorney argued that the sex was consensual. The prosecutor supposedly pressing the case on Madrazo's behalf explained to me that he wouldn't have been able to win a rape conviction "beyond a reasonable doubt" because in addition to the guard's semen (determined by DNA tests on underwear Madrazo had the presence of mind to keep as evidence) some of Madrazo's semen had also been found on a towel in her cell.[37] The possibility of a wet dream or involuntary ejaculation seems to have escaped the prosecutor, or at least to have seemed not at all compelling compared to the readily available assumption that a Mexican transsexual would have wanted it.

There is one domain, however, where Madrazo might have been legible as a trans/migrant body: American asylum law. Because it is constructed

within a human rights framework as opposed to within an imperative to border fortification, political asylum can sometimes be a refreshingly progressive area of immigration law. And it is also, arguably, one of the most potentially progressive areas of any segment of the law on matters relating to sexuality and gender, particularly in case law—though of course there are grave limitations, embedded in the terms by which an asylum claim must be made as well as in the luck of the draw of a judge. Once the frenzy to erect impenetrable borders is taken out of the discourse, the frantic need to fortify sex/gender boundaries can either evaporate or harden within new contexts. The contradictions erupt because, on the one hand, as a sphere of immigration policy that focuses on taking in the vulnerable, not only can asylum law cope with dissident expressions—be they political, sexual, or gender-related—it requires them. On the other hand, to win a claim, the asylum seeker must conform to a new set of regulatory ideals—be they political, sexual, or gender-related—in order to be embraced by America. Often queer immigrants requesting asylum on the basis of sexual orientation find that they must completely renounce their homelands and backgrounds and exchange them for a mythic American beneficence. The legal scholar—and gay Pakistani immigrant—Saeed Rahman has explained how he found that winning his asylum claim in 1997 meant demonizing Pakistan in ways that were painful to him, as though showing how impossible it is for a gay man to live openly there required a thorough, even colonialist, indictment of the entire culture. At the same time, Rahman found he was expected to "buy into a simple discourse of how wonderful America is." Dreaming of coming here, he had "felt that in America I could live freely. Even if one is harassed or attacked for being gay, there's recourse to the law. But that narrative didn't factor in that I was non-white and going to be an immigrant."[38]

Madrazo had first come to the United States in 1991, crossing the border from Ciudad Juárez to El Paso and immediately boarding a bus for Miami, deliberately seeking refuge with a gay community where *se habla español.* She says she was fleeing lifelong violence and persecution, which began in her own family as her brothers tried to beat some machismo into her, and persisted as she sought to make a living in the big cities of Mexico. In Miami, it was tough just to scrape by; without documents she couldn't get a decent job, and in 1995 she returned to Mexico, hoping the atmosphere for transsexuals might have improved at least slightly. It

hadn't. Madrazo endured more violence and penury, and after recuperating from an especially vicious queer-bashing, she crossed the border again in 1998. This time, though, she would try to become legal.

Immigration law had changed since she had first fled north. On June 19, 1994, Attorney General Janet Reno issued an order that directed immigration officials to recognize gay men and lesbians as a "social group"—a designation required for eligibility in political asylum cases. The order responded to a 1989 case of a gay Cuban man, the first to be granted asylum by an immigration judge on the basis of sexual-orientation discrimination. The Board of Immigration Appeals upheld the decision in 1990, and Reno's order made it a legal precedent (see Randazzo's essay in this volume).[39]

Though transgender people were not explicitly named as part of that "social group"—nor as a "social group" of their own—in immigration courts around the country, transgender applicants were beginning to win asylum on the basis of sexual orientation or gender persecution. In 1997, for instance, a male-to-female transsexual from Peru was granted asylum because she was "taunted, humiliated, and physically attacked by her family, classmates, teachers, and strangers on the street," and "arrested and detained [by the Peruvian police] for being a gay man."[40] And in a groundbreaking decision in 2000—albeit one that technically applies only locally—California's Ninth Circuit Court granted asylum to a Mexican named Geovanni Hernandez-Montiel, asserting that "gay men with female sexual identities in Mexico constitute a protected 'particular social group' under the asylum statute." (The Ninth Circuit thus overturned a Board of Immigration Appeals decision that had suggested that Hernandez-Montiel merely needed to alter his appearance—essentially, butch up—if he didn't want to be persecuted.)[41]

