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# Cultivating Fear

The Vulnerability of Immigrant Farmworkers in the US  
to Sexual Violence and Sexual Harassment



## **Cultivating Fear:**

**The Vulnerability of Immigrant Farmworkers in the US  
to Sexual Violence and Sexual Harassment**

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<b>Patricia M.'s Story .....</b>	<b>1</b>
<b>Summary .....</b>	<b>3</b>
<b>Key Recommendations .....</b>	<b>9</b>
To the United States Congress .....	9
To the US Department of Homeland Security .....	9
To the US Department of Labor and the Occupational Safety and Health Administration (OSHA) .....	9
To All State Governments .....	9
To Local Law Enforcement Agencies .....	10
To Agricultural Employers .....	10
<b>Methodology .....</b>	<b>11</b>
Definitions .....	13
<b>I. Background .....</b>	<b>15</b>
Immigrant Farmworkers: A Vulnerable Workforce .....	15
Structure of Agricultural Work .....	19
<b>II. Types of Workplace Sexual Violence and Sexual Harassment Experienced by Farmworkers .....</b>	<b>23</b>
Rape and Other Forms of Coercive Sexual Conduct .....	24
Unwanted Touching, Verbal Abuse, and Exhibitionism .....	27
Long-Term Harassment .....	29
<b>III. Unique Vulnerabilities .....</b>	<b>32</b>
Sexual Relations as a Supervisor's "Perk" .....	32
Girls and Young Women .....	34
Recent Immigrants .....	36
Single Women .....	36
Indigenous Workers .....	37
LGBT Workers .....	39

<b>IV. The Lasting Impact of Workplace Sexual Violence and Sexual Harassment .....</b>	<b>41</b>
Physical Injury, Psychological Trauma, Social Ostracism, and Disruption of Family Life .....	41
Limited Access to Necessary Social Services.....	43
Termination and Other Forms of Retaliation .....	46
<b>V. A Dysfunctional Immigration System .....</b>	<b>49</b>
Limitations of the Current Immigration System .....	50
The Government’s Competing Interests: Immigration Enforcement versus Worker Protection... ..	52
Limitations of U Visas.....	55
<b>VI. Inadequate Civil Law Protections for Agricultural Workers.....</b>	<b>58</b>
Exclusion of Farmworkers from Worker Protection Laws .....	58
Inadequate Enforcement of Existing Worker Protection Laws by DOL and Other Federal and State Agencies in Agricultural Workplaces .....	60
Particular Barriers for Unauthorized Immigrants .....	65
The EEOC: Positive Efforts but Limited Resources .....	67
<b>VII. Obstacles to Enforcement of Applicable Criminal Law .....</b>	<b>72</b>
Fears of Police Fueled by Police Involvement in Immigration Enforcement.....	72
Failure to Investigate Sexual Assault.....	77
<b>VIII. Employer Failure to Address Sexual Violence and Harassment .....</b>	<b>80</b>
Taking Advantage of the Dysfunctional Immigration System .....	80
Inadequate Sexual Harassment Trainings and Policies .....	83
<b>IX. International Legal Obligations.....</b>	<b>87</b>
Sexual Violence and Sexual Harassment as Human Rights Violations .....	87
Human Rights Standards on Immigrant Workers, Including Unauthorized Workers .....	89
<b>X. Recommendations .....</b>	<b>90</b>
To the United States Congress .....	90
To the US Department of Homeland Security .....	91
To the US Equal Employment Opportunity Commission .....	92
To the US Department of Labor (DOL) and the Occupational Safety and Health Administration (OSHA) .....	92
To All State Governments .....	93
To Local Law Enforcement Agencies .....	93
To Agricultural Employers .....	94
To Agencies Providing Services for Victims of Sexual Violence and Harassment .....	94
<b>Acknowledgments .....</b>	<b>95</b>

## Patricia M.'s Story

Patricia M. was 21 years old when she first came to the United States from Mexico about six years ago. Like most immigrant farmworkers in the US, Patricia did not have a work visa, but she was able to get work. About four years ago, she got a job harvesting almonds. The foreman would pick workers up and then drop them off at the end of the day at a local gas station. She said he repeatedly offered her food and drink, which “bothered [her] a lot,” because she felt he was not offering these things innocently. He insinuated that he could help her, saying, “Listen to me, I’m the foreman, and you’ll have a job.”

On the third day, he dropped off all the workers at the gas station except her. He told the rest of the workers he was going to pick up the water cooler, but instead, he took Patricia to a remote field.

“From there, he didn’t say anything, he just stared at me. I was wearing a hat and a bandanna [that covered my face], and he said, ‘What do you have there? An animal?’ And I knew he wanted to do something to me.”

Patricia described him as “fat, very big.” She reported that he got on top of her and tied her hands with her bandanna to the hand grip above the truck door. Then, she said, “He took off my clothes and he raped me.... He hurt me badly.”

Patricia did not tell anyone. She said, “I felt very sad and very alone.” She had no family in the US, and she did not want to tell her family in Mexico what had happened.

After the rape, Patricia continued to work at the same farm. She could not leave the job because there was no other work available. The abuse continued. “He kept raping me and I let him because I didn’t want him to hit me. I didn’t want to feel pain.” Eventually, Patricia found out she was pregnant. She heard that she could apply for disability benefits and went to a social service agency where the

employees asked her whether she had a partner. That question prompted her to tell them everything, and the agency helped her file a police report.

Patricia credits the agency for providing crucial support. She still has not told her family in Mexico what happened. Although she told her mother she was pregnant, she didn't tell her about the rape, "because I don't want her to be sick." Without the counselors at the agency, she knows she would never have filed the police report: "I was afraid they would put me in jail; I was afraid [they'd] send me to Mexico because I was illegal."

Patricia stated that the foreman was not prosecuted and sentenced for the crime. Instead, after arresting him, the police seem to have contacted immigration authorities, as he was soon deported. Unfortunately, this does not mean he is completely out of Patricia's life. She has heard reports from his family that he is planning to come back to the US and see the child. The rape continues to affect her in other ways as well. Patricia is now married, and her daughter is "so beautiful," despite the painful memories of how she became pregnant. Yet she reports, "Sometimes, I remember and I can't be intimate with my husband." She also worries because, "I don't know what to tell my daughter when she gets older."<sup>1</sup>

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<sup>1</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011.

## Summary

Hundreds of thousands of women and girls in the United States today work in fields, packing houses, and other agricultural workplaces where they face a real and significant risk of sexual violence and sexual harassment.<sup>2</sup> While the exact prevalence of workplace sexual violence and harassment among farmworkers is difficult to determine due to the challenges of surveying a seasonal, migrant, and often unauthorized population, the problem is serious.<sup>3</sup>

In researching this report, Human Rights Watch interviewed 160 farmworkers, growers, law enforcement officials, attorneys, service providers, and other agricultural workplace experts in eight states; almost without exception, they identified sexual violence and harassment as an important concern. Victims<sup>4</sup> of sexual violence and harassment are often reluctant to describe these experiences, yet nearly all of the 52 workers we interviewed, including many not specifically identified in advance as having been victims of such abuses, said they had experienced sexual violence or harassment or knew other workers who had.

Sexual violence and harassment in the agricultural workplace are fostered by a severe imbalance of power between employers and supervisors and their low-wage, immigrant workers. Victims often then face systemic barriers—exacerbated by their status as farmworkers and often as unauthorized workers—to reporting these abuses and bringing perpetrators to justice. To meet its human rights obligations to these farmworkers suffering sexual violence and harassment, the US government and agricultural employers must take steps to reduce and eliminate these barriers. This report documents the experience of immigrant farmworker women and girls with workplace sexual violence and harassment—with particular attention to unauthorized immigrants—and sets forth detailed recommendations for improving their working conditions and access to services and legal remedies.

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<sup>2</sup> The terms “sexual violence” and “sexual harassment” are used in conjunction in this report because neither term alone, as used colloquially, fully captures the nature of abuses described by farmworkers (see Definitions, p. 12).

<sup>3</sup> A 2010 survey of 150 farmworker women in California’s Central Valley found that 80 percent had experienced some form of sexual harassment, while a report by the Southern Poverty Law Center found that a majority of their 150 interviewees had also experienced sexual harassment. Irma Morales Waugh, “Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” *Violence Against Women*, January 2010; Southern Poverty Law Center, “Injustice On Our Plates: Immigrant Women in the U.S. Food Industry,” November 2010, <http://www.splcenter.org/get-informed/publications/injustice-on-our-plates> (accessed April 7, 2012).

<sup>4</sup> The terms “victim” and “survivor” are used interchangeably in this report.

Several farmworkers like Patricia M. (whose story is recounted above) reported being survivors of rape and other forms of coercive sexual conduct. Angela G., a single mother in California, told Human Rights Watch that she was raped by a supervisor who threatened her daily afterward.<sup>5</sup> An 18-year-old indigenous woman from Oaxaca, Mexico, who spoke no English and practically no Spanish, reported her rape to a local farmworker women's organization but left the area before the organization was able to help her seek justice. She reportedly told the young woman who tried to help her, "I would like to speak as you speak, but I can't defend myself."<sup>6</sup>

Many more farmworkers reported incidents of humiliating, debilitating harassment in the form of unwanted touching, pressure to engage in sexual relations, and verbal harassment. A woman in New York stated that she had picked potatoes and onions with a supervisor who touched all the women's bodies, and if they tried to resist, he would threaten to call immigration or fire them. Women packing cauliflower in California described working with a supervisor who exposed himself and made comments like, "[That woman] needs to be fucked!"<sup>7</sup> Knowing that they are likely to be viewed as "sexual objects," women often choose to wear clothes that obscure their faces and their bodies. Susana J., a farmworker who cut broccoli, stated, "Women can't dress normally.... You think, 'Oh my goodness, if I wear this, what will happen?' And in that way, the harassers affect you every day."<sup>8</sup>

Such violence and harassment are rarely singular events; many women reported that perpetrators had harassed and abused multiple victims over a period of time. Human Rights Watch's investigation found that, in most cases, perpetrators are foremen, supervisors, farm labor contractors, company owners, and anyone else who has the power to hire and fire workers as well as confer certain benefits, such as better hours or permission to take breaks. Farmworkers frequently depend on employers for housing and transportation, creating more opportunities for those who seek to take advantage of vulnerable workers. Co-workers are also perpetrators, enabled, in part, by an environment that can seem tolerant of abuses. In interviews with Human Rights Watch, farmworkers noted that certain workers are much more powerless and more likely to be victimized than

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<sup>5</sup> Human Rights Watch interview with Angela G. (pseudonym), California, June 2011.

<sup>6</sup> Human Rights Watch interview with Ines R. (pseudonym), California, August 2011.

<sup>7</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

<sup>8</sup> Human Rights Watch interview with Susana J. (pseudonym), California, June 2011.

others, including girls and young women, recent immigrants, single women working alone, and indigenous workers.

The impact of such violence and harassment can be devastating. Survivors of sexual violence experience various responses to the trauma, including depression, physical pain, and damaged relationships with their partners and families. Although many of the farmworkers who reported abuse stated they did so after interacting with a rape crisis center or other similar agency providing assistance to victims of sexual assault, few farmworkers have access to such agencies. Even where such agencies are present in rural communities, they are not always able to provide adequate services to limited-English-proficient immigrant victims.

Farmworkers who push back against the abuse, or report incidents to management, say they suffer retaliation, getting fewer hours, more abusive treatment, or, worst of all, losing their jobs altogether. Because many farmworkers work with family members, retaliation can mean the victim is fired along with her family, resulting in loss of income to the entire household. Those who live in employer-provided housing can even find themselves homeless. Some farmworkers who had filed sexual harassment lawsuits reported they were “blackballed” and shut out of jobs at other farms.

