A RENEWED CALL FOR "SÍ, SE PUEDE!"* FINDING HEALING AND ACCOUNTABILITY FOR THE SEXUAL HARASSMENT OF LATINA FARMWORKER WOMEN

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ABSTRACT

Research indicates that roughly 25 to 50 percent of all women in the United States' workforce have experienced at least one incident of sexual violence. For the more than 560,000 farmworker women who pick and pack fresh produce in the United States agriculture industry, estimates are that over 80 percent have experienced sexual harassment. Yet, despite the extensive awareness and research devoted to workplace sexual harassment generally, including by the #MeToo movement, significantly less attention has been given to the experiences that women farmworkers confront in their workplaces.

This article examines the workplace sexual harassment faced by farmworker women, the majority of whom are undocumented immigrants from Central and Latin American countries. It explores the legal gains that have been made to date to protect farmworker women and hold their employers to account, as well as the obstacles that remain to fundamentally changing the conditions in the fields. Inspired by the history of Latina organizing in the agricultural industry, this article considers whether now, more than ever, Latina coalitions are vital to supporting workers. The article concludes by arguing that the collective activism amongst farmworker women inspires a path forward to fundamentally change the conditions in the fields.

* Many attribute the phrase "Yes, we can!" to César Chávez, but it was first uttered by Dolores Huerta, the unsung female co-founder of United Farmworkers of America, during labor strikes organized by the union. The phrase was used again by over 200 women farmworkers, domestic workers, allies, and congressional leaders on April 24, 2018, during a women's march against discrimination, racism, harassment and abuse. *See* Ai-Jen Poo & Mónica Ramírez, Female Domestic and Agricultural Workers Confront an Epidemic of Sexual Harassment, ACLU (May 4, 2018), https://www.aclu.org/news/womens-rights/female-domestic-and-agricultural-workers-confront, *archived at* https://perma.cc/5TRQ-5TCD.

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Introduction

"All a person has is their story, what they've gone through . . . and when you try to deny them their story, you are taking away their power."

– Dolores Huerta[1]

When Maricruz Ladino worked in the farm fields of Salinas, California, she was assaulted during her workday by her supervisor.[2] Her supervisor wanted her to go with him to conduct an inspection in a field, far away from other people. "I couldn't even scream. Because it's very traumatic. You don't even know how to react," Maricruz recounts. That same supervisor harassed Maricruz repeatedly. She continued to work on the farm after her assault and was worried about the consequences of complaining: "I didn't say anything for a long time because of my job." Eventually, Maricruz said, "no more" and complained to her employer. Soon afterwards, her employer called her and said, "Here is your check. We don't need you anymore." Maricruz's employer subsequently threatened her about moving forward with her complaint, even intimidating her with the prospect of deportation. Maricruz gathered the courage to sue her employer and, after four long years, she settled her lawsuit with compensation. For her, it was never about the money "because that does not give you back the integrity you lost as a woman . . . I was heard. That's why I think there was justice." Maricruz told her story, acutely aware of the fact that she was not the only woman who had experienced abuse as a farmworker:[3]

> It was happening to many, many more women. And if I stay quiet, then it is going to keep happening. That's why I want to talk about it now, so that everybody can see themselves in me, so that they won't stay quiet anymore. They must react, not with violence but with the laws that protect them. Documented or undocumented, you have to speak.

Maricruz Ladino's experience of sexual harassment and assault is all too common for the more than 560,000 women who pick and pack fresh produce in the American agriculture industry.[4] Estimates suggest as many as 75 percent of these women are undocumented immigrants, primarily from Central and

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[1] Dolores (5 Stick Films 2017).

[2] Maricruz Ladino told her story to PBS/Frontline interviewers. *See Rape in the Fields*, PBS (June 25 and Mar. 18, 2014), https://www.pbs.org/wgbh/frontline/documentary/rape-in-the-fields/, *archived at* https://perma.cc/7LSW-JJ3Z.

[3] *Id.*

[4] According to the National Institute for Occupational Safety & Health, there were approximately 2.1 million full-time workers employed in production agriculture in the US in 2020. Approximately 1.4 to 2.1 million hired crop workers are employed annually on crop farms in the US. *Agricultural Safety*, The Nat'l Inst. for Occupational Safety and Health (Mar. 3, 2023), https://www.cdc.gov/niosh/topics/aginjury/, *archived at* https://perma.cc/VXX4-W336. In 2019, the Department of Commerce estimated that around 26 percent of all hired farmworkers and all wage and salary farmworkers were women. *Farm Labor*, USDA Econ. Rsch. Serv. (Aug. 7, 2023), https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic, *archived at* https:// perma.cc/98P8-GDZN.

Latin American countries.[5] In trying to do their jobs, these women are regularly subjected to exploitative and abusive conditions including poverty wages, lack of safety precautions, and near-constant sexual harassment. Some reports indicate over 80 percent of female farmworkers[6] have experienced sexual harassment.[7] While the Equal Employment Opportunity Commission (EEOC) has made some progress in holding certain employers accountable, farmworker women continue to be harassed and assaulted at work. Inspired by the history of Latina[8] organizing in the agricultural industry, this article considers whether now, more than ever, Latina coalitions are important in this industry. It examines the success of such organizing movements—the lessons that can be used today to advocate for better conditions and how to embed support structures for Latina workers in the agricultural industry. In doing so, this article seeks to move beyond the narrative that Latina farmworker women are helpless "victims." Rather, this article demonstrates the power that coalitions of Latina women have had, and continue to have, in holding exploitative employers to account and healing the trauma faced by workers who have endured these conditions.

This article is divided into five sections. Section I outlines the abusive conditions faced by farmworker women and the persistent stereotypes that mask the full experiences of these women. Section II considers the legal gains that have been made to date to protect farmworker women and hold their employers to account, as well as the obstacles that remain to fundamentally changing the conditions in the fields. Section III considers the specific vulnerabilities faced by farmworker women and how coalition building can address the concerns of these communities. Section IV examines the collective activism farmworker women have demonstrated, both historically and through to the present. Finally, this article considers a path forward: how we can change the narrative from "victim" to recognize the power farmworker women have in telling their stories, and how to support Latina farmworker coalitions to change their conditions in the fields.

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[5] Sara Kominers, Working in Fear – Sexual Violence Against Women Farmworkers in the United States: A Literature Review 13 (Oxfam America 2015).

[6] *Id.* at 9 (adopting an expansive definition of "farmworker" to include all of those who harvest and pack agricultural products in off-farm facilities).

[7] Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women*, 16 Violence against women 237, 241 (2010).

[8] The term "Latina" is used in this article to refer to women who identify their origin or descent to Mexico, Puerto Rico, Cuba, and Central and South American countries. There is a broader critique about whether broad monolithic terms such as "Latina," "Hispanic," and "Latinx" are appropriate. *See* Miguel Salazar, *The Problem with Latinidad*, The Nation (Sept. 16, 2019), https://www.thenation.com/article/archive/hispanic-heritage-month-latinidad/, *archived at* https://perma.cc/LKZ8-9GLR. Such critiques are important, yet for the purposes of this article I adopt the term "Latina" in order to unpack some of the stereotypes that are often adopted in reference to this group of women.

I. The Problem And The Stereotypes: Exploitation Of Latina Farmworkers

"I believe it's the abuse of power . . . that's why they do it. Why don't they do it in the streets? Because they know they can go to jail. They do it here because they feel that they have the power to control, manipulate, and be able to take advantage. That's why it happens in the warehouses and fields and most of the time, it is the foremen."

– a woman farmworker from Yakima Valley, Washington.[9]

This section outlines the persistent and widespread sexual abuse experienced by farmworker women across the United States. It also examines the obstacles faced by farmworker women that prevent greater awareness about the conditions they endure. I then consider the stereotypes farmworker women experience as well as how those stereotypes are often used to categorize these women as submissive, powerless victims. I begin to challenge the myth that those stereotypes have created and how that myth shapes our responses to the experiences of farmworker women.