After her first hearing, Madrazo received a letter from the INS informing her that she had conditionally been granted asylum. She merely had to be fingerprinted and go through some other checks. At a second hearing, she was told that the agency was now having some doubts. Authorities were concerned that she had left the United States and come back and had also dug up the old soliciting misdemeanors. The INS told her she would have to attend a third hearing before a final decision would be made. Madrazo arrived at the hearing on May 4, 2000, carrying just a small purse. From there, she went directly to Krome.

As soon as she was removed from the discourse of asylum law, Madrazo

shifted back into the category of "undocumented criminal alien." So her transgender status no longer cast her as a victim of a "primitive" land, requiring rescue by America; quite the contrary, it became a marker of her multivalent deviance from which America itself required rescue through her deportation. Madrazo's illegibility became quite literal: Krome authorities couldn't figure out whether to house her in the men's or women's dorm. So they put her in one of the punitive segregation cells.

Narrow and dank, about seven feet wide by eight feet long, Krome's solitary cells are furnished with a stainless steel toilet and a steel ledge sticking out of the wall with a thin plastic mattress on it. The fluorescent lights give off a faint buzz. The ceiling is scrawled with graffiti. When I had a look in 2000, a macho little poem graced the ceiling: "Deportame, no me importa / No llores como mujer / Lo que no supiste / Defender como hombre / Deportame no me importa" [Deport me, I don't care / Don't cry like a woman (over) / That which you didn't know how / to defend like a man / Deport me, I don't care]. I don't know whether Madrazo had to stare up at those dispiriting and gender-stereotypical words from that thin plastic mattress. What she did say about being in segregation was that it depressed and terrified her. And that it created the opportunity for Lemar Smith to assault her.

That Madrazo came forward with charges and has continued to pursue justice has enabled her, at last, to begin to claim a place within a discourse that does not disavow her reality. The narrative she provides of her own history and aspiration streams easily into the currents of the time-honored American immigrant story, though she appeared not to be representable within that mythic frame. She has insisted on entering it, asserting her own all-American progress narrative in which hard work, persistence, and deliberate self-invention carry her from oppression to freedom and, eventually, maybe even prosperity. What, after all, is more American than *becoming* an American by changing the nationality one "can, should, will have"? and, presumably, by extension, by changing the gender one "has"—that is, by fully engaging the task of self-making? That's not how it has worked out for Madrazo—not yet, anyway, as she still awaits a final decision on her asylum request as well as her lawsuit—but most likely it cannot work out that way. Precisely the failure of that logical extension exposes the limitations of the liberal state, where those

hoary old hierarchies of naturalized gender and nation permit only so much flexibility within a rigid frame. Straight and "legal" immigrants, properly abject queer ones, and norm-abiding U.S.-born homosexuals can fit within it and be recognized as citizens. If, that is, no unruly spoilers tug too hard on the edges.

In Miami, Madrazo found that the Latino, mostly Cuban, and right-tilting community would not embrace her, nor would the largely affluent and conservative gay community claim her as one of their own. As surely as German Jews rushing to assimilate into New York's upper classes distanced themselves from the unacculturated proletarian Eastern European Jews who followed them across the ocean a century ago, the assimilationist white gay men of South Beach want nothing to do with a Mexican tranny. Quite the reverse, they expressly want not to be bound up with her lest their own advances be delayed, or even reversed, by the association.

In another self-Americanizing move, Madrazo has, however, become active with the LGBT Latino/a activist organization LLEGÓ, whose progressive principles of inclusion made it easy for them to welcome her into their fold. Madrazo delivered the keynote address at LLEGÓ's annual national dinner in 2002 to great acclaim. Back in Mexico, Madrazo had eked out a living lip-synching her way across the country, performing in drag shows with other trans women. The experience did not live up to the campy pleasure and gender-fuck euphoria that some U.S. academics like to ascribe to drag. On the contrary, it was a miserable existence: "It was a place for us to hide and cry together, a place for us to have some kind of community," she says. Still, Madrazo earned her diva chops in those shows, acquiring the aplomb, the snap, the comfort on stage that are feeding her activist work now.