In general, survivors of sexual assault and harassment in the US struggle to report the assault or pursue justice. Nearly one in five women in the US has been raped at some point in her life.<sup>9</sup> Yet despite the prevalence of sexual violence and decades of legal reform meant to hold perpetrators accountable, in 2008 only 41 percent of victims of rape or sexual assault reported the crimes to the police,<sup>10</sup> and in 2010 less than a quarter of reported forcible rapes resulted in an arrest.<sup>11</sup> Similarly, a 2011 *Washington Post*-ABC News poll found that one in four women and one in ten men have experienced workplace sexual harassment; only 41 percent of women who had experienced harassment said they had reported it to their employers.<sup>12</sup>

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<sup>9</sup>US Department of Health and Human Services, Centers for Disease Control and Prevention, “National Intimate Partner and Sexual Violence Survey: 2010 Summary Report,” November 2011.

<sup>10</sup> US Department of Justice, Bureau of Justice Statistics, “National Crime Victimization Survey, 2008.”

<sup>11</sup> US Department of Justice, Federal Bureau of Investigation, “Crime in the United States 2010.”

<sup>12</sup> Gary Langer, “One in Four U.S. Women Reports Workplace Harassment,” ABC News, November 15, 2011.

Farmworker survivors of workplace sexual violence face the challenges all survivors face, but on top of that, they face particular challenges as farmworkers and as migrants. The agricultural industry has long been treated differently than other industries under US labor law. Agricultural workers are excluded from such basic protections as overtime pay and the right to collective bargaining. The laws that do exist are not adequately enforced, and several studies, including previous Human Rights Watch reports, have found that wage theft, child labor, and pesticide exposure occur with troubling frequency. In such an environment, farmworkers are unlikely to have faith in the ability of authorities to rectify abuses.

The agricultural industry relies heavily on unauthorized immigrants, who make up about 50 percent of the workforce, if not more. Although growers and farmworkers agree that the current situation is unsustainable, the US Congress has failed to pass legislation that would enable farmworkers already here to gain legal status and would reform the existing guestworker system for agricultural workers. Even many immigrants with work authorization lack English proficiency and education, and those with guestworker visas are dependent on their employer to remain in legal status, which can discourage workers from reporting workplace abuses.

The lack of any immediate prospect for gaining legal status affects the ability of unauthorized farmworkers to report sexual violence, sexual harassment, and other workplace abuses in myriad ways. Although US law entitles unauthorized workers to workplace protections and labor enforcement agencies assert that broad application of the law best protects the rights of all workers, the US government's interest in protecting unauthorized workers from abuse conflicts with its interest in deporting them. These competing interests affect unauthorized workers' ability to exercise their rights in several key ways.

Unauthorized workers often struggle to find legal representation, since federally funded legal services organizations are prohibited (with some exceptions) from representing unauthorized immigrants. Moreover, in a 2002 decision, the US Supreme Court in *Hoffman Plastic v. National Labor Relations Board* held that an unauthorized worker fired from his job for organizing does not have the right to receive compensation for lost work under the National Labor Relations Act (NLRA). This decision has raised questions about whether unauthorized workers are entitled to the same remedies for workplace abuse as authorized workers. The US government and worker advocates maintain that the decision is limited strictly to a specific provision of the National Labor Relations Act and does not affect the

applicability of other labor laws, but the decision forces lawyers to be cautious in the remedies they seek while also emboldening unscrupulous employers who may feel they have less to lose in mistreating unauthorized workers, including tolerating workplace sexual harassment.

The availability of the U visa—a special non-immigrant visa for victims of certain crimes who cooperate in investigations—provides some relief, but the usefulness of the visa is limited by inconsistent certification of victim cooperation by law enforcement agencies and the unavailability of such visas for most witnesses.

And while police are supposed to vigorously investigate crimes against all victims, regardless of immigration status, the increasing involvement of local police in federal immigration enforcement has fueled immigrants' fear of the police and their desire to avoid contact with the police, even to report crimes. State governments' efforts to get involved in immigration enforcement, through laws like Arizona's SB 1070 or Alabama's HB 56, have further fueled fears of the police and discouraged reporting of crimes in immigrant communities.

Some employers have also failed to meet their obligation to protect their employees from sexual harassment. Few of the farmworkers we spoke with said they received training on sexual harassment or information on how to report harassment. Where farmworkers did report the abuses to employers, many supervisors and employers ignored their complaints or retaliated against them, including with threats of deportation.

Both international human rights law and US law state that all workers, regardless of immigration status, have the right to protection from sexual harassment and other workplace abuses, as well as the right to redress when such abuses occur. The International Covenant on Civil and Political Rights (ICCPR), ratified by the US in 1992, declares, "Everyone has the right to liberty and security of person." The ICCPR further prohibits discrimination on "any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." US law specifically prohibits workplace sexual harassment as a form of employment discrimination under Title VII of the Civil Rights Act of 1964, and criminal laws prohibiting sexual violence are meant to protect all victims, including unauthorized immigrants. But it is not enough for these laws simply to exist. The ICCPR also requires states parties to

“ensure ... an effective remedy” when these rights are violated. The Inter-American Commission on Human Rights has similarly found that the American Declaration of the Rights and Duties of Man requires the United States to take due diligence to prevent, punish, and provide remedies for acts of violence, by private parties as well as state actors.

Sexual violence and harassment in the agricultural workplace is a complex problem which should be addressed in a comprehensive way. The US government and agricultural employers should take steps to ensure that farmworkers, including unauthorized farmworkers, are able to access “an effective remedy” and gain meaningful protection under these laws.

# Key Recommendations

## To the United States Congress

- Pass the Senate version of the Violence Against Women Act (VAWA) reauthorization bill (S. 1925) or similar legislation that strengthens the U visa and other protection for immigrant victims of sexual violence, including farmworker women and girls.
- Enact immigration legislation that would reduce the incidence of serious abuses of immigrant workers' rights, including reform of the existing agricultural guestworker program and enactment of a program of earned legalization for unauthorized farmworkers already in the US.
- Enact legislation to ensure equality of remedies for all workers who suffer workplace violations or seek to enforce workers' rights, regardless of immigration status, and thereby rectify the Supreme Court's decision in Hoffman Plastic.
- Eliminate the exclusion of farmworkers from important labor protections like the National Labor Relations Act and the Fair Labor Standards Act.

## To the US Department of Homeland Security

- Repeal programs such as Secure Communities which require or encourage local police to enforce federal immigration laws.
- Screen immigrants arrested in enforcement actions for eligibility for U and T visas and ensure that appropriate prosecutorial discretion policies, as outlined in Immigration and Customs Enforcement memoranda, are applied to them.

## To the US Department of Labor and the Occupational Safety and Health Administration (OSHA)

- Increase agricultural workplace inspections and the civil and criminal penalties imposed on employers, within the limits allowed by law, to improve their compliance with relevant laws.

## To All State Governments

- Ensure that state laws fill gaps in federal labor protections for agricultural workers and provide alternatives to federal avenues for seeking redress for sexual harassment and other workplace abuses.

## To Local Law Enforcement Agencies

- Take all necessary and appropriate steps to assure immigrant communities that unauthorized immigrants who report crimes will not be reported to immigration authorities.

## To Agricultural Employers

- Create and enforce clear workplace policies prohibiting sexual violence and harassment, and create accessible channels by which employees can safely report violations.
- Investigate every reported instance of sexual violence or harassment and take prompt corrective action to remedy the problem.

## Methodology

This report is based primarily on 160 in-person and telephone interviews conducted by a Human Rights Watch researcher with farmworkers, attorneys, members of the agricultural industry, service providers, law enforcement officials, and other experts in California, New York, North Carolina, Florida, Texas, Colorado, Ohio, Arizona, Pennsylvania, Tennessee, and the state of Washington, from March to August 2011.

We spent the longest time in California because it has the largest number of farmworkers—both authorized and unauthorized—in the United States, as well as a large number of farm labor contractors.

Human Rights Watch also reviewed press reports, reports by nongovernmental organizations, and public records of civil litigation involving allegations of sexual harassment in agricultural workplaces, identified primarily through a search of news and legal databases and through consultations with legal service providers representing farmworkers.

We interviewed 50 workers with experience in the agriculture industry, one with experience in poultry processing, and one with experience in both agriculture and poultry processing, or 52 workers in total. The interviewees included 47 women (including several who described experiences they had as girls), two girls under 18, and 3 men. Their experiences included working with a wide range of crops in both fields and packing houses. The crops included fruit (table grapes, oranges, strawberries, figs, blueberries, apples, cherries, and melons), vegetables (tomatoes, cauliflower, broccoli, lettuce, spinach, mixed greens, asparagus, garlic, onions, green beans, sweet potatoes, hot peppers, bell peppers, cucumbers, and cabbage), nuts (pistachios and almonds), and non-food products like cotton and tobacco.

We identified most interviewees with the assistance of rural legal service organizations, sexual assault survivor advocates, and other social service and advocacy organizations serving farmworkers. These interviewees are likely less isolated and less vulnerable on average than those who have no contact with such organizations. Given the sensitive nature of the subject and individuals' fears about their employment and immigration status, many organizations reported knowing or having met victims who were not (or would not be) willing to be interviewed by Human Rights Watch. About 25 interviewees were

referred to Human Rights Watch as having been survivors of sexual violence and/or sexual harassment. The majority of the remaining interviewees were not known by the referring agencies to be victims, but were women who had consented to being interviewed by us about their experiences as female farmworkers. Although both male and female farmworkers can be victims of sexual violence and sexual harassment, this report focuses on women and girls, for whom the prevalence of abuses is reportedly higher.

In addition to farmworkers, we interviewed lawyers representing farmworkers in sexual harassment cases, sexual assault survivor advocates, union representatives, social service providers, growers, agricultural industry representatives, regulatory agency staff, and local law enforcement officials in several localities. In total, as noted above, we interviewed more than 160 people.

Most interviews with farmworkers were conducted in Spanish, with the assistance of an interpreter. Some interviews were conducted in English or a mixture of English and Spanish, at the preference of the interviewee. Some individuals interviewed in Spanish were also native speakers of indigenous languages.

Most of the farmworker interviews were done individually, except in a few cases where interviewees preferred to speak in small groups. All but two of the 52 interviews were conducted in person in the interviewees' homes, in agency offices, or in other settings where the interviewee felt private and secure; the remaining two were done by telephone. Interviews ranged from 10 to 90 minutes in length. All participants were informed of the purpose of the interview and consented orally. Care was taken not to re-traumatize any survivors of sexual violence and harassment, and all interviewees were advised that they could decline to answer questions or terminate the interview at any time. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, counseling, or social services.

No interviewee received compensation for providing information. Two individuals were reimbursed for expenses incurred in traveling to the interview location.

Given the sensitive nature of the topic and unauthorized legal status of many interviewees, Human Rights Watch assured all farmworker interviewees that their identities would remain

confidential. Therefore, all farmworkers' names have been replaced with pseudonyms, and identifying details, such as the precise date and location of interview, have been withheld.

## Definitions

### *Sexual Violence and Sexual Harassment*

Sexual violence and sexual harassment are used in conjunction in this report for several reasons, the most important being that neither term alone, as used colloquially, fully captures the nature of abuses described by farmworkers.