A. The reality of workplace sexual harassment and abuse

Figures indicate that roughly 25 to 50 percent of all women in the American workforce have experienced at least one incident of sexual violence.[10] By contrast, some studies indicate that for farmworker women this figure sits around 80 percent.[11] Despite the extensive awareness and research devoted to workplace sexual harassment generally, including by the #MeToo movement, significantly less attention has been given to the experiences farmworker women confront in their workplaces.[12]

The available research suggests sexual harassment and violence is a "longstanding, pervasive and frequent norm" in the agriculture industry.[13] Several qualitative studies conducted from the late 1980s through the present recognize the abusive conditions faced by women farmworkers around the country. As part of her master's thesis at California State University, Maria Elena Lopez-Trevino was one of the first to survey women farmworkers about the issues they face. Her study revealed approximately 90 percent of the women interviewed in 1993 reported sexual violence as a major problem in the workplace.[14] While only 10 percent of respondents themselves admitted

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[9] Nicole Jung-Eun Kim, Victoria Breckwich Vásquez, Elizabeth Torrese, R. M. Bud Nicolaa, & Catherine Karr, *Breaking the Silence: Sexual Harassment of Mexican Women Farmworkers*, 21 J. Agromedicine 154, 159 (2016).

[10] Kominers, *supra* note 5, at 1.

[11] Waugh, *supra* note 7, at 241.

[12] Kominers, *supra* note 5, at 1; Kim, *supra* note 9, at 154.

[13] *See, e.g.*, Kominers, *supra* note 5, at 16.

[14] Maria Elena Lopez-Trevino, The Needs and Problems Confronting Mexican American and Latin Women Farmworkers: A Socioeconomic and Human's Right Issue, 7 (1995) (Master's thesis in Psychology, California State University).

they had been sexually harassed, Lopez-Trevino observed this low reporting rate reflected the reluctance of women to report "less severe forms of harassment."[15] A 2010 study conducted by Irma Morales Waugh of 150 Mexican farmworker women in California found that 80 percent of interviewees had experienced some form of sexual violence on the job, whether that was gender harassment, unwanted sexual attention (including verbal and physical sexual advances), and sexual coercion.[16]

The Southern Poverty Law Center's extensive report from 2010 interviewed 150 immigrant women from Latin American countries living in several American states.[17] A majority of the women interviewed said they endured some form of "sexual harassment that, at times, rose to the level of sexual assault."[18] A 2012 report from Human Rights Watch found that nearly all of the 52 farmworkers interviewed experienced sexual violence at work, or knew someone who had.[19] A 2016 study of women farmworkers in Yakima Valley, Washington found persistent workplace sexual harassment in the fields and warehouses, with 75 percent of participants sharing either a personal story, or another woman's story of abuse at work.[20] Indeed, the EEOC acknowledged that in one region of California alone "hundreds, if not thousands, of women had to have sex with supervisors to get or keep jobs and/or put up with a constant barrage of grabbing and touching and propositions for sex by supervisors."[21] One worker from Salinas, California even told EEOC staff that farmworkers referred to one company's field as the *field de calzón*, or "field of panties," because so many supervisors raped women there.[22]

The harassment documented in these studies ranges widely, from making demeaning comments and verbal abuse, to exhibitionism, unwanted touching, rape, to being forced to offer sexual favors or risk punishment and dismissal.[23] Women tend not to describe their experiences using the legal language of "quid pro quo" and "hostile work environment,"[24] but their stories are consistent with these definitions of sexual harassment.[25] The abuse and harassment experienced by these women is generally not limited to a single isolated incident, but often persists for months or even years, with perpetrators victimizing

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[15] *Id*.

[16] Waugh, *supra* note 7, at 240–41.

[17] Mary Bauer & Mónica Ramírez, Injustice on our Plates: Immigrant Women in the U.S. Food Industry 4 (Southern Poverty Law Center 2010).

[18] *Id*. at 44.

[19] Grace Meng, Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment 3 (Human Rights Watch 2012).

[20] Kim, *supra* note 9, at 156.

[21] Kominers, *supra* note 5, at 16.

[22] William R. Tamayo, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law: The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. Davis L. Rev. 1075, 1080 (2000).

[23] Kominers, *supra* note 5, at 2; Waugh, *supra* note 7, at 253; Meng, *supra* note 19, at 4–8; Luz S. Marín, Milagros Barreto, Mirna Montano, Jodi Sugerman-Brozan, Marcy Goldstein-Gelb & Laura Punnett, *Workplace Sexual Harassment and Vulnerabilities among Low-Wage Hispanic Women*, 5 Occupational health science 391, 392 (2021).

[24] 29 C.F.R. § 1604.11 (2023).

[25] Kim, *supra* note 9, at 156; Bauer & Ramírez, *supra* note 17, at 44.

multiple workers whether or not the workers lodge complaints against them.[26] Many workers identified the majority of their harassers as male and/or foremen, although some have also said they have been harassed by women and their co-workers.[27]

These studies also point to numerous barriers that women face in reporting their experiences of abuse. These factors include power differentials in the workplace, economic vulnerability coupled with the need to support their families, language barriers, fear of telling their partners or families about their experiences, not knowing their legal rights, and fears of being reported to immigration authorities.[28] Some women have reported being explicitly told not to file complaints, or chose not to do so in fear of retaliation and losing their jobs.[29] In many respects, farmworker women are the "perfect victims."[30] Indeed, the sexual harassment farmworker women endure is part of a broader context of exploitation of Latinx and migrant farmworkers, as well as others in the American agricultural industry.[31]

While important work has been done to raise awareness about the conditions experienced by farmworker women, it remains a difficult problem to quantify. Very few organizations keep statistics about farmworker women. Some states collect information through their regulatory programs, though no federal agency specifically tracks the number of sexual harassment incidents occurring within the agriculture industry.[32] Reliable figures about the prevalence of sexual harassment are difficult to acquire because of severe underreporting of this type of abuse. Few Latina farmworkers file reports.[33] A further challenge to gathering data is the seasonal, migratory, and temporary nature of agricultural work, in addition to the reality that many workers are undocumented.[34] As compared with workers in other industries, farmworker women face different fears and obstacles to reporting their abuse and seeking support. This makes traditional research methods largely ineffective.[35] As Bernice Yeung reported, "[w]ithout hard numbers, it's an issue that remains in the shadows, off the radar of policymakers, advocates and growers who could make a difference."[36]

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[26] MENG, *supra* note 19, at 29.

[27] Kim, *supra* note 9, at 156.

[28] Kim, *supra* note 9, at 157; KOMINERS, *supra* note 5, at 13; Waugh, *supra* note 7, at 245–46, 254; BAUER & RAMÍREZ, *supra* note 17, at 23, 42.

[29] Kim, *supra* note 9, at 157.

[30] BAUER & RAMÍREZ, *supra* note 17, at 42.

[31] This context includes low poverty wages, wage theft, exposure to pesticides, lack of labor law protection, immigration status uncertainty and fear of deportation. *See generally* BAUER & RAMÍREZ, *supra* note 17.

[32] KOMINERS, *supra* note 5, at 12.

[33] *Id.* at 2.

[34] *Id.* at 1.

[35] *Id.* at 2.

[36] Bernice Yeung, *A Guide to What's Happened After Rape in the Fields*, REVEAL (Mar. 18, 2014), https://revealnews.org/article/a-guide-to-whats-happened-after-rape-in-the-fields/, *archived at* https://perma.cc/V4TF-ERGK.

B. Farmworker Women are Fixed in the Narrative as Submissive, Powerless Victims

The stereotypes that farmworker women experience regularly categorize them as submissive, powerless victims. As Maria Ontiveros argues, for women of color, sexual harassment is rarely about sex or sexism alone—it also about race and culture.[37] It is vital to understand the experiences of farmworker women through this intersectional lens to challenge the stereotypes that are reinforced.

Stereotypes have a direct impact on the harassment experienced by Latina women farmworkers. For Latinas specifically, the "hot-blooded" Latin archetype means Latinas are often perceived as accessible for the sexual use of others, with few recriminations to be faced for abusing them.[38] Further, growing up in a "macho culture" fosters the perception that Latina women are submissive and passive, with the consequence that they are understood to do whatever their employer asks.[39] This stereotype of submissiveness also means Latina women can face additional barriers to aggressively resisting harassment and pursuing legal remedies because they would be acting against the model of a "good Latina woman."[40] These cultural stereotypes can mean Latina women farmworkers become "easy targets," or so-called "perfect victims" for abuse, preventing women from speaking out about their experiences.