Indeed, Madrazo has made a spectacular entrance in an act of what Lauren Berlant calls "Diva Citizenship":

> Diva Citizenship occurs when a person stages a dramatic coup in a public sphere in which she does not have privilege. Flashing up and startling the public, she puts the dominant story into suspended animation; as though recording an estranging voice-over to a film we have all already seen, she re-narrates the dominant history as one that the abjected people have once lived sotto voce, but no more; and she challenges her audience to identify with the enormity of the suffering

> she has narrated and the courage she has had to produce, calling on people to change the social and institutional practices of citizenship to which they currently consent.[42]

Madrazo asked America to protect her from persecution as a transsexual in Mexico. Instead, a guard working for the Immigration Service—acting on behalf of the state—tried to "protect" the state by persecuting her further for being a trans/migrant woman. By bringing the charges and not letting the case drop when Smith was granted his plea bargain, Madrazo is, indeed, renarrating the dominant history and challenging people in the United States to recognize her suffering and courage. To change the practices of citizenship to which we consent in these increasingly bellicose and nationalistic times may be the most difficult challenge for those of us who enjoy the comforts and privileges of that citizenship. Those who have not been recognized within those institutional practices—and who, like Madrazo, are seldom legible within them—may be the best ones to show us the fault lines we must learn to exploit.

Notes

My investigation of Christina Madrazo's case began as a journalistic report for the *Village Voice* ("Nightmare in Miami," March 26, 2002, 28–33, cover story). I want to thank Karen Cook, my editor at the *Voice,* for all the fruitful ways in which she helped shape my thinking and my writing. Though this essay is considerably different, much of the material used here is drawn from that report (and from nearly ten years of covering INS detention and immigration policy for the *Voice.*) I'm also grateful to Eithne Luibhéid, whose insightful comments and suggestions have helped transform my profile of Christina Madrazo into a more extended and analytical essay here.

1. All quotations from Christina Madrazo are based on author interviews conducted with her in Miami on January 23, 2002, and by telephone on several occasions between February 1 and March 15, 2002. Details of her case are based on these interviews as well as on complaint papers prepared by her attorney, Robert Sheldon, and on several interviews with Sheldon, conducted in Miami on January 23, 2002, and by telephone on several occasions between February 1 and March 15, 2002.
2. The two-count indictment of Lemar Smith is filed as *United States of America v. Lemar Smith,* 00–0704, CR-Graham, U.S. District Court, Southern District of Florida (filed on August 31, 2000).
3. In a letter dated March 2, 2002, Madrazo's attorney, Robert Sheldon, notified the government that Madrazo intended to file a $15 million federal lawsuit on April 1, 2002, against the Justice Department, but indicated that she'd prefer to settle the

case than to pursue the claim. A few months later, the government offered $15,000 as a settlement—an amount Madrazo and Sheldon regarded as insulting, given that they interpreted the offer of any amount as an admission of wrongdoing. On July 3, they filed suit seeking $1 million in damages.

4. Though the number of INS detainees is public information, it is not among the statistics available on the INS's Web site. The current numbers were provided by the INS press office in response to my request. In a statement before the House Committee on the Judiciary Subcommittee on Immigration and Claims on December 19, 2001, Edward McElroy, INS district director for New York, said that at that time the INS had access to 21,304 detention beds. Though the functions of the INS were divided into several divisions of the new Department of Homeland Security in March 2003, and the INS as a single entity was officially dissolved, Madrazo's experience took place under the old designation. In addition, the on-the-ground personnel of the Bureau of Immigration and Customs Enforcement is the same as that of the INS. Therefore, for the sake of clarity, I have chosen to refer to the immigration agency as the INS throughout.