Sexual violence is defined by the Centers for Disease Control and Prevention, an agency within the US Department of Health and Human Services, as "any sexual act that is perpetrated against someone's will," including rape, attempted rape, abusive sexual contact (such as unwanted touching), and non-contact sexual abuse (such as threatened sexual violence, exhibitionism, and verbal sexual harassment).<sup>13</sup>

Sexual harassment, as defined by the Equal Employment Opportunity Commission, a US agency charged with enforcing federal anti-discrimination laws in the workplace, can include unwelcome sexual advances, requests for sexual favors, and other verbal and physical harassment of a sexual nature, as well as rape and attempted rape. Under US law, workplace harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment, or when it results in an adverse employment decision. The harasser need not be the victim's supervisor, but may also be a co-worker or customer.<sup>14</sup>

Most of the incidents described by farmworkers interviewed by Human Rights Watch qualify under these definitions as both workplace sexual violence and sexual harassment. Given this fact and the sometimes narrow colloquial understanding of these terms, both terms are used throughout the report to accurately impart the significance of these abuses.

It is not within the scope of this report, however, to make legal determinations as to whether specific incidents described by interviewees would constitute actionable claims

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<sup>13</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention, "Sexual Violence: Definitions," page last updated November 9, 2009, <http://www.cdc.gov/violenceprevention/sexualviolence/definitions.html> (accessed January 9, 2012).

<sup>14</sup> US Equal Employment Opportunity Commission, "Sexual Harassment," [http://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm) (accessed January 9, 2012).

under US law. We gave the farmworkers we interviewed the opportunity to raise any and all concerns they had about workplace sexual harassment and did not limit our interviews solely to instances of sexual harassment that would form the basis for a lawsuit.

### *Farmworker*

Although the type of work most commonly associated with agriculture is planting and harvesting crops, agricultural labor includes a much broader range of tasks, including packing, canning, and working in tree farms and nurseries. Under the Fair Labor Standards Act (FLSA), “Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities ..., the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.”<sup>15</sup> The workers interviewed in this report have experience working in a wide range of these tasks.

As noted in the methodology section above, two testimonies come from workers with experiences in poultry processing and some of the secondary accounts and published cases discuss sexual violence and sexual harassment in meat production and dairy and egg production workplaces. These were included because the immigrant workers in these environments face similar challenges to those faced by workers in forms of employment more commonly labeled “agricultural.”

### *Unauthorized Immigrant*

This report uses the term “unauthorized” to describe individuals in the United States who lack authorization to live and work in the US. Some in this group came to the US with a visa but stayed past their visa expiration date or otherwise violated the terms of admission. Others came to the US without a visa. Some in this latter group have filed papers seeking legal status but are waiting, and likely will have to wait for years more, to obtain it due to the limited availability of immigrant visas. The term “unauthorized,” rather than “undocumented” or “illegal,” best captures the diversity of situations in this population.

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<sup>15</sup> Fair Labor Standards Act (FLSA), Section 3(f), 29 US Code Sections 203.

## I. Background

### Immigrant Farmworkers: A Vulnerable Workforce

There are an estimated 1.4 million crop workers in the United States, with an additional 429,000 livestock workers.<sup>16</sup>

The vast majority of farmworkers in the United States are believed to be foreign-born. According to the National Agricultural Workers Survey (NAWS), which surveys crop workers, about 72 percent of farmworkers in 2007-2009 reported they were foreign-born; 68 percent reported they were born in Mexico.<sup>17</sup> Although most are Latino, there are other immigrant groups as well; one sexual harassment lawsuit filed by the Equal Employment Opportunity Commission against a Florida vegetable and fruit wholesale was brought on behalf of five Haitian women.<sup>18</sup>

The proportion of farmworkers who are unauthorized is close to 50 percent and has held steady at that number since 2001.<sup>19</sup> Many believe the percentage of unauthorized workers may be even higher, as the methodology used by the NAWS relies on employers who agree to allow their workers to be interviewed.<sup>20</sup> Manuel Cunha, president of the Nisei Farmers

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<sup>16</sup> Measuring the number of people doing agricultural work in the US today is challenging for many reasons, including the migratory nature of the population, the seasonal nature of agricultural work, and the varying definitions of “agricultural work.” This widely cited figure of about 1.8 million agricultural workers is derived by dividing crop and livestock labor expenditures of farmers in each state by the average hourly earnings of farmworkers in that state, based on data from both the US Department of Agriculture National Agriculture Statistics Service (NASS) and the US Department of Labor National Agricultural Workers Survey (NAWS). Philip Martin, “California Hired Farm Labor 1960-2010: Change and Continuity,” *Migration Dialogue*, University of California-Davis, April 30, 2011, <http://migration.ucdavis.edu/cf/files/2011-may/martin-california-hired-farm-labor.pdf> (accessed March 12, 2012).

Other estimates of the US farmworker population range from about 1 million to over 3 million. US Department of Agriculture Economic Research Service, “Rural labor and Education: Farm Labor,” updated July 11, 2011, <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm> (accessed March 5, 2012); and National Center for Farmworker Health, “Migrant and Seasonal Farmworker Demographics,” 2009, <http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf> (accessed March 5, 2012).

<sup>17</sup> Daniel Carroll, Annie Georges, and Russell Saltz, “Changing Characteristics of US Farm Workers: 21 Years of Findings from the National Agricultural Workers Survey,” Immigration Reform and Agriculture Conference: Implications for Farmers, Farm Workers, and Communities, University of California, Washington, D.C. Campus, May 12, 2011, <http://migration.ucdavis.edu/cf/files/2011-may/carroll-changing-characteristics.pdf> (accessed March 12, 2012).

<sup>18</sup> Southern Poverty Law Center, *US EEOC et al. v. Gargiulo, Inc.*, Case Docket, <http://www.splcenter.org/get-informed/case-docket/-us-eeoc-et-al-v-gargiulo-inc> (accessed April 7, 2012).

<sup>19</sup> Carroll et al., “Changing Characteristics of US Farm Workers,” Immigration Reform and Agriculture Conference, May 12, 2011.

<sup>20</sup> US Department of Labor, “The National Agricultural Workers Survey: Survey Documentation—Statistical Methods of the National Agricultural Workers Survey,” updated January 5, 2011, <http://www.dol.gov/agworker/naws.cfm> (accessed January 24, 2012).

League, a major growers association, believes 90 percent of farmworkers in California have questionable documents and that across the nation, 75 to 80 percent are unauthorized.<sup>21</sup>

Not included in the NAWS are about 68,000 foreign-born farmworkers who have work authorization under the H-2A temporary foreign agricultural worker program, a very small portion of the entire agricultural workforce.<sup>22</sup> But these workers' visas are tied to their employers, and the worker is entirely dependent upon his or her employer for permission to remain in the United States. Thus, their work authorization provides little protection from abuse and retaliation.<sup>23</sup>

The native language of the vast majority of farmworkers is Spanish, and only 30 percent report speaking English "well."<sup>24</sup> Most have had little formal education; the average highest grade completed is eighth grade.<sup>25</sup>

According to the NAWS 2009-2010 data, about 24 percent of farmworkers are estimated to be female.<sup>26</sup> About three percent are under 18 and many of these children are girls.<sup>27</sup> Some women work with their husbands, but others are single mothers who, unable to support their children in their home countries, migrated to the US in search of work.

Women face particular difficulties in farm work. They are vulnerable to sexual violence and harassment and other forms of gender discrimination, and they face the significant challenge of taking care of children while working in an industry in which benefits like sick leave and paid vacation are extremely rare. Analysis of NAWS data from 2004-2006 by the

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<sup>21</sup> Human Rights Watch interview with Manuel Cunha, President, Nisei Farmers League, Fresno, California, August 12, 2011.

<sup>22</sup> US Department of Labor, "H-2A Temporary Agricultural Visa Program, FY 2011 Select Statistics," [http://www.foreignlaborcert.dol.gov/pdf/h\\_2a\\_selected\\_statistics.pdf](http://www.foreignlaborcert.dol.gov/pdf/h_2a_selected_statistics.pdf) (accessed February 23, 2012).

<sup>23</sup> See Farmworker Justice, "Litany of Abuses: More – Not Fewer – Labor Protections Needed in the H-2A Guestworker Program," December 2008, [http://www.fwjustice.org/images/stories/imm\\_labor\\_files/LitanyofAbuseReport\\_Dec2008\\_FINAL.pdf](http://www.fwjustice.org/images/stories/imm_labor_files/LitanyofAbuseReport_Dec2008_FINAL.pdf) (accessed January 30, 2012); Southern Poverty Law Center, "Close to Slavery: Guestworker Programs in the United States," March 2007, <http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states> (accessed January 30, 2012).

<sup>24</sup> Carroll et al., "Changing Characteristics of US Farm Workers," Immigration Reform and Agriculture Conference, May 12, 2011. The most recent Department of Labor report of data from 2001-2002 states that 81 percent of crop workers reported their native language is Spanish; 77 percent were foreign-born. US Department of Labor, Office of the Assistant Secretary for Policy, Office of Programmatic Policy, "Findings from the National Agricultural Workers Survey (NAWS) 2001-2002," March 2005.

<sup>25</sup> Ibid.

<sup>26</sup> Email communication from Daniel Carroll, US Department of Labor, Office of Policy Development and Research, Employment and Training Administration, to Human Rights Watch, March 13, 2012.

<sup>27</sup> Carroll et al., "Changing Characteristics of US Farm Workers," Immigration Reform and Agriculture Conference, May 12, 2011.

Southern Poverty Law Center found that the average personal yearly income of female crop workers was \$11,250, significantly lower than the average income of \$16,250 for male crop workers.<sup>28</sup> The Indigenous Community Survey, while cautioning that its sample size was small, found that indigenous farmworker women work in worse conditions and earn lower wages than indigenous farmworker men.<sup>29</sup>

Among the fastest growing populations of farmworkers in California, and possibly the US in general, are migrants from indigenous communities in Mexico and Central America. A 2010 study of indigenous farmworkers in California identified 23 different languages spoken by these workers, the most common being Zapoteco, Mixteco, and Triqui.<sup>30</sup> These workers frequently speak little or no Spanish, which isolates them even further from government and community services.<sup>31</sup> It is difficult to quantify exactly how many farmworkers are indigenous, as it is believed many report Spanish as their native language in their responses on the NAWS survey regardless of their actual mother tongue, but 15 percent reported being indigenous on the 2007-2009 NAWS.<sup>32</sup>

In California, researchers estimate that 20 percent of farmworkers, or approximately 128,000 farmworkers, may be indigenous.<sup>33</sup> Indigenous workers tend to be younger, more recently arrived, and poorer than other immigrant farmworkers, with less education and less English-speaking ability. They are frequently discriminated against in their home country, and continue to suffer discrimination at the hands of non-indigenous or mestizo immigrants when they come to the US. Social service agencies are often unaware that these workers speak a different language and have a different cultural background than other Latino immigrants. Thus, indigenous workers face additional barriers to reporting abuses and violations.<sup>34</sup>

Farmworkers' vulnerability is exacerbated by low wages and poverty. National surveys of farmworker wages represent mainly skilled and permanent employees and often exclude

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<sup>28</sup> Southern Poverty Law Center, "Injustice on Our Plates," November 2010.

<sup>29</sup> Richard Mines, Sandra Nichols, and David Runsten, and California Rural Legal Assistance, "California's Indigenous Farmworkers," January 2010, <http://indigenousfarmworkers.org/> (accessed January 30, 2012).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Aguirre International, "The California Farm Labor Force: Overview and Trends from the National Agricultural Workers Survey," June 2005, <http://agcenter.ucdavis.edu/AgDoc/CalifFarmLaborForceNAWS.pdf> (accessed January 30, 2012).

<sup>33</sup> Ibid.