The "powerless and passive" Latina stereotype has infiltrated wider conversations around the sexual harassment that Latinas experience. For many years, the national conversations around workplace sexual harassment, including those sparked by the #MeToo movement, have failed to capture and respond to the realities experienced by women of color, and farmworker women in particular.[41] Yet, when conversations have included some stories of migrant women and their experiences in the workplace, the focus tends to center on their individual vulnerabilities and lack of political power.[42] Factors specifically highlighted are: their lack of English proficiency, fears of deportation, and inability to find work elsewhere.[43] Farmworker women are regularly viewed as powerless victims, unable to help themselves or their communities.

While these stereotypes do mirror the experiences of some farmworker women, there are many women who challenge these archetypes. Many women do not just passively "submit" to the abuse they face. Rather, they do everything within their power to protect and advocate for themselves. Some farmworker women have described to researchers the self-defense strategies

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[37] Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 Golden Gate U.L. Rev. 817, 817 (1993).

[38] *Id.* at 818–21; Johana P. Lopez, *Speaking With Them or Speaking for Them: A Conversation About the Effect of Stereotypes in the Latina/Hispanic Women's Experiences in the United States*, 25 New Horizons in Adult Educ. & Hum. Res. Dev. 99, 102 (2013).

[39] Ontiveros, *supra* note 37, at 821–24; Lopez, *supra* note 38, at 100–02.

[40] Ontiveros, *supra* note 37, at 821–24; Lopez, *supra* note 38, at 102.

[41] Nicole Hallett, *Immigrant Women in the Shadow of #MeToo*, 49 U. of Balt. L. Rev. 59, 59–60, 63–64 (2019).

[42] *Id.* at 86, 90.

[43] *Id.* at 86.

they have used to deter unwanted attention from harassers, including wearing looser clothing to cover their bodies.[44] Indeed, ignoring, quitting, avoidance, and complying are deliberate resistance strategies used by many farmworker women to survive and take control of their situation.[45] As Waugh recognized, "women purposefully 'choose' these actions, "considering them the best possible approach to a complex set of circumstances."[46] Further, many women seek emotional and practical support from co-workers and friends to assist them with the sexual harassment they face.[47] Seeking support has, in some instances, given women the courage to confront their perpetrator.[48]

For those farmworker women who have spoken out and made complaints, they demonstrate tremendous power and agency in doing so. These women file complaints against their abusers and employers despite the risks they face in doing so, including retaliation, possible deportation, or losing their jobs. Women like Maricruz Ladino often speak about being driven to complain in order to protect other women around them and to end the cycle of violence.[49] Part of what drives the courageous actions of these women is to ensure the abuse they faced does not happen to others.[50] As Kim and others found in their research, farmworker women often advocate for change within their own communities by educating each other about the importance of workers' rights, offering advice on ways to confront harassers and encouraging each other to file complaints to break the silence of workplace sexual harassment.[51] As one woman in this study said, "break the silence, to not be afraid regardless of whether you have or don't have legal documents, that harassment needs to stop everywhere and the silence is broken, now it is time to stop all of this abuse."[52]

Only viewing farmworker women as passive, submissive victims denies the reality of their experiences and actions. I do not challenge these stereotypes to discount the abusive experiences that have victimized many farmworker women. Rather, I challenge these stereotypes to show that there can be two, true narratives at the same time: a) thousands of women face serious and horrific sexual harassment in their workplaces and encounter significant obstacles in reporting this abuse; *and* b) many women demonstrate resistance and power in taking control of their situations, reporting their abuse where possible, and fighting for other farmworker women. By acknowledging a more comprehensive, and intersectional account of the experiences of farmworker women we can recognize their power within farmworker communities to hold

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[44] Kim, *supra* note 9, at 158.
[45] Waugh, *supra* note 7, at 252.
[46] *Id.*
[47] *Id.* at 246.
[48] *Id.*
[49] *Rape in the Fields*, *supra* note 2.
[50] Telephone Interview with Lucila Rosas, Administrative Judge, EEOC (Dec. 5, 2022); Mónica Ramírez, Founder & President Justice for Migrant Women, Address at NYU Law School Seminar: Law and the Legal System through the Lens of Latinx Communities (Nov. 3, 2022).
[51] Kim, *supra* note 9, at 157–58.
[52] *Id.*

employers to account and heal the trauma faced by Latina workers enduring these conditions.

II. Limited Legal Gains

"Violations were just the cost of doing business. It was cheaper for them, in other words, to pay the fines and to continue to pay the fines than to actually clean up their act."

– Robert Reich, Former Secretary of Labor.[53]

This section examines the legal responses to date which have supported farmworker women and held their employers accountable for the abusive conditions they endure. It outlines the (limited) support in place for some farmworker women through the U visa scheme. I consider the effectiveness of civil mechanisms to challenge workplace sexual harassment, the enforcement powers of the EEOC and its litigation portfolio to date. Finally, I examine why law enforcement and criminal prosecution presently remains limited as well as the wider legal obstacles that prevent a real shift in the conditions experienced by farmworker women in the fields.

A. U Visas

Implemented in 2000,[54] the U non-immigrant status visa scheme ("U visa") was designed to protect immigrant victims of crime.[55] The scheme provides successful applicants and their families with a special visa to lawfully live and work in the United States and to apply for a green card. The goal of the U visa scheme is to protect undocumented individuals who may otherwise be too scared to come forward to report the crimes they have experienced for fear of deportation.[56] The legislation was specifically intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of sexual assault as well as other gender-based crimes (domestic violence and human trafficking).[57] At least in theory, the scheme promised much for farmworker women, many of whom are undocumented and have experienced sexual harassment.

The U visa scheme resulted in significant strides for Latina women. One of the most significant cases in this area is *Cazorla v. Koch Foods of Miss., L.L.C.* There, the Fifth Circuit found in favor of several undocumented

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[53] *Rape in the Fields*, *supra* note 2.

[54] Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1518, § 1502(a)(3) (2000).

[55] Hallett, *supra* note 41, at 80; Jason A. Cade & Meghan L. Flanagan, *Five Steps to a Better U: Improving the Crime-fighting Visa*, 21 Richmond Pub. Int. L. Rev. 85, 87 (2018).

[56] Hallett, *supra* note 41, at 81.

[57] *Victims of Criminal Activity: U Nonimmigrant Status*, US Citizenship and Immigr. Servs. (USCIS) (last visited Dec. 10, 2022), https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status, *archived at* https://perma.cc/6X5D-KBTB.

workers, in particular women who complained about sexual harassment and abuse against their employer, Koch Foods, a poultry processor.[58] The EEOC filed a discrimination suit in federal court against Koch Foods alleging that the company subjected a class of workers to unlawful employment practices and retaliation on the basis of sex, national origin, and race.[59] In particular, the lawsuit alleged that Koch Foods actively retaliated against the workers, threatened to harm them and have them deported, and also claimed the workers made the allegations "to obtain immigration benefits under the U-visa program."[60] During the proceedings, Koch Foods sought discovery of any information relating to the workers' U visa applications. A magistrate judge granted the motion in part, allowing for Koch Foods to compel production of the workers' U visa-related information.[61] After the EEOC and workers sought review of this decision, the District Court ruled that the EEOC was excused from disclosing this information, but that the workers had to produce their own U visa information as it was relevant to determining their credibility.[62] The EEOC sought interlocutory review of the decision, appealing to the Fifth Circuit. In a triumph for the victims, the Fifth Circuit declined the application, holding that any discovery related to U visa information would undermine the statutory confidentiality of U visa applications and may have a wider chilling effect on victims reporting their abuse:[63]

> Thousands apply for U visas each year, and they do so with the assurance that federal authorities will keep their applications confidential. Allowing U visa discovery from the claimants themselves in this high-profile case will undermine the spirit, if not the letter, of those Congressionally sanctioned assurances and may sow confusion over when and how U visa information may be disclosed, deterring immigrant victims of abuse—many of whom already mistrust the government—from stepping forward and thereby frustrating Congress's intent in enacting the U visa program.

Despite the success in *Cazorla*, the operation of the U visa scheme is not without its hurdles. First and foremost, there is a cap on how many visas are provided under the scheme. Only 10,000 U visas are available annually and this cap has repeatedly been met midway through each year, leaving many who are eligible without relief and vulnerable to deportation if they report sexual crimes.[64] The United States Citizenship and Immigration Services (USCIS) has a long wait list for applicants awaiting a final decision if the cap

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[58] Cazorla v. Koch Foods of Miss., L.L.C., 838 F.3d 540 (5th Cir. 2016) [hereinafter "Cazorla 5th Cir.]."