5. The deportation officer, who spoke to me on the condition of anonymity, made these remarks in Miami in May 2000.

6. See "INS 'using racist policy against Haitians'—immigration advocates," Associated Press (AP), March 16, 2002; and "US Changes Detention Policy to Discourage Haitian Refugees," AP, March 19, 2002. Further details were provided in a March 16 telephone interview with Cheryl Little, an attorney representing the detainees through the Florida Immigrant Advocacy Center in Miami.

7. The UNHCR expressed these remarks in a written response dated April 15, 2002, to a "Request for Advisory Opinion on Detention of Asylum Seekers" from the Florida Immigrant Advocacy Center. On similar grounds, Amnesty International issued a public statement on April 29, 2002, urging the United States to "Stop Discriminating against Haitian Asylum-Seekers."

8. Jonathan Simon, "Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the United States," *Public Culture* 10, no. 3 (1998): 577–607; quotations from pp. 579 and 583.

9. INS commissioner Gene McNary made this remark as he toured six newly erected tents at a detention center for Central Americans in Bayview, Texas. See Roberto Suro, "US Is Renewing Border Detentions," *New York Times*, February 8, 1990, A22, col. 1.

10. The INS issued national standards for treatment of its detainees on January 1, 2001, after scores of complaints and lawsuits alleging physical and mental abuse of immigrants detained in detention centers and county jails. The standards, covering such matters as visiting policies and grievance procedures, began immediately to be phased in at the INS's own facilities; state and local jails that house INS detainees had two years to comply. Continued complaints from detainees and advocates—and some lawsuits—suggest that the standards have not been strictly enforced. They do not have the weight of law, as ACLU Immigrants' Rights Project attorney Judy Rabinovitz said at the time, and could prove to be impossible to enforce.

11. Edward Stubbs presided over an extended tour of the grounds at Krome and spoke to me (and a delegation from the Women's Commission for Refugee Women and Children) on March 30, 2000.

12. The rise in immigrant detainees responds to a growing pressure to fill up empty cells. As the state prison population begins to decline, reversing a decadelong trend that produced a prison-building boom in the 1990s, those with an interest in keeping multitudes behind bars—public employees working in the prisons that expanded in the 1990s, for-profit prison companies—are coming to regard immigrants as their redeemers. Like agriculture, restaurants, hotels, and other realms of American business, the prison-industrial complex now looks to illegal immigrants as the most promising means of keeping them afloat. See Alisa Solomon, "Detainees Equal Dollars: The Rise in Immigrant Incarcerations Drives a Prison Boom," *Village Voice*, August 20, 2002, 46–48; and Judith Greene, "Bailing Out Private Jails," *American Prospect* 12, no. 16 (September 10, 2001).

13. In "Millennial Capitalism: First Thoughts on a Second Coming" (*Public Culture* 12, no. 2 [2000]: 291–343), Jean Comaroff and John L. Comaroff argue that "many of the enigmatic features of economy and society circa 2000—be they the allegorical transfiguration of the nation-state, the assertive stridency of racinated adolescence, the crisis of masculinity, and apotheosis of consumption, the fetishism of civil society, the enchantments of everyday life—are concrete, historically specific outworkings of millennial capitalism and the culture of neoliberalism" (334). See also Simon, "Refugees in a Carceral Age."

14. CEO Steve Logan reported on how good INS detainees are for the private-prison business and how that business is booming, especially after September 11, 2001, in Cornell Companies' third-quarter public conference call between executives and investment analysts in December 2001. Similar sentiments have been expressed by Logan's counterparts in other private-prison companies. Wackenhut Corrections Corporation's CEO George Zoley enthused in a quarterly conference call in August 2002 over the U.S. government's plans "to build up the capacity for detaining illegal immigration at a number of locations throughout the country."

15. Statistics provided by the INS press office; they are also echoed in Edward McElroy's presentation before Congress on December 19, 2001 (see note 4).