<sup>34</sup> Mines et al., "California's Indigenous Farmworkers," January 2010.

workers who are unauthorized or paid by contractors.<sup>35</sup> Even so, the reported annual incomes are very low. Average annual income for crop workers from 2007-2009 ranged from \$15,000 to \$17,499; average total family income ranged from \$17,500 to \$19,999.<sup>36</sup>

Farmworkers are paid an hourly or daily wage or a piece rate. When a worker is paid a piece rate, the day's wages are calculated based on how many containers of fruit or vegetables are picked or packed. With some exceptions, however, the workers must be paid at least the minimum wage. As found in a previous Human Rights Watch study of child labor in US agriculture, *Fields of Peril*, however, workers who are paid a piece rate are often under extreme pressure not to take breaks, whether to go to the bathroom, drink water, or stand up from stressful, stooped positions.<sup>37</sup> The report also found that workers who are paid a piece rate who do not pick enough to meet the minimum wage are often not paid the difference as required by law.<sup>38</sup> For this report, a woman in North Carolina reported she had just worked an eight or nine-hour day and been paid only \$34, well below North Carolina's minimum wage of \$7.25 per hour.<sup>39</sup>

Should farmworkers lose their jobs, only 39 percent are eligible for unemployment insurance; should workers lose their jobs because of injury, less than 50 percent are eligible for workers' compensation. Unauthorized workers are not eligible for unemployment insurance even when their employers pay into the system. Twenty-one percent live in housing supplied by the employer, meaning the loss of a job would also result in loss of housing.<sup>40</sup> Farmworkers simply cannot afford to lose their jobs, and they often have few options for other employment if farm work is not available.

In keeping with national trends, immigrant farmworkers increasingly have lived in the US for long periods of time and live in "mixed status" families, where some members are US

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<sup>35</sup> Ibid.

<sup>36</sup> Carroll et al., "Changing Characteristics of US Farm Workers," Immigration Reform and Agriculture Conference, May 12, 2011.

<sup>37</sup> Human Rights Watch, *Fields of Peril: Child Labor in US Agriculture*, May 5, 2010, <http://www.hrw.org/reports/2010/05/05/fields-peril-o>.

<sup>38</sup> Ibid.

<sup>39</sup> Human Rights Watch interview with Jimena H. (pseudonym), North Carolina, August 2011. Her experience was confirmed by other farmworkers and by Nathan Dollar, executive director of Vecinos, a farmworker health organization, who has repeatedly met farmworkers being paid by piece rate for tomatoes and strawberries who are not making \$7.25 per hour. Human Rights Watch telephone interview with Nathan Dollar, Executive Director, Vecinos, July 17, 2011.

<sup>40</sup> Bon Appetit Management Company and United Farm Workers, "Inventory of Farmworker Issues and Protections in the United States," March 2011, <http://www.bamco.com/sustainable-food-service/farmworker-inventory> (accessed April 23, 2012).

citizens or have work authorization while others are unauthorized. In 2007-2009, 55 percent of foreign born-workers reported having been in the US for at least 10 years; 29 percent reported having been in the US for more than 20 years. In 1992-1994, only three percent of all farmworkers were in mixed status families, but by 2007-2009, that number had increased to 12 percent.<sup>41</sup> This is significant, as some advocates told Human Rights Watch that the fear of separation from US citizen family due to deportation was a significant factor in farmworkers' reluctance to report sexual violence and other abuses.<sup>42</sup>

## Structure of Agricultural Work

### *Seasonal and Temporary Work*

Some farms employ full-time workers year-round, but most farm work is by nature temporary and seasonal, which creates working conditions that are very different from those experienced by workers in most other industries. Because it is so difficult to find stable, year-round work, farmworkers have a strong interest in keeping the jobs they have.<sup>43</sup>

Most farmworkers, often called “settled” farmworkers, live and work in the same area year-round, such as in California, where the growing season is longer. Others are classified as “migrants,” defined in the NAWS as those who travel at least 75 miles within a 12-month period to obtain a job. Some “shuttle” between the US and a foreign country to work each year, while others migrate within the US for work; for example, workers Human Rights Watch met in North Carolina had also worked in New Jersey, Michigan, and Florida. Newcomers to the US are most likely to be migrant workers,<sup>44</sup> and as migrants, they are less likely to know about the communities in which they live temporarily and to have access to social services.

### *Farm Labor Contractors*

Farmworkers may be employed directly by growers or by farm labor contractors, who recruit and hire workers for multiple growers. Although the NAWS indicates that only 12 percent of

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<sup>41</sup> Carroll et al., “Changing Characteristics of US Farm Workers,” Immigration Reform and Agriculture Conference, May 12, 2011.

<sup>42</sup> Human Rights Watch telephone interviews with Daniela Dwyer, Staff Attorney, Florida Legal Services, Migrant Farmworker Justice Project, May 12, 2011; and Mercedes Lorduy, Attorney, VIDA Legal Assistance, May 18, 2011.

<sup>43</sup> According to the NAWS from 2000-2001, crop workers are employed on US farms an average of 34.5 weeks a year, and in non-farm activities for a little more than 5 weeks a year. US Department of Labor, “National Agricultural Workers Survey (NAWS) 2001-2002,” March 2005.

<sup>44</sup> Aguirre International, “The California Farm Labor Force,” June 2005.

farmworkers were employed nationwide by a contractor in 2007-2009,<sup>45</sup> the use of contractors varies significantly by state. One study using NAWS data from 2003-2004 found that while 18 percent were employed by contractors nationwide, 37 percent were employed by contractors in California.<sup>46</sup> Although farm labor contractors are required to be licensed by the US Department of Labor and are regulated by the Migrant Seasonal Agricultural Worker Protection Act, there are many small, unlicensed contractors operating outside of the regulatory framework.<sup>47</sup>

Growers may choose to use a contractor for a variety of reasons. Contractors are often second-generation or long-term immigrants who speak better English as well as Spanish and are better able to communicate with workers than growers are. Some farms that employ a small, year-round workforce find it convenient to use a contractor for the few months each season when they need more workers. And given the increase in the use of contractors after the enactment of the Immigration Reform and Control Act of 1986 (IRCA), there is evidence that some farmers seek to avoid IRCA-related paperwork and sanctions on employers for hiring unauthorized workers.<sup>48</sup> One farmer told Human Rights Watch that one reason he uses a contractor to hire his seasonal workforce is that some of his most valued employees are unauthorized, and he hopes using a contractor for new hires will help reduce the likelihood of an audit of his permanent workforce.<sup>49</sup>

The increase in the use of contractors is significant for several reasons. Contract workers tend to be paid less than directly-hired workers and are unemployed for longer periods during the year.<sup>50</sup> A study focusing on indigenous farmworkers found that contract workers receive the same wages but are more commonly mistreated, such as through charges or overcharges for equipment, food, rides, and other services by foremen.<sup>51</sup> Although not all contractors violate labor laws, farmworker advocates have raised particular concerns

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<sup>45</sup> US Department of Labor, “National Agricultural Workers Survey (NAWS) 2001-2002,” March 2005.

<sup>46</sup> Aguirre International, “The California Farm Labor Force,” June 2005.

<sup>47</sup> Bon Appetit Management Company and United Farm Workers, “Inventory of Farmworker Issues and Protections in the United States,” March 2011.

<sup>48</sup> Philip Martin, “California Hired Farm Labor 1960-2010,” April 30, 2011; Philip L. Martin and Gregory P. Miller, “Farmers increase hiring through labor contractors,” *California Agriculture*, vol. 47, no. 4, July-August 1993, <http://ucanr.org/repository/cao/landingpage.cfm?article=ca.v047n04p20&fulltext=yes> (accessed March 11, 2012), p. 20-23.

<sup>49</sup> Human Rights Watch telephone interview with California farmer, July 2011.

<sup>50</sup> Bon Appetit Management Company and United Farm Workers, “Inventory of Farmworker Issues and Protections in the United States,” March 2011; see also Philip Martin, “California Hired Farm Labor 1960-2010,” April 30, 2011.

<sup>51</sup> Mines et al., “California’s Indigenous Farmworkers,” January 2010.

about farm labor contractors, in part because some of the most egregious and well-publicized incidents of violations in an agricultural setting have involved contractors.<sup>52</sup> The role of contractors perhaps most warrants scrutiny because when violations occur under contractors, growers often argue that they should not be held liable because the contractors, not they, are the workers' employers.<sup>53</sup> Many farmworker advocates believe that some growers take advantage of the grower-contractor relationship to distance themselves from abusive working conditions and wages set by some contractors.

Swanton Berry Farm, a major organic strawberry producer in California, does not use contractors because the owners believe the primary motivation for using a contractor is "externalizing the risk of being an employer," and "that's not something we're interested in."<sup>54</sup> Other farmers echoed similar concerns and stated that when they do employ a contractor, they either work with a contractor they know and trust or ensure that the workers under the contractor receive the same training as their own permanent employees.<sup>55</sup>

One farmworker who has worked in North Carolina, Georgia, and Florida expressed strongly her belief that growers who directly employ workers and do not rely on contractors often feel more responsibility for the workers' working conditions:

Right now, we're working directly for a grower and it's very different.... He knows us personally.... When we went to work on Friday, he asked for a meeting with all of us. He said he wanted a job well done, work slow, that he didn't want anyone to get sick. He said it's going to be really hot, wants to make sure there's water, let women use the bathroom, water on both sides.... He explained to us, if there's lightning, don't wait for him to say so, just note the time and go home. With a contractor, you just keep working.<sup>56</sup>

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<sup>52</sup> "EEOC Files Its Largest Farm Worker Human Trafficking Suit Against Global Horizons, Farms," US Equal Employment Opportunity Commission press release, April 20, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/4-20-11b.cfm> (accessed March 12, 2012) (describing trafficking lawsuits brought in separate cases against farm labor contractors). See also Southern Poverty Law Center, "Under Siege: Life for Low-Income Latinos in the South," April 2009 <http://www.splcenter.org/get-informed/publications/under-siege-life-for-low-income-latinos-in-the-south> (accessed March 12, 2012) (describing a lawsuit against a large grower for unpaid wages, where the company argued the workers were actually employees of an independent contractor, although the workers lived in company labor camps, used company equipment, and were supervised by company employees).

<sup>53</sup> Ibid.

<sup>54</sup> Human Rights Watch telephone interview with Sandy Brown, Human Resources, Swanton Berry Farm, July 21, 2011.

<sup>55</sup> Human Rights Watch telephone interviews with Phil Foster, California farmer, July 1, 2011; and Larry Jacobs, California farmer, July 1, 2011.

<sup>56</sup> Human Rights Watch interview with Juana J. (pseudonym), North Carolina, July 11, 2011.

Although some farm labor contractors are large companies with millions of dollars in annual sales and hundreds of employees,<sup>57</sup> many are small, mom-and-pop operations with limited assets, which can affect the damages available to workers seeking remedies. If certain conditions are met, such as grower involvement in training or supervision of workers, workers can argue that the grower should be considered a joint employer. As a grower association representative noted, “A grower cannot interfere with a contractor’s business because if anything goes wrong, then there’ll be joint liability,” illustrating the incentive for growers to distance themselves from contractor-run farm operations.<sup>58</sup>

### *Supervisors and Others in Positions of Power*

Even growers who do not use contractors to find workers frequently relinquish oversight and responsibility to employees such as supervisors and foremen (frequently called crewleaders or *mayordomo*). The foreman may, in addition to recruiting and hiring workers, also help find housing, provide transportation to work (usually for a fee), and help newcomers adjust to life in the US. A foreman can have significant authority because he informs workers which fields they should report to and is typically responsible for determining pay.

Some contractors charge employees for transportation, food, and/or housing, either charging them directly or deducting these expenses from their paychecks, reducing their already meager pay. Those who are newcomers and more vulnerable tend to feel obligated to pay for a service like a ride from a *raitero*, a worker who provides transportation to the worksite.<sup>59</sup> Because many farmworkers do not have cars or other ways to get to work, the *raitero* has the power to take someone to work and to determine the conditions of transportation.