[59] Second Amended Complaint, EEOC v. Koch Foods of Miss., LLC, No. 3:11-CV-00391-CWR-LRA, 2012 WL 12033809, (S.D. Miss. Sept. 17, 2012).

[60] *Id.*; Cazorla 5th Cir., *supra* note 58, at 545.

[61] Cazorla 5th Cir., *supra* note 58, at 546–47.

[62] *Id.*

[63] *Id.* at 562–64.

[64] KOMINERS, *supra* note 5, at 42. In good news, there is no cap for family visas who derive their status from the principal applicant.

is reached before their petition is considered.[65] As of the end of September 2023, there were a total of 344,600 pending applications on this waitlist.[66] To give an indication of how many U visa applications are received annually, in 2022 there were 30,120 applicants received from victims of crime and 20,954 applications received from their family members.[67] The most applications received for any given year to date was in 2017, with 37,287 applications from victims and 25,702 from their family members.[68] There are regularly far more annual applications than the Congressional cap for U visas.

At this rate, it is hard to believe all the applications on the waiting list will be processed. Indeed, an example from farmworker women demonstrates the issues with demand and processing times of the U visa scheme. In 2012, five farmworker women complained about the sexual harassment they endured while working at Moreno Farms.[69] The women complained to both the police (although no criminal charges ever followed) and the EEOC. In 2015, after testifying at trial in one of the EEOC's highest profile employment discrimination cases concerning farmworker women, a jury found in the women's favor.[70] Victoria Mesa-Estrada, attorney for the women, reports that of the four women who applied for a U visa, only one of those women received it.[71] She received it early in 2022. The other three women are still waiting to have their applications processed. Hence, even those victims with support from attorneys and the EEOC are struggling to have their U visa applications processed in a timely manner.

The approach to U visas has also varied significantly under different political administrations, exposing the vulnerability of the scheme's discretionary framework.[72] The Obama administration supported the U visa scheme.[73] The Trump administration, however, was openly hostile towards the scheme

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[65] USCIS, *supra* note 57.

[66] *Number of Form I-918 Petitions for U Nonimmigrant Status By Fiscal Year, Quarter, and Case Status Fiscal Years 2009-2023*, US Citizenship and Immigr. Servs. (USCIS) (last visited Feb. 24, 2024), https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2023_q4.pdf, *archived at* https://perma.cc/3XPV-VFWF.

[67] *Id.*

[68] *Id.*

[69] Tim Elfrink, *Florida Farm Owners Assault Migrants While Police and Prosecutors Do Nothing*, Miami New Times (Mar. 10, 2015), https://www.miaminewtimes.com/news/florida-farm-owners-assault-migrants-while-police-and-prosecutors-do-nothing-7530797, *archived at* https://perma.cc/K4XL-3Q2N; EEOC v. Moreno Farms, No. 1:14-CV-23181-DPG, 2015 WL 11233071 (S.D. Fla. Oct. 5, 2015).

[70] EEOC Wins Jury Verdict of over $17 Million for Victims of Sexual Harassment and Retaliation at Moreno Farms, U.S. EEOC (Sept. 10, 2015), https://www.eeoc.gov/newsroom/eeoc-wins-jury-verdict-over-17-million-victims-sexual-harassment-and-retaliation-moreno, *archived at* https://perma.cc/PXZ3-9PSR.

[71] Telephone Interview with Victoria Mesa-Estrada, Attorney, Searcy, Denney, Scarola, Barnhart & Shipley (Dec. 12, 2022).

[72] Alison J. Coutifaris, *Surviving Crime and Facing Deportation: U Visas as a Defense Against Removal in a System of Divided Agency Jurisdiction*, 36 Georgetown Immigr. L.J. 910, 913 (2022).

[73] *See, e.g.*, Coutifaris, *supra* note 72, at 913; *Fact Sheet: Immigration Accountability Executive Action*, The White House Off. of the Press Sec'y (Nov. 20, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action, *archived at* https://perma.cc/7MED-DDD9.

and its immigrant applicants, with widespread reports that there was a sharp downturn in sexual violence complaints under the administration because of deportation fears.[74] A central strategy of the Trump administration involved reinvigorating federal-state enforcement programs, including 287(g) agreements, to deputize state and local police officers to enforce federal immigration laws.[75] The 287(g) agreements compelled local law enforcement officers to investigate immigration status and, if the person appears to be deportable, hand them over to federal authorities.[76] These programs actively prevented victims from complaining to law enforcement about the sexual harassment they had experienced for fear that reporting would ultimately lead to their deportation. The backlog of U visa applications also grew significantly under the Trump administration.[77] During the first year of the Biden administration, the Department of Homeland Security implemented a streamlined system for providing prompt protection by directing agency officials to refrain from taking enforcement actions against U visa applicants.[78] In June 2021, the Biden administration announced it would speed up the process of issuing temporary work permits to some U visa applicants, in recognition of the backlog on the waitlist.[79] This would give applicants who are victims of crimes the right to "work and remain safely in the United States" in exchange for cooperation with law enforcement while their applications are processed.

Technical requirements of the visa scheme have also created obstacles for applicants. As part of a petitioner's application, one must demonstrate that they cooperated in the investigation or prosecution of a crime, as certified by a government agency (which can include the police, a district attorney or the EEOC).[80] Inconsistent implementation of the U visa program obfuscates the extent to which law enforcement and government agencies facilitate or impede certification.[81] Of note, while many officials understand the U visa

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[74] Cade, *supra* note 55, at 87–89, 99–106.

[75] *Id.* at 101; Section 287(g) agreements became law as part of the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009–547 (1996) (codified at 8 U.S.C. § 1357(g)).

[76] *Id.*

[77] Eileen Sullivan, *Biden extends temporary work permissions for some undocumented immigrants who are victims of crime*, N.Y. TIMES (June 14, 2021), https://www.nytimes.com/2021/06/14/us/politics/biden-immigration-victims-work-visa.html, *archived at* https://perma.cc/9LP5-XDZN.

[78] Coutifaris, *supra* note 72, at 913; Tae D. Johnson, *ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims*, U.S. Immigr. & Customs Enf't. (2021), https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf, *archived at* https://perma.cc/85PA-K5KM.

[79] *See* Sullivan, *supra* note 77.

[80] *See* USCIS, *supra* note 57.

[81] *See* Cade, *supra* note 55, at 96–98; Jean Abreu, Sidney Fowler, Nina Holtsberry, Ashley Klein, Kevin Schroeder, Melanie Stratton & Deborah M. Weissman, The Political Geography of the U Visa: Eligibility as a Matter of Locale 22 (2014); Michael Kagan, *Immigrant Victims, Immigrant Accusers*, 48 U. Mich. J. L. Reform 915, 939–51 (2015); Eunice Hyunhye Cho, Giselle A. Hass & Leticia M. Saucedo, *A New Understanding of Substantial Abuse: Evaluating Harm in U Visa Petitions for Immigrant Victims of Workplace Crime*, 29 Geo. Immigr. L.J. 1, 24–30 (2014); Tahja L. Jensen, *U Visa "Certification": Overcoming the Local Hurdle in Response to a Federal Statute*, 45 Idaho L. Rev. 691, 700–02 (2009).

requirements and adopt fair, streamlined procedures for evaluating the cooperation or "helpfulness" requirement,[82] others are reluctant to provide certification because they want to avoid "giving someone legal status" who "did not suffer enough," or they have a blanket denial policy for certifications.[83]

While the Biden administration's approach to the U visa scheme provides hope for U visa applicants, issues with the growing waitlist and certification variability continue to pose obstacles to giving farmworker women the immigration protection they deserve for reporting sexual harassment.