16. The Anti-Terrorism and Effective Death Penalty Act (ADEPA), a direct response to the 1995 bombing of the federal office building in Oklahoma City, was passed and signed into law in April 1996. Among many other provisions, it imposed mandatory detention and deportation even on long-term U.S. residents convicted of any drug offense (including possession of small amounts of marijuana), and it eliminated the long-standing right of those facing deportation under these terms to judicial review. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)—embedded in a budget bill and signed into law on September 30, 1996, with little debate—reiterated the authority to deport immigrants for minor crimes and further restricted humanitarian relief and access to asylum. Like ADEPA, IIRAIRA also further limited the power of the federal courts to review deportation decisions. It's easy to see now how both functioned as precursors to the USA PATRIOT Act, which restricts judicial review even further to encompass executive action, passed in a rush after the attacks of September 11, 2001.

17. According to the INS press office, in 2001 the INS housed detainees in nine hundred county jails and state correctional facilities around the country. Advocates have long charged that the INS keeps inadequate controls on the treatment of detainees in these far-flung facilities.

18. Senator Zoe Lofgren offered her assessment of the INS during the "Immigration and Naturalization Service Performance Issues Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, 107th Congress," on October 17, 2001 (www.house.gov/judiciary/75762.pdf).

19. These allegations are detailed in the U.S. Department of Justice, Office of the Inspector General, Semiannual Report to Congress, March 31, 2001 (www.usdoj.gov/oig/sa2001/invest.htm). For details on mismanagement at the INS—including the loss of weapons, automobiles, and other material provided to INS employees—see the statement of Glenn A. Fine, inspector general, U.S. Department of Justice, before the House Judiciary Committee, Subcommittee on Immigration and Claims, concerning "Immigration and Naturalization Service Enforcement and Service Performance Issues," October 17, 2001.

20. See Debbie Sontag, "Behind Krome's Doors: Ex-Inmates Tell of Abuse, Brutality by Guards," *Miami Herald,* April 11, 1990; Lizette Alvarez and Debbie Sontag, "Krome Haunted by Claims of Abuse," *Miami Herald,* April 28, 1991; Lizette Alvarez, "Guard, Chinese Detainee Fight at Krome," *Miami Herald,* May 2, 1991; Jody A. Benjamin and Vanessa Bauza, "Lack of Oversight Blamed for Krome Center Woes," *Florida Sun-Sentinel,* September 3, 2000 (especially the sidebar, "History of the Krome Service Processing Center").

21. In telephone interviews in March 2002, spokespeople from the U.S. Attorney General's Office, the Office of the Inspector General, and the civil rights division of the FBI all confirmed their agencies' involvement in investigations.

22. The affidavits, which were provided to me on condition that the complainants remain anonymous, are voluminous and repetitive: different women describe the same threats, promises, attempts at coercion, and sexual scenarios playing out around them, often in obsessive detail. See also *Behind Closed Doors: Abuse of Refugee Women at the Krome Detention Center,* a report issued by the Women's Commission for Refugee Women and Children, October 5, 2000.

23. Amnesty International issued the press release on October 12, 2001.

24. Darren Rosenblum, "'Trapped' in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism," *Michigan Journal of Gender and Law* 6 (2000): 499–570, 502.

25. A first-rate source of up-to-date information on nondiscrimination legislation that includes transgender people is the Web site of the Transgender Law and Policy Institute (www.transgenderlaw.org).

26. For an excellent analysis of efforts to keep transgender (and other "deviance") out of the Employment Non-Discrimination Act, which would protect gay men and lesbians from workplace discrimination, see Patrick McCreery, "Beyond Gay: 'Deviant' Sex and the Politics of the ENDA Workplace," in *Out at Work: Building a Gay–Labor Alliance,* ed. Kitty Krupat and Patrick McCreery (Minneapolis: University of Minnesota Press, 2000), 31–51.

27. The New Jersey case is *Enriquez, M.D. v. West Jersey Health Systems,* Superior Court of New Jersey, Appellate Division, A2017–99T5 and A-5581–99T5 (May 31, 2001). The Kansas case is *In Re: Matter of Estate of Marshall Gardiner,* 85,030, Supreme Court of the State of Kansas (July 3, 2001).

28. Rosenblum, "'Trapped' in Sing Sing," 525.

29. Katrina Rose, "When Is an Attempted Rape Not an Attempted Rape? When

the Victim Is a Transsexual," *American University Journal of Gender, Social Policy, and the Law* 9 (2001): 505–40.