A *punchadora* is the person who is assigned the task of counting containers, boxes, or buckets for those who are paid by piece rate. Although it is not a supervisory position, it can be a coveted position because the work is somewhat less strenuous. Because the *punchadora*’s actions set wages for the day, it can also be a position of power.

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<sup>57</sup> Bon Appetit Management Company and United Farm Workers, “Inventory of Farmworker Issues and Protections in the United States,” March 2011.

<sup>58</sup> Human Rights Watch interview with Manuel Cunha, August 12, 2011; see also US Department of Labor, Wage and Hour Division, “Fact Sheet #35: Joint Employment and Independent Contractors Under the Migrant Seasonal Agricultural Worker Protection Act,” revised July 2008, <http://www.dol.gov/whd/regs/compliance/whdfs35.htm> (accessed January 31, 2012).

<sup>59</sup> Mines et al., “California’s Indigenous Farmworkers,” January 2010. The study found only 5 percent of non-indigenous workers with 9 or more years in this country will pay for rides.

## II. Types of Workplace Sexual Violence and Sexual Harassment Experienced by Farmworkers

For a woman alone, there is much danger.... A man can catch you in the fields where the plants are taller than you.

—Rosario E. (pseudonym), North Carolina farmworker, July 2011.

Nearly every worker interviewed by Human Rights Watch reported that they had either personally experienced some form of workplace sexual violence or harassment or personally knew someone who had experienced it. Our research confirms what farmworker advocates across the country believe: sexual violence and sexual harassment experienced by farmworkers is common enough that some farmworker women see these abuses as an unavoidable condition of agricultural work.

As one rural legal aid lawyer put it, sexual harassment is a “recurring, day in and day out, significant problem for women farmworkers.... It’s not a made-up issue, it’s real.”<sup>60</sup> A 2010 survey of 150 farmworker women in California’s Central Valley found that 80 percent had experienced some form of sexual harassment,<sup>61</sup> while a report by the Southern Poverty Law Center found that a majority of their 150 interviewees had also experienced sexual harassment.<sup>62</sup> In 1995 the Equal Employment Opportunity Commission (EEOC), the federal agency in charge of enforcing anti-discrimination laws, began specifically conducting education and outreach on sexual harassment of farmworkers. This initiative followed a meeting in which farmworkers and advocates told the agency that sexual assault and harassment were serious problems, with one worker referring to one company’s field as the “field de *calzon*,” or “field of panties,” because of the number of rapes that had occurred there.<sup>63</sup>

As described below, farmworkers reported experiencing a wide range of unwanted sexual violence and harassment.

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<sup>60</sup> Human Rights Watch interview with Michael Meuter, Director of Litigation Advocacy & Training, California Rural Legal Assistance, Migrant Farmworker Project, Salinas, California, April 5, 2011.

<sup>61</sup> Irma Morales Waugh, “Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” *Violence Against Women*, January 2010.

<sup>62</sup> Southern Poverty Law Center, “Injustice On Our Plates: Immigrant Women in the U.S. Food Industry,” November 2010.

<sup>63</sup> William R. Tamayo, “The Role of the EEOC in Protecting the Civil Rights of Farm Workers,” *UC Davis Law Review*, vol. 33, Summer 2000, p. 1075.

## Rape and Other Forms of Coercive Sexual Conduct

Rape and other forms of coercive sexual conduct are the most egregious forms of sexual violence and harassment experienced by farmworkers. Several women interviewed by Human Rights Watch reported they had been raped by a supervisor or co-worker.

### Angela G.'s Story

Angela G., like most farmworkers, came to the US about 12 to 13 years ago for “a better life.” What she found, however, was that to survive in the US she had to work “from sun-up to sun-down.” When she first began cutting and packing lettuce, the pain in her hands was excruciating, but she managed to continue and has worked in lettuce for the past 12 years.

In her experience, women in general were not valued by the supervisors and the foremen, but Angela reported that because she did not have a partner, she was singled out for abuse. “I was called a dyke; they said I was a lesbian.... [The supervisor] and the foreman would laugh.” She was afraid to say anything because others who had complained of sexual harassment had been fired immediately. But to listen in silence day after day caused her a great deal of pain: “There was no one to help me.... When I got home, all I could do was cry. And then I had to wake up the next morning and go to work [to survive].”

“All the supervisors were the same.... Even in those cases [where a supervisor was different], if they heard something, they just stayed quiet.”

Angela stayed on, however, because she wanted to get promoted, earn a higher salary, and be better able to support her family. And then one day, a supervisor asked her to come over to his house to pick up some boxes. Angela reported that after she entered the house, he raped her.

Angela said she felt powerless: “For me, it felt like an eternity. I wanted to scream but I couldn’t. Afterward, he said I should remember that it’s because of him that I have this job, and if I say anything, I’ll lose my job.... I was afraid to call the police, to do anything. I didn’t know what to do. My mind was completely blocked off.”

Angela explained that she withdrew into herself and became deeply depressed: “When someone lays a hand on you, you feel like you can’t go on.” With no family near her other than her daughter, she said she would talk “in silence” to her deceased father, which “allowed me to release a lot of what I was feeling.” But she reported that the perpetrator continued to threaten her on a daily basis, even telling other co-workers what he had done, to show that he was in control. Angela came to feel that even if she lost her job, she had to do something. “I didn’t have any willpower to continue with my life, but to think this could happen to someone else, that’s when I realized I had no other options [but to report it].” She first reported the rape to the company, but when nothing happened, she spoke with a lawyer, who helped her file a sexual harassment claim against the company.

Angela’s ordeal, however, did not end there. Her immigration status was another serious factor, as she was deported in the middle of her lawsuit, and she wondered if her employer had reported her to immigration. She felt everybody in her small community knew what had happened and were talking about her. She sought therapy, but found that it was too expensive and to go to a session would require her to miss work and lose even more income. Although free care was available in her area, the wait list was very long. Yet Angela found support from her attorney, and she began to feel she could regain some of what she had lost.

In Angela’s experience, companies fail to comply with laws that are meant to protect workers. She described how she has seen management at one workplace call a meeting and pass a piece of paper for the workers to sign, even though the workers had no idea what the meeting was about or what the paper said. They were then told that if anyone asked if they received any training, they were supposed to say, “Yes.”

For Angela, it is important that her experience help other workers: “My goal is that all their eyes are open to all the abuses.”<sup>64</sup>

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<sup>64</sup> Human Rights Watch interview with Angela G. (pseudonym), California, June 2011.

Farmworkers who had not been raped were well aware of the risk. A male farmworker who picks cabbages in New York said a female co-worker had told him in 2009 that the “American bosses” had approached her for sexual favors, and that she had accepted for fear of being fired.<sup>65</sup> Teresa G., a woman in North Carolina who works in tobacco, said that in 2011 a supervisor told two of her co-workers they had to have sex with him in order to get the job. When Teresa found one of the women crying, she asked why she had done it, and she replied, “My husband doesn’t have work. I don’t have work.” Teresa confronted the supervisor and told him, “You’re a fucking pig,” but he simply smiled.<sup>66</sup>

Rape was similarly reported to farmworker advocates in Texas, California, Arizona, and Florida. Several of the sexual harassment lawsuits brought by the Equal Employment Opportunity Commission have alleged rape as well as other forms of workplace harassment. In *EEOC v. Harris Farms*—a landmark case because it was the first and thus far only farmworker sexual harassment case to go to a jury trial—Olivia Tamayo, a Mexican immigrant who had worked for more than 15 years at Harris Farms, one of the largest agribusinesses in the country, won a damages award of almost \$1 million in 2005 after testifying that her supervisor forcibly raped her several times, sometimes at knife or gun point.<sup>67</sup> Other suits alleging sexual assault have involved a tree farm in Oregon<sup>68</sup> and an egg farm in Iowa.<sup>69</sup>

In many cases, moreover, relationships that appear consensual may be the product of psychological coercion or desperate economic circumstances. Veronica Z., a woman who has worked with onions and cotton in California, explained why she ended up in a sexual relationship with her supervisor:

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<sup>65</sup> Human Rights Watch interview with Carlos U. (pseudonym), New York, August 2011.

<sup>66</sup> Human Rights Watch interview with Teresa G. (pseudonym), North Carolina, July 2011.

<sup>67</sup> “Jury Orders Harris Farms to Pay \$994,000 in Sexual Harassment Suit by EEOC,” US Equal Employment Opportunity Commission press release, January 21, 2005, <http://www.eeoc.gov/eeoc/newsroom/release/1-21-05.cfm> (accessed March 5, 2012). The verdict was upheld by the Ninth Circuit Court of Appeals in *EEOC v. Harris Farms*, 274 Fed. Appx. 511, 2008 WL 1776532 (9th Cir. 2008).

<sup>68</sup> “Oregon Tree Farm Settles EEOC Lawsuit Over Sexual Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, April 21, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/4-21-11.cfm> (accessed March 5, 2012).

<sup>69</sup> “EEOC and DeCoster Farms Settle Complaint for \$1,525,000,” US Equal Employment Opportunity Commission press release, September 30, 2002, <http://www.eeoc.gov/eeoc/newsroom/release/9-30-02-b.cfm> (accessed March 5, 2012).

My son broke a leg riding a bike when someone ran him over. I arrived at work late, and the foreman fired me. I returned to work because [the perpetrator] was able to get me a job, only because we had relations. I needed the job for my children.<sup>70</sup>

Although they were not in a relationship, she reported that he continued to coerce her to have sexual relations with him for years. Veronica said when she tried to end it, he threatened her with a gun and began harassing her at work. When she eventually filed a lawsuit against the company he worked for, the company argued that she had been in a consensual relationship with him.<sup>71</sup>

A farmworker advocate in North Carolina stated bluntly, “It has to do with survival—nothing to do with free will or choice. I’ve seen 50-year-old men with 16-year-old girls who refuse to complain or discuss the relationship.”<sup>72</sup> A counselor at a domestic violence and sexual assault crisis center in Fresno, California, agreed that vulnerable women often end up in relationships with perpetrators of the abuse, especially if they get pregnant: “You’re having a child, you build a relationship with the perpetrator..., you’re getting financial support. [It] becomes normal to them.”<sup>73</sup>

## Unwanted Touching, Verbal Abuse, and Exhibitionism

The forms of sexual violence and harassment most commonly reported to Human Rights Watch were unwanted touching, verbal abuse, and exhibitionism.

Many women described how supervisors and co-workers with more workplace authority than they have would aggressively ask them out on dates. Juliana T. reported that when she was working in lettuce three years ago with her boyfriend, the foreman would say to her, “Leave your boyfriend because I have papers.” Although she never accepted, he repeatedly invited her to restaurants and casinos, asking almost three to four times a week, to the point that she “didn’t know what to say or do. I was scared.”<sup>74</sup> Some women were openly propositioned. Monica V., who has worked in North Carolina and New York, described how when she was working in tobacco, the contractor would offer her a ride,

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<sup>70</sup> Human Rights Watch interview with Veronica Z. (pseudonym), California, June 2011.

<sup>71</sup> Human Rights Watch interview with Veronica Z. (pseudonym), California, June 2011.

<sup>72</sup> Email communication from farmworker advocate with NC Field to Human Rights Watch, April 21, 2011.

<sup>73</sup> Human Rights Watch telephone interview with Rosie Lopez, Victim Advocate, Marjaree Mason Center, July 22, 2011.