B. The EEOC and Challenging Workplace Sexual Harassment

Civil mechanisms primarily focus on holding employers to account for the sexual harassment committed against farmworker women.[84] Workplace sexual harassment is prosecutable under Title VII of the Civil Rights Act of 1964 as a form of sex discrimination.[85] Workplace sexual harassment is legally defined as encompassing 'quid pro quo' harassment (employment or benefits that are contingent on submission to sexual favors) or 'hostile work environment' harassment (where sexually inappropriate behaviors create an offensive work environment).[86] While sexual harassment is considered a form of "sex" discrimination under Title VII, it is important to recognize many farmworker women experience such harassment under the veil of intersecting unprotected classes including sex, culture, income, national origin and immigration status.[87] Employment discrimination law largely fails to account for the intersectional discrimination faced by farmworker women in this context.[88]

The EEOC enforces Title VII protections and has the authority to investigate and prosecute sexual harassment claims.[89] EEOC enforcement requires farmworker women to be willing to complain in the first place which, as

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[82] *See e.g.*, *EEOC Procedures: Requesting EEOC Certification For U Nonimmigrant Classification (U Visa) Petitions In EEOC Cases*, U.S. EEOC (outlining the EEOC's guidelines for certification of U visas), https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-u-visa-petitions-eeoc, *archived at* https://perma.cc/HU7W-ZE3L.

[83] Abreu, *supra* note 81, at 32–64.

[84] *See* Bauer & Ramírez, *supra* note 17, at 47–48.

[85] Title VII of the Civil Rights Act, 42 U.S.C. § 2000e (1964).

[86] 29 C.F.R. § 1604.11(a). *See* Bryson v. Chicago State Univ., 96 F.3d 912, 915–16 (7th Cir. 1996) (providing an analytical framework in examining a quid pro quo harassment claim); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 65–67 (1986) (defining hostile work environment); EEOC v. Mgmt. Hospitality of Racine, Inc., 666 F.3d 422, 432 (7th Cir. 2012) (noting factors used to determine when harassment has risen to the level of creating an illegal hostile work environment).

[87] Kominers, *supra* note 5, at 22.

[88] *Id.* However, undocumented workers are expressly protected by federal anti-discrimination laws including Title VII. *See* Espinoza v. Farah Mfg. Co., 414 U.S. 86, 95 (1973) (holding that Title VII was clearly intended to apply with respect to the employment of aliens inside any state).

[89] *See* 42 U.S.C. § 2000e-5(a) (2014); Faragher v. City of Boca Raton, 524 U.S. 775, 806 (1998) (noting that, as long ago as 1980, the EEOC has been charged with enforcement of Title VII cases).

discussed earlier, can be difficult.[90] When a person files a complaint with the EEOC, the agency investigates the claim.[91] If the EEOC finds reasonable cause for sexual harassment, it will first try to settle the case, but if that is unsuccessful it will then determine if a lawsuit is warranted.[92] If the EEOC does not find reasonable cause for a sexual harassment claim, the charge will be dismissed and the complaining individual will retain the option to pursue a private lawsuit.

In 1999, the EEOC made it a national priority to assist low-wage vulnerable workers, particularly immigrant workers.[93] Since then, the EEOC has brought several landmark cases on behalf of farmworker women who have experienced sexual harassment and, in doing so, has raised considerable awareness about the experiences of farmworker women. These cases include:

i) *EEOC v. Tanimura & Antle*,[94] in which Blanca Alfaro, a single mother from El Salvador, reported being raped by a hiring official and then fired when she protested further harassment. After Blanca complained, several other women also came forward, and the EEOC settled the case against the world's largest lettuce grower for one of the largest amounts in a farmworker case to-date ($1.855 million);

ii) *EEOC v. Harris Farms*,[95] which became the first sexual harassment lawsuit involving farmworker women to reach a federal jury. Olivia Tamayo's supervisor raped her in the fields at gunpoint, and threatened to kill her husband if she reported his assaults. Harris Farms, one of the biggest agri-businesses in the country, fought the claim through to trial, contending that the relationship between Olivia and her supervisor was consensual.[96] The jury awarded Olivia nearly $1 million;

iii) *EEOC v. Evans Fruit Co.*,[97] which was the second sexual harassment case concerning farmworker women to reach a federal jury, involved 17 women who complained about sexual assault and harassment by supervisors. The women faced threats and retaliation for filing their complaints. Although the EEOC lost the case at trial, the case brought

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[90] *See* Gabriela Parra, *Immigration Policy For Workplace Violence And Undocumented Women: State-Based Solutions For Wisconsin*, 30(1) Wisconsin J. L., Gender & Soc'y 99, 104–06 (2015). *See also* Section I(A) of this article.

[91] 29 C.F.R. § 1601.21(a) (1999).

[92] *Id.*; 42 U.S.C. § 2000e-5(b) (2014).

[93] William R. Tamayo, *Symposium: The Evolving Definition of the Immigrant Worker: The Intersection Between Employment, Labor, and Human Rights Law*, 44 U. S. F. L. Rev. 253, 261 (2009).

[94] *Id.* at 261; Kominers, *supra* note 5, at 23.

[95] EEOC v. Harris Farms, 274 F. App'x. 511 (9th Cir. 2008).

[96] *Rape in the Fields*, *supra* note 2; Rosas, *supra* note 50.

[97] EEOC v. Evans Fruit Co., 872 F. Supp. 2d 1107 (E.D. Wash. 2012); EEOC v. Evans Fruit Co., No. CV-10-3033-LRS, 2013 U.S. Dist. LEXIS 102677 (E.D. Wash. July 22, 2013).

> attention to the issue and pressured some growers to institute sexual harassment policies.[98]

These cases represent a small percentage of similar cases brought by the EEOC since 1999.[99] While the EEOC has had some success in holding agricultural employers to account, there are also ongoing obstacles to bringing successful claims on behalf of farmworker women. In addition to difficulties in encouraging farmworker women to come forward, the EEOC also faces internal constraints. Human Rights Watch has aptly characterized the EEOC's work in this space as "positive efforts but limited resources."[100] Geographically, EEOC offices are primarily located in urban centers while many farmworker women live in rural areas. For workers without cars, it can be difficult to reach EEOC offices, let alone take time away from work and their families.[101] Because of this distance, the EEOC often relies on grassroots and not-for-profit organizations to act as their "eyes and ears" on the ground and to bring cases to the EEOC's awareness.[102] The EEOC has developed critical partnerships with a range of organizations around the country, including the Southern Poverty Law Center, California Rural Legal Assistance, Inc., Organizacion en California de Líderes Campesinas (Líderes Campesinas), and the ACLU Women's Project.[103] However, in some parts of the country those responsible for EEOC outreach work do not represent the communities they are engaging with and, because of resourcing and budget constraints, there are often not enough staff able to conduct this important work.[104]

Further, the quality of EEOC investigations vary widely. While some investigators are said to display understanding and sensitivity, others do not understand the unique challenges faced by farmworkers.[105] The investigatory process can be cumbersome, slow and re-traumatizing for victims.[106] The EEOC does, however, continue to prioritize these cases, develop internal expertise, investigation and litigation processes, and encourage cross-pollination across offices to share resources and information.[107]

Difficulties also remain with enforcement of successful judgments. This is notable in *EEOC v. Moreno Farms*, where the EEOC won a judgment of over $17 million in punitive and compensatory damages on behalf of five women who were harassed and assaulted by their supervisors and their employer's sons.[108] After the successful result, Robert Weisberg, regional attor-

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[98] Kominers, *supra* note 5, at 23–24; *Rape in the Fields*, *supra* note 2.

[99] For a list of cases as of October 2015, see *Selected List of Pending and Resolved Cases Involving Farmworkers from 1999 to the Present*, U.S. EEOC (last updated Oct. 2015), https://www.eeoc.gov/selected-list-pending-and-resolved-cases-involving-farmworkers-1999-present, *archived at* https://perma.cc/BCM7-QQQW.

[100] Meng, *supra* note 19, at 67–71.

[101] *Id.* at 69.

[102] Tamayo, *supra* note 93, at 264–65; Rosas, *supra* note 50.

[103] Tamayo, *supra* note 93, at 264–65.

[104] Mesa-Estrada, *supra* note 71.

[105] Meng, *supra* note 19, at 67–71.

[106] *Id.* at 67.

[107] Rosas, *supra* note 50.