30. The Violent Crime Control and Law Enforcement (Gender-Motivated Violence) Act of 1994 (40302(c), 42 *U.S. Code* 13981 [1994 and Supp.]) permits the victim of a violent crime, committed because of the victim's gender, to sue the perpetrator in federal or state court.

31. David Reiff, *Going to Miami: Exiles, Tourists, and Refugees in the New America* (Boston: Little, Brown, 1987), 82.

32. A useful overview of the history—and a powerful critique—of the plenary power doctrine can be found in Anne E. Pettit's "'One Manner of Law': The Supreme Court, Stare Decisis and the Immigration Law Plenary Power Doctrine," *Fordham Urban Law Journal* 24 (Fall 1996): 165–215.

33. Among the groups pushing for immigration restriction, the most vocal is the Federation for American Immigration Reform (FAIR), whose rhetoric is quite bald. Couching similar ideology in more academic form, the Center for Immigration Studies (CIS) produces measured-sounding think-tank reports. One, written for CIS by James R. Edwards Jr. in 1999 ("Homosexuals and Immigration: Developments in the United States and Abroad"), goes beyond the usual warnings about the threat of Latin American or Muslim immigrants to detail how "For at least a decade, homosexual advocacy groups have made immigration one of the fronts on which they fight for their agenda."

34. The provision—known as 245(i)—was due to expire and was extended by Congress, with restrictions, in March 2002. It allows certain illegal immigrants to remain in the United States while they apply for legal residency rather than return to their country of origin to apply there, as long as they have a family member or employer willing to sponsor them and pay a $1,000 fine. They must have been present in the United States since December 2000. The White House estimated that two hundred thousand immigrants could be eligible. While most are from Mexico, the law itself does not single out Mexicans, and tens of thousands of others would benefit equally from the law. Nonetheless, egged on by FAIR and other restrictionists, the bill became known as a "Mexican amnesty"—in part because President Bush pushed for the legislation shortly before his departure for a UN summit in Mexico. The provision is not limited to Mexicans, nor is it an amnesty as it applies only to those who otherwise qualify for permanent residence. The *New York Times* report on passage of 245(i), by Robert Pear, had the misleading headline "House Passes Immigrant Bill to Aid Mexico" (March 13, 2002). In fact, the measure fell far short of bolder proposals that had been considered in negotiations between the United States and Mexico for greater extension of legal rights to millions of undocumented Mexicans here and for guest worker programs.

35. Jessica Chapin, "'Closing America's 'Back Door,'" *GLQ* 4, no. 3 (1998): 403–22, 403, 405.

36. See Andres Viglucci, "Detainee Alleges 2nd Sex Attack," *Miami Herald,* May 27, 2000. Viglucci writes, "Krome sources say Sheldon's client was initially placed in a small men's dorm adjacent to the camp clinic. She was removed to an isolation cell after officers received reports she was having sex with residents, the sources said."

37. Author interview with the prosecutor, Scott Ray, March 16, 2002.

38. Rahman elaborated this analysis in an interview with the author in June 1999; he earlier offered this argument on a panel, "Shifting Grounds for Asylum: Female

Genital Surgery and Sexual Orientation," held on October 16, 1997, at New York University School of Law. The transcript is published in *Columbia Human Rights Law Review* 29 (Spring 1998): 467–532.

39. See Fatima Mohyuddin, "United States Asylum Law in the Context of Sexual Orientation and Gender Identity: Justice for the Transgendered?" *Hastings Women's Law Journal* 12 (Summer 2001): 387–410.

40. See law office of Robert Jobe, press release, "Six More Gays Receive Asylum as Window of Opportunity Closes in April 1997," February 25, 1997, San Francisco, California.

41. *Hernandez-Montiel v. INS* (2000 U.S. App. LEXIS 21403), 98–70582, August 24, 2000, Ninth Circuit Court of California.

42. Lauren Berlant, *The Queen of America Goes to Washington City,* (Durham, NC: Duke University Press, 1997), 223.