<sup>74</sup> Human Rights Watch interview with Juliana T. (pseudonym), California, June 2011.

more hours, and more money in exchange for sex.<sup>75</sup> Mercedes Lorduy, an attorney with VIDA Legal Assistance in Florida, reported that one of her clients was stalked by a nursery owner to the point that she had to get a restraining order against him.<sup>76</sup>

Several women reported that supervisors would touch them as they stooped or bent over to plant or harvest crops. Mercedes A., for example, who picked potatoes and onions two years ago in New York, said her supervisor would touch women's bottoms and breasts as they worked.<sup>77</sup>

Women also reported verbal harassment and gestures that were obscene and humiliating:

- Bianca H. described working for years with men who would touch themselves, simulate sex with each other, and make comments like, "Last night, I dreamed about you; if you only knew how I dreamed about you! How many things I did to you!"<sup>78</sup>
- Claudia L., while working in grapes last year, reported she had a supervisor who made obscene and vulgar statements. "One time, my zipper was down, and he told me to zip it because he could see my vagina and he would want it if he saw it." Although she tried to ignore him, she was frightened when he saw her working alone, ahead of the others. "He said there were coyotes who would eat me, but he said, 'I'm going to eat you instead.'"<sup>79</sup>
- Four women who worked together in a cauliflower packing house from the end of 2010 to the beginning of 2011 reported being abused by a supervisor who every day shouted things like, "Women, move your hands like you fuck!" "You guys are fucking all day! You idiots!" "This is dick! You guys are worth a piece of dick!"<sup>80</sup> Ana D. remembered, "He was all powerful. He'd say, 'Nobody does shit to me! Everybody can suck my dick!'.... He would say to the men [because I don't have a

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<sup>75</sup> Human Rights Watch interview with Monica V. (pseudonym), New York, August 2011.

<sup>76</sup> Human Rights Watch telephone interview with Mercedes Lorduy, Attorney, VIDA Legal Assistance, May 18, 2011.

<sup>77</sup> Human Rights Watch interviews with Mercedes A. (pseudonym), New York, August 2011; Susana J. (pseudonym), California, June 2011; and Leticia N. (pseudonym), California, June 2011.

<sup>78</sup> Human Rights Watch interview with Bianca H. (pseudonym), California, June 2011.

<sup>79</sup> Human Rights Watch interview with Claudia L. (pseudonym), California, June 2011.

<sup>80</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E., California, April 2011.

husband], ‘Ana needs to be fucked!’”<sup>81</sup> Women were not the only ones who had to suffer his abuse, as he would also take his penis out of his pants and shake it at all of his workers.<sup>82</sup>

Unwanted touching, stalking, and verbal harassment exist on a spectrum with sexual assault. Cindy Marroquin at the California Coalition Against Sexual Assault (CALCASA) explained, “Many times it’s a progression; it’s not that they’re assaulted just one time. Usually it starts with verbal comments or verbal threats, what they would consider providing a compliment … just putting [the victims] in a place to say, ‘I could do this to you if I wanted to.’”<sup>83</sup> Patricia M. (whose story begins this report) reported she was verbally harassed before she was raped,<sup>84</sup> and Victoria Mesa, an attorney with Florida Rural Legal Services, reported that one of her clients endured constant harassment by her supervisor who tried to touch her, made lewd remarks, and showed his penis to her before he eventually raped her.<sup>85</sup> An EEOC lawsuit against Willamette Tree Wholesale alleged that the same supervisor who sexually assaulted one woman also harassed her sister with graphic sexual comments, propositions, and groping.<sup>86</sup>

## Long-Term Harassment

For farmworkers, sexual violence and harassment are not generally limited to a single isolated incident. Harassment often lasts for months, even years, and perpetrators often victimize multiple workers, regardless of whether complaints are made to company management.

Bianca H. reported that she packed spring mix and spinach for a greens company that did nothing to stop men from making obscene comments and gestures, despite complaints from Bianca and her female co-workers. She worked in this environment 12 hours a day over a seven-month season, day in and day out, for four years. Bianca cried as she

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<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Human Rights Watch interview with Cindy Marroquin, Advocacy Services Coordinator, California Coalition Against Sexual Assault (CALCASA), Sacramento, California, April 4, 2011.

<sup>84</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011.

<sup>85</sup> Human Rights Watch telephone interview with Victoria Mesa, Attorney, Florida Rural Legal Services, August 2, 2011.

<sup>86</sup> “Oregon Tree Farm Settles EEOC Lawsuit Over Sexual Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, April 21, 2011.

remembered: “I felt horrible. Every day, you feel they are just using you.... It makes you feel like you’re worth nothing.”<sup>87</sup>

Marcela V. reported that she had been a forewoman for 11 years where “[e]very season, there were women who complained to me, sometimes two or three women.”<sup>88</sup> Although she made complaints, nothing ever happened. Eventually she and Veronica Z., who was directly harassed, filed a lawsuit alleging sexual harassment and retaliation after they lost their jobs in 2005. During the hearing, she was devastated to discover for the first time that her adult daughter had also been harassed. “We were just machines doing the work for them because they didn’t even take us seriously.”<sup>89</sup>

Lorena U. reported that in September 2010, she was propositioned for sex by a supervisor at a garlic farm. She consulted with a caseworker at a local agency for domestic violence survivors, who advised her to report the incident to the owner of the farm. According to Lorena, the owner said several people had complained about this supervisor, but he had never believed them.<sup>90</sup> The caseworker told Human Rights Watch that three different women had separately reported problems with this particular supervisor.<sup>91</sup>

Many of the sexual harassment lawsuits brought by the EEOC on behalf of agricultural workers have been brought on behalf of multiple survivors, often as a class action. In recent years, the EEOC has brought sexual harassment lawsuits involving multiple plaintiffs against:

- Evans Fruit in Washington State, on behalf of three individuals and a class of women;<sup>92</sup>
- Cyma Orchids in California, on behalf of four women;<sup>93</sup>
- Spud Seller in Colorado, on behalf of several female employees;<sup>94</sup>

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<sup>87</sup> Human Rights Watch interview with Bianca H. (pseudonym), California, June 2011.

<sup>88</sup> Human Rights Watch interview with Marcela V. (pseudonym), California, June 2011.

<sup>89</sup> Ibid.

<sup>90</sup> Human Rights Watch interview with Lorena U. (pseudonym), California, June 2011.

<sup>91</sup> Human Rights Watch interview with caseworker (name withheld), California, June 2011.

<sup>92</sup> “Major Washington Apple Grower Hit with Preliminary Injunction,” US Equal Employment Opportunity Commission press release, November 3, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/11-3-10.cfm> (accessed March 5, 2012).

<sup>93</sup> “EEOC Sues Cyma Orchids for Sex and National Origin Discrimination, Retaliation,” US Equal Employment Opportunity Commission press release, September 30, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/9-30-10c.cfm> (accessed March 5, 2012).

<sup>94</sup> “EEOC Sues Spud Seller, Inc. for Alleged Sex Harassment by Supervisor,” US Equal Employment Opportunity Commission press release, September 30, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/9-30-100.cfm> (accessed March 5, 2012).

- Willamette Tree Wholesale in Oregon, on behalf of two female employees and two male relatives, also employees, on charges of severe sexual harassment and retaliation;<sup>95</sup>
- Holiday Specialtrees in Oregon, on behalf of two male victims of same-sex harassment and racial discrimination;<sup>96</sup>
- Knouse Foods in Pennsylvania, on behalf of a class of female employees who suffered harassment on the basis of sex and national origin;<sup>97</sup>
- DiMare, a large tomato farm in Florida, on behalf of at least three female employees.<sup>98</sup>

Four of the companies have settled with the EEOC—Cyma Orchids, Willamette Tree, Holiday Specialtree, and Knouse Foods—and in their settlement agreements agreed to broad, company-wide changes including one or more of the following: new policies and procedures to address unlawful discrimination, new trainings for managers, supervisors, and employees, and EEOC monitoring.<sup>99</sup> The other cases remain pending.

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<sup>95</sup> “Oregon Tree Farm Settles EEOC Lawsuit Over Sexual Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, April 21, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/4-21-11.cfm> (accessed March 5, 2012).

<sup>96</sup> “EEOC Sues Tree Farm for Sexual and Ethnic Harassment,” US Equal Employment Opportunity Commission press release, September 29, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/9-29-10n.cfm> (accessed March 5, 2012).

<sup>97</sup> “Knouse Foods Sued by EEOC for Sexual and National Origin Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, September 22, 2009, <http://www.eeoc.gov/eeoc/newsroom/release/archive/9-22-09a.html> (accessed March 5, 2012).

<sup>98</sup> “Immokalee Farming Operation Committed Sexual Harassment Against Women, EEOC Charges,” US Equal Employment Opportunity Commission press release, March 23, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/3-23-11.cfm> (accessed April 7, 2012).

<sup>99</sup> “Cyma & Taean Orchids to Pay \$240,000 for Harassment, Discrimination Against Latina Farm Workers,” US Equal Employment Opportunity Commission press release, November 29, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/11-29-11b.cfm> (accessed Marcy 5, 2012); “Oregon Tree Farm Settles EEOC Lawsuit Over Sexual Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, April 21, 2011; “Woodburn Tree Farm Settles EEOC Lawsuit for Sexual and Ethnic Harassment,” US Equal Employment Opportunity Commission press release, September 13, 2011, <http://www.eeoc.gov/eeoc/newsroom/release/9-13-11c.cfm> (accessed March 5, 2012); “Knouse Foods Agrees to Pay \$300,000 to Settle EEOC Harassment and Retaliation Lawsuit,” Friends of Farmworkers, Inc. press release, July 28, 2010, <http://www.palegalaid.net/news/palawhelporg-news/knouse-foods-agrees-pay-300000-settle-eeoc-harassment-and-retaliation-lawsuit> (accessed March 5, 2012).

### III. Unique Vulnerabilities

The foreman is the law.

— Santiago I. (pseudonym), California farmworker, June 2011.

Immigrant women and girls in agricultural work face unique vulnerabilities to sexual violence and harassment. Contractors, supervisors, foremen, growers, and others with connections and authority wield tremendous power. William Tamayo, a regional attorney at the EEOC who has litigated several farmworker sexual harassment cases, described a pattern he has seen repeatedly in the cases on which he has worked:

The owners of the major farms tend to be white, English speaking longtime family members who turn over operations of the farm to “Jose,” a longtime employee who is bilingual and who is expected to maintain the operations and keep labor problems to a minimum—you know, “out of sight, out of mind.” The workers are geographically isolated from community services, have few options in life and are in desperate poverty. They are dependent on Jose to navigate the English-speaking world for them. If Jose is a predator and/or his supervisors below him are predators, it is the ideal situation for sexual harassment to occur—unfettered, unpunished, and unstopped.<sup>100</sup>

Although anyone can be a victim, members of some groups may be more vulnerable than others. Unauthorized workers are particularly likely to be fearful of reporting abuses, and girls and young women, single women, and indigenous workers are particularly likely to be targeted, as well as unlikely to report inappropriate sexual speech or conduct.

#### Sexual Relations as a Supervisor’s “Perk”

Several farmworkers, including those who had worked as supervisors and foremen, told Human Rights Watch that some supervisors and foremen view the possibility of sexual relations with workers simply “as a perk of the job.”<sup>101</sup> Roberta C., a young woman who had

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<sup>100</sup> William Tamayo, “Rape, Other Egregious Harassment, Threats of Physical Harm to Deter Reporting, and Retaliation,” American Bar Association, Fifth Annual Labor and Employment Law Conference, Seattle, Washington, November 2011, <http://www.asianlawcaucus.org/wp-content/uploads/2011/10/Discrimination-Against-Asian-Americans-in-the-Workplace-Bill-Tamayo-ABA.Many-Faces.pdf> (accessed February 2, 2012).