[108] *See* EEOC Wins Jury Verdict, *supra* note 70.

ney for EEOC's Miami District Office said the "jury's verdict today should serve as a clear message to the agricultural industry that the law will not tolerate subjecting female farm workers to sexual harassment and that there are severe consequences when a sex-based hostile work environment is permitted to exist."[109] While the news portrayed the case as a success, Victoria Mesa-Estrada, attorney for the women, observed that "at the end of the day there was no justice."[110] Though the EEOC obtained this significant award, the Department of Justice never enforced the judgment, effectively choosing not to exercise their right to compel the legally liable employers to pay for their misdeeds.[111]

C. A Lack of Criminal Enforcement and Obstacles to Change

While employers have been held to account in some EEOC cases, very few criminal charges have been laid against perpetrators within the agricultural industry.[112] The intertwined partnership between law enforcement and federal immigration officers, especially through the use of 287(g) agreements as highlighted above, often forces victims to choose between facing potential deportation and complaining to police.[113] Further, there is a reluctance from law enforcement to prosecute complaints brought by farmworker women, whether because of a lack of evidence available in what are often 'he said, she said' cases, a lack of training for police in sexual violence, bias and indifference towards undocumented workers, or a view that these women are "disposable."[114]

Even if women do come forward to police, the discretion to bring criminal charges lies solely with prosecutors.[115] There are additional challenges in prosecuting sexual assault cases when a woman is undocumented because, as District Attorney Lisa Green acknowledges, there are difficulties in "getting juries to connect with Spanish speakers and understand why survivors of workplace sexual assault would go back to work in the same place."[116] As a consequence of the lack of criminal enforcement, some women, including the Moreno Farms victims, continue to see their perpetrators in the community or employed elsewhere in the industry.[117]

Farmworker women face other legal obstacles due to changing conditions in the fields. Low-income farmworkers have limited access to legal assistance as legal service organizations that receive federal funding from the

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[109] *Id*.
[110] Mesa-Estrada, *supra* note 71.
[111] *Id*.
[112] *See* Parra, *supra* note 90, at 111–14; Mesa-Estrada, *supra* note 71.
[113] Parra, *supra* note 90, at 113; *see* MENG, *supra* note 19, at 72–73.
[114] BAUER & RAMÍREZ, *supra* note 17, at 22–23; Mesa-Estrada, *supra* note 71.
[115] Parra, *supra* note 90, at 113 (citing Jeffrey J. Pokorak, *Rape Victims and Prosecutors: The Inevitable Ethical Conflict of De Facto Client/Attorney Relationships*, 48 S. TEX. L. REV. 695, 703 (2007)).
[116] MENG, *supra* note 19, at 79 (citing Human Rights Watch interview with Lisa Green, Kern County District Attorney in Bakersfield, California, June 28, 2011).
[117] Mesa-Estrada, *supra* note 71.

Legal Services Corporation (LSC) are generally prohibited from representing undocumented immigrants.[118] In many rural areas, organizations funded by the LSC are the only options available, and this can leave undocumented women without legal representation. Farmworkers also have no federal protection from retaliation by their employers for labor organizing,[119] limiting the political and economic power of farmworkers seeking to demand accountability and change within the agricultural industry.[120] Ensuring that employers and employees have greater awareness about the sexual harassment experienced by farmworker women is also difficult when sexual harassment policies and training are not required by federal law in the agricultural industry.[121] While some states provide laws requiring such policies and training, including California, Connecticut and Maine, there are no nationwide mandates in this space.[122]

While some legal gains have been made with the U visa scheme and EEOC lawsuits, there has been limited success in fundamentally changing the experiences of farmworker women who encounter harassment and assault. Issues remain with a backlog of U visa applications, enforcing civil awards, resourcing the EEOC's work, holding perpetrators to account through the criminal justice system and supporting farmworker women to bring legal claims. The legal system has provided some mechanisms for accountability, but it is not a panacea. So, what else can be done? How can we support farmworker women to heal from their experiences and continue to hold their employers to account to change conditions in the fields? The remainder of this article will consider how grassroots coalition building could provide some answers to these questions.

III. The Importance of Coalition Building

"Historically, women's work, when anchored in community betterment activities that do not capture a public spotlight, is not recognized as either "political" or "leadership." Yet, this work is crucial in generating community empowerment."

– Denise Segura & Elisa Facio.[123]

This section examines why coalition building is particularly important for farmworker women. It identifies the particular vulnerabilities of this community that exacerbate experiences of sexual harassment and mean that coalition building within the farmworker community provides real opportunities

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[118] Kominers, *supra* note 5, at 6.
[119] *Id.* at 20.
[120] *See* Bauer & Ramírez, *supra* note 17, at 29.
[121] Kominers, *supra* note 5, at 24.
[122] *See id.* at 43.
[123] Denise A. Segura & Elisa Facio, *Adelante Mujer: Latina Activism, Feminism, and Empowerment, in* Latinas/os in the United States: Changing the Face of America 294, 296 (Havidán Rodríguez, Rogelio Sáenz & Cecilia Menjívar (eds., 2008)).

for change. Coalitions can address the very real concerns that farmworker women have, while also providing support to one another and speaking out against workplace sexual harassment.

As discussed previously,[124] farmworker women face specific obstacles that exacerbate their experiences of sexual harassment and make it difficult for them to complain. Individual factors can include age, marital status and family status. For example, single farmworker women or women who provide economic support for their households have been shown to be at higher risk of sexual harassment, but also have a high vulnerability because of their economic dependence on the job which, in turn, reduces their likelihood of reporting their experiences.[125] Women can also be afraid to share their experiences with their partners and families because of cultural stigma and shame.[126] Social vulnerabilities include immigration status, low socioeconomic status, difficulties in finding other jobs after quitting or being fired, English proficiency, and lack of Spanish proficiency for indigenous women.[127] Workplace dynamics are also relevant. These include the male-dominated nature of the agricultural industry, as well as the remote and rural locations of farms which can conceal the abuse occurring.[128] Power imbalances between Latina workers, their perpetrators (often foremen or supervisors), and employers can both be an underlying cause of harassment as well as an obstacle that prevents women from coming forward.[129] As Luz Marín has observed, while sexual harassment is common to all industries and occupations, "not all workers may be vulnerable in the same way."[130]

By recognizing the specific experiences of farmworker women, we can also recognize the need for coalitions within farmworker communities that can address the issues farmworker women face. Community and society organizations can provide essential resources for farmworker women who have faced abuse, including access to victim support services, legal services, emotional support and healthcare.[131] Such organizations can provide information about how to file a report or complaint, whether with their employer, police or the EEOC.[132] Community organizations can also provide leadership in farmworker communities, raising awareness about abuse and encouraging more women to come forward within a safe, supportive network. At the policy level, there are also opportunities for community organizations to collaborate with leaders, researchers, and unions to identify trends and develop recommendations, as well as advocate for legislative change at the state or federal level.[133] Studies show that it is women who frequently seek out assistance

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[124] *See* Section I(A).
[125] *See* Marín, *supra* note 23, at 405.
[126] Mesa-Estrada, *supra* note 71; Rosas, *supra* note 50.
[127] *See* Marín, *supra* note 23, at 406.
[128] KOMINERS, *supra* note 5, at 17–18; Kim, *supra* note 9, at 155.
[129] KOMINERS, *supra* note 5, at 3; Marín, *supra* note 23, at 407; Kim, *supra* note 9, at 157.
[130] Marín, *supra* note 23, at 404.
[131] *Id.* at 408.
[132] *See* Kim, *supra* note 9, at 160.
[133] Marín, *supra* note 23, at 409.

from community organizations in order to meet their needs and those of their families. As Denise Segura and Elisa Facio observe, women's participation in "gendered networks" can have important implications and provide material, financial, informational and emotional assistance on a regular basis.[134]

Farmworker women are experts in their experiences, needs and communities.[135] Where formal legal mechanisms have only provided limited gains to date, collective action within the community offers the opportunity to build a shared understanding of farmworker women's experiences of harassment and inspire broader action to address the issue.[136] In the next section I examine how farmworker women have already demonstrated the power of such collective action.

IV. Then and Now: Collective Activism of Women in the Fields

"One person can't do anything; it's only with others that things are accomplished."

– Luisa Moreno.[137]

This section examines the collective activism and coalitions that arose in the twentieth century and continue to exist today with the aim of improving workplace conditions for farmworker women. This section identifies the strong history of Latina-led organizing for farmworker women, exemplified by the work of women such as Dolores Huerta and Luisa Moreno, before turning to the numerous contemporary organizations founded by farmworker women that continue to support and advocate for this community.

A. A Strong Activist History

As Segura and Facio observe, Latinas have historically demonstrated considerable leadership and activism in organizing for better and safer working conditions.[138] This is true in many industries across the United States, but particularly in the agricultural sector. The stories of Luisa Moreno and Dolores Huerta demonstrate the historical power of collective activism led by Latina women.

Luisa Moreno remains the only transcontinental Latina union organizer.[139] Her work, and passion for better working conditions for women carried her

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[134] Segura & Facio, *supra* note 123, at 302.

[135] Ramírez, *supra* note 50.

[136] *See generally* Veronica Terriquez, Tizoc Brenes & Abdiel Lopez, *Intersectional Mobilization, Social Movement Spillover, and Queer Youth Leadership in the Immigrant Rights Movement*, 62(3) Soc. Probs. 343 (2015) (writing about the benefits of collective action in intersectional social movements and the Immigrant Rights Movement specifically).

[137] Vicki L. Ruiz, *Una Mujer sin Fronteras: Luisa Moreno and Latina Labor Activism*, 73(1) Pacific Hist. Rev. 1, 1 (2004).

[138] Segura & Facio, *supra* note 123, at 296.

[139] Luisa Moreno's story is brought to light by Ruiz. *See* Ruiz, *supra* note 137.

across the country, from the garment shops of New York City to cigar plants in Tampa to canneries in Los Angeles, with innumerable stops in between. An immigrant from Guatemala, Moreno was the first Latina vice-president of a major union, the United Cannery, Agricultural, Packing, and Allied Workers of America (UCAPAWA), which in its heyday was the seventh-largest affiliate union of the Congress of Industrial Organizations (which, at the time, was one of the largest federations of labor unions from around America). In this role, Moreno was the first Latina elected to a high-ranking national union post. Yet, her most notable "first" was acting as the driving force behind El Congreso de Pueblos de Habla Española (the Spanish-Speaking People's Congress), the first national Latino civil rights assembly held in 1939. Approximately 1,000 to 1,500 delegates, representing over 120 organizations, assembled in Los Angeles to discuss issues around employment, housing, education, health and immigrant rights. Moreno co-organized El Congreso with Josefina Fierra, the two sharing an understanding of the intersectional discrimination faced by Mexican women in the American workforce at the time. Both Moreno and Fierra championed women's voices, ensuring El Congreso had a women's committee and a women's platform for action. Moreno continued to advocate for workers around the country until she retired from public life in 1947. The United States deported Moreno in 1950 for her ties to the communist party. While Moreno is among the American "icons of labor history," her story remains largely unknown.[140]

Nine years after Moreno's deportation, Dolores Huerta became the political director for the Community Service Organization, one of very few Latinas to be involved in California community organizing at the time.[141] Soon after this, Huerta began organizing farmworkers with César Chávez and formed the United Farmworkers Union (UFW) in 1962. From the outset, Dolores Huerta raised awareness about the sexual abuse and harassment faced by women farmworkers and how they were treated worse than their male co-workers. Having seen the conditions experienced by farmworkers and knowing how to organize and achieve legislative change, Huerta felt advocating for farmworkers was her "calling."

A core component of Dolores Huerta's work was ensuring women were part of the farmworkers organizing movement. As Chávez himself acknowledged, Dolores "made it all right for women to be on the picket line" and advocated for women's equal participation in the union throughout her leadership.[142] The UFW had more women involved in its organization than all other American unions combined, although for many years Huerta remained the only woman on UFW's executive board. While Huerta did not initially describe herself as a "feminist," this would change as she later built coalitions with the women's liberation movement and activists like Gloria Steinem while directing the first national boycott of California table grapes. Steinem herself

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[140] Ruiz, *supra* note 137, at 1.
[141] DOLORES, *supra* note 1 (Dolores Huerta's story is powerfully told by Peter Bratt).
[142] As interviewed in DOLORES, *supra* note 1.

has said "I would not have been able to see what was hidden in the fields of our country without Dolores."[143]

While Dolores Huerta's leadership was pivotal to the success of the UFW movement, she has often been recognized as a subsidiary figure in the movement. As Angela Davis commented, the assumption was Chávez "was the leader, and Dolores was the housekeeper."[144] Indeed, the infamous slogan "Sí se puede!" that formed the rallying cry of UFW picket lines has often been misattributed to Chávez.[145] Yet despite such setbacks, Dolores Huerta was a steadfast leader in the twentieth century farmworkers movement and still continues to fight for the rights of farmworker women today at the age of 93.

By understanding the stories of women like Moreno and Huerta we can see that Latina women have long been unsung leaders of collective labor organizing within farmworker communities. We can also see the strength their voices gave to these movements and how that continues to sound in Latina farmworker coalitions today.

B. The Strength in Movements Today

Across the country, many Latina-led organizations continue the work started by activists such as Luisa Moreno and Dolores Huerta. In this subsection I identify some of the organizations working to support farmworker women, educate workers about their rights, improve employer standards, increase and improve sexual harassment policies and training, and raise awareness of sexual violence in the agriculture industry. Farmworker women themselves have created several of these organizations and used grassroots organizing to develop leadership among themselves to combat the widespread sexual violence they face.[146] While there are many such organizations working across the United States, I identify just some of them below to demonstrate the ongoing strength of activism amongst farmworker women.

Alianza Nacional De Campesinas[147]

Alianza Nacional de Campesinas is a coalition of 15 grassroots, farmworker organizations across 11 states and the District of Columbia. The coalition advocates for the civil, constitutional, and human rights of farmworker women, and other women workers throughout the farm and food systems. It was the first national women farmworkers organization in the United States, created by current or former women farmworkers and female members of farmworker families. The organization has long worked to end the epidemic

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[143] *Id*.

[144] *Id*.

[145] Even President Obama attributed the slogan to Chávez when he adopted "yes we can!" in his 2008 Presidential campaign, yet he would later correct his mistake when giving Dolores Huerta the presidential medal. *See id*.

[146] Kominers, *supra* note 5, at 45.

[147] Alianza Nacional de Campesinas, https://www.alianzanacionaldecampesinas.org, *archived at* https://perma.cc/2J74-LCK6.

of sexual and domestic violence experienced by farmworker women through education, intervention and outreach to farmworker women, as well as policy and advocacy efforts to raise awareness about conditions on farms. Alianza also supports survivors' healing using theater, house meetings and art. Since many Alianza members have themselves experienced gender-based violence, their activism is grounded in personal experiences as survivors and witnesses to the harm such violence causes farmworker communities.

Justice for Migrant Women[148]

Justice for Migrant Women works to educate policymakers and other officials both at home and abroad about the various issues threatening the safety and security of migrant women and preventing migrant women from reaching their full potential. The organization has spent significant time educating decision-makers about the widespread gender-based violence that migrant women experience at work, including for farmworker women. Justice for Migrant Women conducts public awareness and education campaigns, including Know Your Rights presentations to workers, strategic media initiatives and a gender equity outreach initiative targeting farmworker women in Ohio. The organization also has a prominent art activism program, the Bandana Project, which raises awareness about sexual harassment against farmworkers. For many years, farmworker women have used layers of clothing, such as hats and bandanas, as shields to protect themselves from harassment and sexual violence in the fields. The Project uses white bandanas as a symbol of this sexual exploitation and decorates them to help support, fortify and empower farmworker women.

The organization's founder, Mónica Ramírez, is herself a leader, advocate, organizer, and attorney who has dedicated her career to helping farmworker women fight gender discrimination and sexual harassment in the workplace. Ramírez has regularly amplified the voices of farmworker women amongst mainstream gender discrimination movements, such as #MeToo and #TimesUp.[149]

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[148] *Our Work*, Justice for Migrant Women, https://justice4women.org/overview, *archived at* https://perma.cc/V6UU-JQ7H.

[149] *See, e.g.*, Héctor Tobar, *The Time's Up Initiative Built Upon the Work Done by These Labor Activists*, Smithsonian Mag. (Dec. 2018), https://www.smithsonianmag.com/innovation/times-upinitiative-built-upon-work-labor-activists-180970720/, *archived at* https://perma.cc/9D7Q-734B; Mónica Ramírez, *How Women Across Industries Are Finding Their Voice in the Fight Against Sexual Harassment*, Time Mag. (Dec. 11, 2018), https://time.com/5475979/alianza-letter-2018/, *archived at* https://perma.cc/LV6U-6ZY9.