<sup>101</sup> Human Rights Watch interview with Roberta C. (pseudonym), California, June 2011.

done farm work as a teenager, reported that her father had recently been promoted to foreman and her mother was extremely anxious because she could not help but wonder, “If that’s what foremen do, is that what he’s going to do, too?”<sup>102</sup> This idea of access to sex as a perk of the job was echoed by farmworker advocates.<sup>103</sup> Juanita Ontiveros, a long-time community advocate with California Rural Legal Assistance Foundation, reported that the “perk” is considered more likely when there is less work available and more competition for jobs: “[Women] are approached even by crewleaders, anybody who has a little bit of control or power ... who say, ‘I can get you a better job, I can get you in if you put out.’”<sup>104</sup>

The idea that workers who agree to a sexual relationship with the foreman or supervisor get preferential treatment is so widely held that some workers believe that whenever a woman is being treated better than others—for example, being assigned less strenuous or better paying work—she must be providing something in exchange.<sup>105</sup> A poultry processing worker who suffered sexual harassment and then retaliation while working from 2005 to 2007 recounted:

[Another woman is] splitting up with her husband because the same supervisor [who harassed me] caused problems.... She received a promotion. People think she did something. They [assume] when he retaliates, it’s because they won’t let him [have sexual relations]. When he promotes someone, they [assume] she said yes.<sup>106</sup>

Some perpetrators are co-workers without formal supervisory power. Some, however, have connections to the contractor or foreman that may make them feel invincible. Maria A., for example, believed the man who raped her was close friends with the contractor,<sup>107</sup> while 16-year-old Ana I. was verbally harassed by the contractor’s son in the summer of 2009.<sup>108</sup> Sexual harassment by co-workers also occurs in environments where such behavior by supervisors is openly tolerated.<sup>109</sup>

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<sup>102</sup> Human Rights Watch interview with Roberta C. (pseudonym), California, June 2011.

<sup>103</sup> Human Rights Watch telephone interviews with Juanita Ontiveros, Community Education and Outreach Advocate, California Rural Legal Assistance Foundation, July 7, 2011; and Julia Perkins, spokesperson, Coalition of Immokalee Workers, May 20, 2011.

<sup>104</sup> Human Rights Watch telephone interview with Juanita Ontiveros, July 7, 2011.

<sup>105</sup> Human Rights Watch interviews with Barbara L. (pseudonym), California, August 2011; Esperanza P. (pseudonym), California, June 2011; and Roberta C. (pseudonym), California, June 2011.

<sup>106</sup> Human Rights Watch interview with Guadalupe F. (pseudonym), North Carolina, August 2011.

<sup>107</sup> Human Rights Watch interview with Maria A. (pseudonym), California, June 2011.

<sup>108</sup> Human Rights Watch interview with Ana I. (pseudonym), North Carolina, July 2011.

<sup>109</sup> Human Rights Watch interviews with Barbara L. (pseudonym), California, August 2011; and Bianca H. (pseudonym), California, June 2011.

## Girls and Young Women

Hundreds of thousands of children under 18 work in agriculture in the United States, at far younger ages, for longer hours, and under more hazardous conditions than all other working children.<sup>110</sup> They are among the least likely to be able to “defend” themselves from sexual violence and harassment because “they don’t quite know what’s going on, they don’t know how to deal with it,” an attorney familiar with sexual harassment cases explained.<sup>111</sup> Despite the particular risks of sexual harassment in agriculture—including isolation in the fields—for young teenage girls, agriculture is often the only available work. While the minimum age for work in other industries is 16, with a few exceptions, there is no minimum age for children working on small farms as long as they have their parents’ permission, and once they are 14, they can work on any farm even without their parents’ permission.<sup>112</sup>

Young women, many of whom are recent arrivals to the US, are also at risk for similar reasons. An attorney who has worked on many sexual harassment cases involving farmworkers observed, “There’s no hard and fast rule, but frequently [women who report are] older, in their late 30’s and 40’s, [who] are more sure of their rights.... A lot of younger women never make it into the office.”<sup>113</sup>

Several farmworkers who are teenagers or who had worked as teenagers told Human Rights Watch they experienced or witnessed harassment and said those most at risk included not only children but those working alone, without their parents.<sup>114</sup> One 19-year-old woman, who had started working in tobacco when she was 14, remembered her mother was always extremely protective— “[She] never left us alone,”<sup>115</sup>—while another who had worked from when she was in eighth grade until she started college (from about 13 to 18

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<sup>110</sup> Human Rights Watch, *Fields of Peril: Child Labor in US Agriculture*, May 5, 2010, <http://www.hrw.org/reports/2010/05/05/fields-peril-o>.

<sup>111</sup> Human Rights Watch telephone interview with Laura Contreras, Attorney, Columbia Legal Services, and Blanca Rodriguez, Attorney, Northwest Justice Project, March 17, 2011.

<sup>112</sup> Human Rights Watch, *Fields of Peril*, May 5, 2010.

<sup>113</sup> Human Rights Watch interview with Michael Marsh, Directing Attorney, California Rural Legal Assistance, Salinas, California, April 26, 2011.

<sup>114</sup> Human Rights Watch interviews with Mariana T. (pseudonym), California, August 2011; Talia F. (pseudonym), North Carolina, July 2011; Rosario E. (pseudonym), North Carolina, July 2011; Marisol Z. (pseudonym), New York, August 2011; Juana J. (pseudonym), North Carolina, July 2011; Paola B. (pseudonym), California, June 2011; and Roberta C. (pseudonym), California, June 2011.

<sup>115</sup> Human Rights Watch interview with Isabel H. (pseudonym), North Carolina, July 2011.

years old) said she “would just cling to [her] parents,” believing “[i]t’s going to be okay as long as I’m close to them.”<sup>116</sup>

Paz B., an 18-year-old who has been doing farm work since she was 16, first came to the US with her sisters. But since her sisters were deported, she has been forced to work alone with a contractor who says things like, “This woman has a good ass. What she needs is a good man,” and who tells other co-workers that Paz would “sleep with any guy.”<sup>117</sup> There can be added pressure for girls and young women who are struggling to keep up with other workers. If a young female worker is not able to finish her row as quickly as others, her parents can help her, but if she is working alone with no family to “back [her] up,” she may be told, either implicitly or explicitly, that if she has a relationship with the foreman, “it would be okay if she were a little behind [in her work].”<sup>118</sup>

Girls and young women working with family members are not immune from predation, as perpetrators can take steps to separate them from their protectors. Cristina N. was a little over 18 when she was raped 12 years ago by a supervisor, who took her to a garden to separate her from her mother.<sup>119</sup> A farmworker advocate in Texas reported that, in one case, a contractor sent a young woman’s mother to another field so the contractor could have unhindered access to her daughter.<sup>120</sup> Similarly, one of the farmworkers in the EEOC lawsuit against Evans Fruit, a major Washington apple grower, described in the EEOC’s press release “how the ranch manager refused to let her work on the same crew as her 15-year-old daughter, who he then targeted with unwelcome verbal and physical sexual attention.”<sup>121</sup>

Girls and young women working with their families must also deal with the risk that, should they reject advances, they may be risking not only their own jobs, but also those of their family members. Ana I., a 16-year-old girl in North Carolina whose case is mentioned above, told us she was working in tobacco two years earlier when the contractor’s son began to try to hold her hand and talk to her. When she rebuffed his advances, she, her mother, and her mother’s boyfriend were all fired. She was devastated: “Because of that,

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<sup>116</sup> Human Rights Watch interview with Roberta C. (pseudonym), California, June 2011.

<sup>117</sup> Human Rights Watch interview with Paz B. (pseudonym), New York, August 2011.

<sup>118</sup> Human Rights Watch interview with Roberta C. (pseudonym), California, June 2011.

<sup>119</sup> Human Rights Watch interview with Cristina N. (pseudonym), California, August 2011.

<sup>120</sup> Human Rights Watch telephone interview with Roman Ramos, Paralegal, Texas Rio Grande Legal Aid, April 25, 2011.

<sup>121</sup> “Major Washington Apple Grower Sued for Sexual Harassment,” Equal Employment Opportunity Commission press release, June 25, 2010.

we couldn't pay our rent or light bill or anything. It was terrible. I thought if I had never said no, we wouldn't have ended up like this.”<sup>122</sup> Community workers at Centro Binacional para el Desarrollo Indígena Oaxaqueño (CBDIO), a California-based organization, described the case of a young Oaxacan girl, 15 or 16 years old, who had been raped by her foreman. They said the girl did not tell anyone because she was afraid he would fire her father, who was working with her. She eventually told her family only when she got pregnant, went to the hospital to give birth, and was questioned because she was a minor.<sup>123</sup>

## Recent Immigrants

Abusers recognize that young women who have just arrived in the US and who “don’t know many things” are particularly vulnerable.<sup>124</sup> A sexual assault survivor advocate in Fresno described a case in which the man who raped and impregnated her client was known to prey on the “new girls.”<sup>125</sup> Natalia B. said she was 20 years old and had just arrived in the US with a work visa in 2010, when she found herself the target of sexual harassment at a cauliflower packing house. The supervisor was abusive to everyone in the workplace, but she reported he had targeted her, touching her and asking her almost every day, “Are you going to give me booty, yes or no?” Although Natalia was good friends with some older women at work—who ultimately defended her and were fired along with her—she was only able to tell them about the full extent of the abuse when they were no longer working at the packing house.<sup>126</sup>

## Single Women

Although women now make up about 24 percent of the agricultural workforce in the US, they are still a minority in an overwhelmingly male industry. While many work with their husbands, there are also many single women, particularly single mothers who are desperate to keep jobs to support their children. Several farmworkers, as well as farmworker advocates, agreed that a single woman working in agriculture faced risks that a married woman would not.<sup>127</sup>

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<sup>122</sup> Human Rights Watch interview with Ana I. (pseudonym), North Carolina, July 2011.

<sup>123</sup> Human Rights Watch interview with Fidelina Espinoza and Oralia Macea, Community Workers, Centro Binacional para el Desarrollo Indígena Oaxaqueño (CBDIO), Fresno, California, June 20, 2011.

<sup>124</sup> Human Rights Watch interview with Juliana T. (pseudonym), California, June 2011.

<sup>125</sup> Human Rights Watch telephone interview with Ileana Herrera, Project Advocate, Marjaree Mason Center, July 22, 2011.

<sup>126</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

<sup>127</sup> Human Rights Watch interviews with Marisol Z. (pseudonym), New York, July 2011; Roberta C. (pseudonym), California, June 2011; Pilar D. (pseudonym), North Carolina, July 2011; Rosario E. (pseudonym), North Carolina, July 2011; and Marta L. (pseudonym), North Carolina, August 2011.

Marta L., a migrant farmworker who has worked in several states, including North Carolina, New Jersey, Michigan, and Florida, found that when she worked without her husband at her side, she “heard bad words, they lacked respect for [her].”<sup>128</sup> It was only when her husband came and said, “Be quiet,” that they stopped. She noted that the risks are particularly high for migrant women workers because “there is the question of where she will sleep, bathe, use the bathroom in labor camps.” At one point, when she was separated from her husband and working alone, she found herself in a group of migrants with just one other woman. Marta made sure to share a room with that woman, as she wanted to avoid what had happened to a woman she knew, who was raped when she slept among men in a labor camp in New Jersey.<sup>129</sup>

Angela G., whose rape by a supervisor is discussed above, also suffered verbal harassment from another supervisor who saw she was single and called her a “dyke” and a lesbian every day. She said, “When I got home, all I could do was cry, and then I had to wake up the next morning and go to work for food to eat.”<sup>130</sup> Magdalena C. was similarly singled out for abuse for not having a husband. She explained that the supervisor at the cauliflower packing shed would shout, “Magdalena needs to be fucked.”<sup>131</sup>

## Indigenous Workers

Indigenous farmworkers are particularly vulnerable to workplace abuses, including sexual violence and harassment, for a multitude of reasons. They are subject to discrimination in their home countries, then come to the US only to find that non-indigenous or mestizo immigrants continue to discriminate against them. As one farmworker reported, they are mocked for not speaking Spanish well: “They say obscene words to them, and when they don’t understand, they laugh more.”<sup>132</sup> Luz S., an older woman who had worked in agriculture for many years, agreed: “They are treated like they have no value ... like they’re not normal people.”<sup>133</sup> She further noted that people who speak Spanish defend themselves, but indigenous people do not.<sup>134</sup> One farmworker, who is herself indigenous but speaks Spanish well, agreed: “People scream at them and they let them. They don’t

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<sup>128</sup> Human Rights Watch interview with Marta L. (pseudonym), North Carolina, August 2011.