Líderes Campesinas[150]

Líderes Campesinas was founded in the 1990s by Mily Treviño-Sauceda to give a voice to the women working in California's fields. The organization provides an opportunity for farmworker women leaders and activists to coordinate their work across California. At the heart of Líderes' leadership philosophy and practice is individual and community empowerment at the grassroots level.[151] Líderes built collectives across the state so that farmworker women (campesinas) may become agents of change and build a unified voice. The mission of the organization is to strengthen the leadership of farmworker women and youth. Líderes also advocates to legislators and policymakers about issues facing farmworker women, such as sexual harassment and abuse in the workplace.

Mujeres Luchadoras Progresistas[152]

Mujeres Luchadoras Progresistas (MLP) is a group of farmworker women from Oregon who promote leadership among women in their community. MLP began as a project of Oregon's farmworker union in 1992 in response to a significant increase in women members reporting domestic violence and sexual harassment in their workplaces. There were no agencies in the community addressing the root causes of these issues and MLP was founded to address the system perpetuating these conditions by creating a support network for farmworker women. Since its creation, MLP has worked toward numerous goals, including developing women's leadership within the farmworker community, developing an organized and collective response to workplace issues, running a radio program "Mujeres de la Comunidad" to share basic health information for women, and creating paths for farmworker women to seek greater economic independence.

Coalition of Immokalee Workers[153]

Founded in 1993, the Coalition of Immokalee Workers (CIW) is a worker-based human rights organization built by farmworker community organizing. CIW organizes the Fair Food Program, a worker-led human-rights initiative in the Florida tomato industry seeking to tackle sexual violence in the fields.

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[150] Líderes Campesinas, https://www.liderescampesinas.org/, *archived at* https://perma.cc/6L3H-79XJ. *See also* Maylei Blackwell, Líderes Campesinas: Grassroots Gendered Leadership, Community Organizing, and Pedagogies of Empowerment (NYU/Wagner Research Center for Leadership in Action 2007).

[151] Blackwell, *supra* note 150, at 36.

[152] Mujeres Luchadoras Progresistas, https://mujeresluchadoras.wordpress.com, *archived at* https://perma.cc/N5F6-WL3D.

[153] *About CIW*, Coalition of Immokalee Workers, https://ciw-online.org/about, *archived at* https:// perma.cc/U9YZ-T576; Kominers, *supra* note 5, at 45; Vera L. Chang, *After #MeToo, This Group Has Nearly Erased Sexual Harassment in Farm Fields*, Food & Wine (Mar. 9, 2020), https://www.foodandwine.com/news/after-metoo-this-group-has-nearly-erased-sexual-harassment-in-farm-fields, *archived at* https://perma.cc/TBU5-6PPF.

The Program, which now operates on over 27 farms, asks growers to agree to a code of conduct that promises their fields will be free of sexual harassment and assault. CIW farmworkers use a mix of education, monitoring and enforcement mechanisms to remedy and prevent sexual violence in the fields. The Program empowers workers to monitor their own rights through interactive peer-to-peer trainings using theater, art and real-life examples. Since the Program started in 2011, CIW has conducted 775 in-person sessions, educating more than 60,000 farmworkers across seven East Coast states. In educating workers about their rights, CIW shifts the culture surrounding sexual harassment away from one of secrecy.

All of these organizations share key strengths: amplifying the stories of women farmworkers, educating and sharing information amongst farmworker communities about their rights, supporting women in accessing legal and social support, advocating for the change farmworker women want to policymakers, and bringing a support network together to heal farmworker communities. If this incredible work is already occurring in many communities, how can we amplify the voices of these coalitions to continue to advance the cause for farmworker women? I attempt to address this question in the final section.

V. A Path Forward

"We recognize that women overcome exploitation and injustice when we organize and reclaim our rights… As a group of farmworker women, we will strengthen our pride, our dignity and advance our cause."

– Mujeres Luchadoras Progresistas[154]

Supporting and amplifying the work of organizations led by farmworker women is essential to achieving long term sustainable change for women in the fields. This section examines the opportunities that lie ahead to change the narrative about the experiences of farmworker women, support these coalitions and increase connections between farmworker organizations, government agencies and law enforcement.

First, part of the object of this article is to re-shape the existing narrative around farmworker women. There is an important story to tell about the vulnerability of farmworker women and the harm they experience as a result of sexual harassment and abuse in their workplaces. But there is a more complex story that recognizes the power, strength and agency of farmworker women who fight injustice, come forward to share their experiences, and build organizations to support and advocate for their communities. I offer a friendly critique of narratives that only share one side of this story and focus on the experiences of farmworker women as "victims." Further work to amplify the

[154] Mujeres Luchadoras Progresistas, *supra* note 152.

voices of farmworker women is essential. This work includes documenting and raising awareness about the experiences of farmworker women, as well as conducting further quantitative and qualitative research to continue to uncover the full scope of sexual exploitation in the fields. Collaboration between farmworker organizations, researchers, academics and journalists is important to achieving this work.

Second, increased funding and awareness for the important work already being conducted by farmworker organizations is essential. These organizations often operate with limited resources. Sustainable funding sources are crucial, including giving state and federal governments the opportunity to support this work. At the federal level, funding through the Violence Against Women Act scheme could provide one mechanism for sustainable funding.[155] Raising awareness about the successes of these organizations can also increase funding bases and broaden their reach.

Finally, it is important to build and maintain coalitions between Latina-led organizations, government agencies (such as the EEOC) and local law enforcement to increase awareness and accountability. While the EEOC already conducts important outreach with farmworker coalitions, it is important this work continues and is funded appropriately by the EEOC. It is also vital that those conducting EEOC outreach are able to connect with farmworker coalitions—if staff do not come directly from those communities, then training is essential to ensure staff fully understand the experiences of farmworker women, can speak Spanish and have access to interpreters to support indigenous farmworkers. Because of historically hostile relationships between many law enforcement offices and farmworker communities, coalition building between Latina-led organizations and law enforcement is important to provide opportunities for farmworker women to make criminal complaints where they choose to. One example of a successful initiative in this space is between Líderes Campesinas and the Monterey County District Attorney's Office, where the District Attorney included Líderes as part of its task force on sexual assault and domestic violence.[156] Coalitions such as this can break down barriers between law enforcement and farmworkers and encourage greater criminal accountability.

Latina-led farmworker organizations are already making considerable gains in their communities through efforts to support farmworker women and advocate for their needs. These organizations and women are experts in their experiences of harassment, in the support that they need, and in how to support their communities to prevent further sexual exploitation. We need to continue to listen to their voices, amplify their experiences, and actively support their cause.

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[155] *Office on Violence Against Women Grants and Programs*, U.S. DEP'T OF JUST., https://www.justice.gov/ovw/grant-programs, *archived at* https://perma.cc/D5XG-7K7M.

[156] Yeung, *supra* note 36.

Conclusion

"Part of what drives these women is that they don't want what happened to them to happen to their children and they want to end the cycle. There is a bigger story."

– Lucila Rosas, EEOC[157]

Life changed dramatically for Maricruz Ladino after she reported her sexual assault and came forward publicly in the *Rape in the Fields* documentary to share her experience.[158] At first, she received many harassing calls and was subjected to comments saying she was an "unfit woman." Coming forward also affected her personal relationships. Nevertheless, talking about her experiences was cathartic: "Now it's part of the medicine I take." Many have also acknowledged Maricruz's strength and impact. Maricruz's daughter told her she was proud of her. Strangers have approached her at the grocery store to thank her for telling her story. At one screening of the documentary in California, a group of high school students rushed up to Maricruz after the film to have their picture taken with her. After they left, Maricruz marveled at what happened: "This makes me feel like I did something important."

Although Maricruz Ladino's experience of sexual harassment as a Latina farmworker is all too common in American fields, her story is also representative of the strength and power demonstrated by farmworker women across the country. This article shed light on the strength of farmworker women who endure these exploitative and abusive conditions, resist their employers' abuse, speak out where they can, and build coalitions within their communities to support each other and advocate for systemic change. While some legal gains have been made to protect farmworker women and hold employers to account, it is the collective activism amongst farmworker women that most inspires a path forward to fundamentally change the conditions in the fields.

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[157] Rosas, *supra* note 50.
[158] Yeung, *supra* note 36.