<sup>129</sup> Human Rights Watch interview with Marta L. (pseudonym), North Carolina, August 2011.

<sup>130</sup> Human Rights Watch interview with Angela G. (pseudonym), California, April 2011.

<sup>131</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

<sup>132</sup> Human Rights Watch interviews with Santiago I. (pseudonym), California, June 2011; and Juliana T. (pseudonym), California, June 2011.

<sup>133</sup> Human Rights Watch interview with Luz S. (pseudonym), California, August 2011.

<sup>134</sup> Ibid.

know how to defend themselves. They stay quiet; they don't even stop to drink water.”<sup>135</sup> Indigenous women in particular tend to speak little or no Spanish because they are less likely than men to have received much formal education.<sup>136</sup>

Many indigenous workers are from the Oaxaca region, and the discrimination against them extends to stereotypes about Oaxacan women and their sexuality. One male farmworker who has been a supervisor and a foreman casually stated, “All the supervisors and foremen believe that Oaxacan women like men more.... They like it because they don't say anything about it.”<sup>137</sup>

Several of the most egregious incidents of sexual violence and harassment reported to Human Rights Watch involved indigenous women and girls. The teenage rape survivor assisted by community workers at CBDIO, whose case is described above, was more vulnerable both because of her age and because her primary language is Zapoteco.<sup>138</sup> Ines R., a young farmworker and a member of Lideres Campesinas, a farmworker women advocacy organization, is fluent in Mixteco, and she recounted the story of a young Mixteco farmworker she had tried to help about two years ago. This woman told her she had been raped by a man who then stopped at a gas station. She dialed 911, the only number she knew, but when the police came, they spoke only English and Spanish, and interviewed her with the perpetrator in the same room. Because she was afraid and unable to communicate, she said she had not been raped. She later reported to Ines, “I felt like nothing, nothing, no heart, no feeling.” Ines said, “I read [the police report], and it said they couldn't do anything because the girl doesn't know how to speak Spanish.” Ines hoped to help her follow up on the police report, but soon afterward, the young woman left the area.<sup>139</sup>

The largest numbers of indigenous workers are in California, but they can be found all over the US. Victoria Mesa, a legal services lawyer in Florida, reported that one of her clients, a woman from Chiapas, was sexually harassed by a supervisor in a nursery “to the point he almost raped her.” When her client reported the supervisor to management, she was

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<sup>135</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011.

<sup>136</sup> Human Rights Watch interview with Jeff Ponting, Director, Indigenous Farmworker Program, California Rural Legal Assistance, Oxnard, California, June 29, 2011.

<sup>137</sup> Human Rights Watch interview with Emilio R. (pseudonym), California, June 2011.

<sup>138</sup> Human Rights Watch interview with Fidelina Espinoza and Oralia Maceda, June 20, 2011.

<sup>139</sup> Human Rights Watch interview with Ines R. (pseudonym), California, August 2011.

fired.<sup>140</sup> The EEOC recently settled a case against a tree farm in Oregon in which two male workers alleged both same-sex harassment and ethnic harassment due to their identification as Mixtecos, an indigenous group from Oaxaca, Mexico.<sup>141</sup>

The vast majority of indigenous workers, however, are extremely reluctant to report any kind of abuse. Sexual harassment is a particularly sensitive subject and difficult to discuss openly in indigenous communities.<sup>142</sup> Jeff Ponting, an attorney and director of the Indigenous Farmworker Program at California Rural Legal Assistance (CRLA), believes that because indigenous peoples typically have experienced discrimination in their home countries, they distrust governments and authorities even more than other unauthorized workers.<sup>143</sup> Although they are one of the fastest growing farmworker populations, growers, regulatory agencies, and social service agencies have made little effort to acknowledge the particular linguistic and cultural needs of this group. California law, for example, requires trainings to be provided only in Spanish and English, with no requirement that the workers understand. Ponting reports that a California agency only hired its first indigenous outreach worker after concerted advocacy by CRLA.<sup>144</sup> For Ponting, indigenous-focused outreach will pay dividends because the communities are tight-knit and well-organized, and those within the communities who do assert their rights can be “fierce advocates.”<sup>145</sup>

## LGBT Workers

The lesbian, gay, bisexual, and transgender (LGBT) farmworker population faces its own particular challenges with regard to both sexual harassment and other forms of discrimination.

CRLA and the National Center for Lesbian Rights discovered there was a serious need for improved legal services for LGBT people in rural California communities and created

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<sup>140</sup> Human Rights Watch telephone interview with Victoria Mesa, Staff Attorney, Florida Rural Legal Services, Migrant Farmworker Justice Project, August 2, 2011.

<sup>141</sup> “Woodburn Tree Farm Settles EEOC Lawsuit for Sexual and Ethnic Harassment,” US Equal Employment Opportunity Commission press release, September 13, 2011.

<sup>142</sup> Human Rights Watch telephone interview with Leoncio Vasquez, Executive Director, Centro Binacional para el Desarrollo Indígena Oaxaqueño, April 21, 2011.

<sup>143</sup> Human Rights Watch interview with Jeff Ponting, June 29, 2011.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

Proyecto Poderoso (Project Powerful) in 2007.<sup>146</sup> Dan Torres, director of the program, told Human Rights Watch that the anti-LGBT animus is so strong that the comments and actions that create a hostile work environment for LGBT workers can also hurt those who are not LGBT or even perceived to be LGBT. The stigma also discourages victims from reporting.<sup>147</sup>

Belen F., a transgender woman who said she had experienced discrimination in Mexico and had hoped life in the US would be different, reported she was sexually harassed and her partner was assaulted at an asparagus packing plant in California four or five years ago. Belen had been working at the same packing plant for several years when she was promoted to foreman. She said she then began to hear the owner of the plant calling her “*joto* or faggot,” and they repeatedly reduced her wages to the point that she was making less than her assistant.<sup>148</sup>

Legal services providers elsewhere in California and in other states also report encountering cases of same-sex sexual harassment, both against workers who identify as LGBT and against those who do not,<sup>149</sup> and at least one EEOC case has involved an allegation of same-sex harassment against two indigenous male workers.<sup>150</sup>

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<sup>146</sup> “NCLR Launches New Project Combating Discrimination against LGBT People Living in Rural California,” National Center for Lesbian Rights press release, December 17, 2007, [http://www.nclrights.org/site/PageServer?pagename=press\\_proyectopoderoso](http://www.nclrights.org/site/PageServer?pagename=press_proyectopoderoso) (accessed March 13, 2012).

<sup>147</sup> Human Rights Watch interview with Dan Torres, Proyecto Poderoso Director and Attorney, California Rural Legal Assistance, San Francisco, California, April 7, 2011.

<sup>148</sup> Human Rights Watch interview with Belen F. (pseudonym), California, June 2011.

<sup>149</sup> Human Rights Watch telephone interviews with Victoria Mesa, August 2, 2011; Jenifer Rodriguez, Attorney, Colorado Legal Services, August 5, 2011; Laura Contreras, Attorney, Columbia Legal Services, and Blanca Rodriguez, Attorney, Northwest Justice Project, March 17, 2011; and Cheryl Gee, Community Worker, Farmworker Legal Services of New York, May 5, 2011.

<sup>150</sup> “Woodburn Tree Farm Settles EEOC Lawsuit for Sexual and Ethnic Harassment,” US Equal Employment Opportunity Commission press release, September 13, 2011. In this case, two male workers alleged the supervisor and other workers would expose themselves while making sexual comments, and co-workers would grab the men’s buttock and chest area or grab them and simulate anal sex.

## IV. The Lasting Impact of Workplace Sexual Violence and Sexual Harassment

Even after workplace sexual violence or harassment ends, survivors continue to suffer the consequences of the abuses. They may have physical injuries and psychological trauma. The abuses sometimes destroy relationships with family members, particularly husbands and partners. And many farmworkers face significant challenges obtaining necessary medical treatment for their physical injuries and mental trauma. Survivors who report abuses to company management or rebuff advances risk getting fired and experiencing other forms of retaliation, including being reported to immigration authorities.

### Physical Injury, Psychological Trauma, Social Ostracism, and Disruption of Family Life

Several survivors of workplace sexual violence and harassment told Human Rights Watch they suffered serious physical and psychological trauma as a result of the abuse:

- **Maria A.** said she was initially scared to report her rape in the summer of 2010, but when she found herself still in pain three months later, she sought medical treatment in a hospital, which then referred her to a social services agency. Now, she said, “I try to be strong.... Sometimes when I am sad, I begin to cry. I ask God not to let this happen to me again and protect me from bad people. I am going to see a doctor because every time I have intercourse with my boyfriend, it hurts and I bleed. I think something was hurt or damaged.”<sup>151</sup>
- **Patricia M.** (whose story begins this report) reported that she still feels pain resulting from physical assault and rape. She feels lucky to be in a good relationship now, but “sometimes, I remember [being raped] and I can’t be intimate with my husband.”<sup>152</sup>
- **Veronica Z.**, who reported being coerced into a sexual relationship with a supervisor, became deeply depressed, according to her caseworker: “She used to come see me every day, so depressed. She would clench her teeth because of the pressure.”<sup>153</sup>

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<sup>151</sup> Human Rights Watch interview with Maria A. (pseudonym), California, June 2011.

<sup>152</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011.

<sup>153</sup> Human Rights Watch interview with caseworker (name withheld), California, June 2011.

In an EEOC sexual harassment case against a tree farm, an Oregon federal court ruled that the lawsuit should move forward even though one of the women who alleged rape did not file her claim within the 300-day time limit prescribed by law. The court concluded that the psychological damage suffered by the survivor—including post-traumatic stress disorder, severe depression, suicidal ideation, social isolation, and panic attacks—justified her delay.<sup>154</sup>

Verbal harassment can be debilitating as well. Four years after leaving the job where she was harassed, Lucia A. was brought to tears as she recounted her story. For over 10 years, she said, she endured daily harassment while packing broccoli: “Every time I went to the bathroom, [my supervisor] would make comments about my bottom and say vulgar things.... I feel a lot of pain remembering this.” Although she was interested in talking to a professional therapist, she believed she could not afford it.<sup>155</sup>

Several farmworker survivors of sexual violence and harassment, as well as farmworker advocates, reported to Human Rights Watch that they suffered from adverse community and family reactions to revelations that they had been abused. It is difficult to discuss sexual violence and harassment in any culture, but it can be particularly difficult in communities where it is commonly assumed the victims are at fault. One male farmworker who has been a supervisor and a foreman declared, “Women are to blame for it as well. I see that they are alone, single, not married. I see that they like being told these things.”<sup>156</sup> Farmworker women, such as Carolina M., agreed that “men think it’s our fault; they think you smiled at them; they never believe us.”<sup>157</sup>

Rosana C., a farmworker in New York, reported seeing immediate damage to her relationship with her husband when she became a victim of sexual violence and harassment. She was raped by a co-worker about five years ago, and more recently she has been subject to daily harassment by a co-worker who sends her text messages multiple times a day. Rosana’s pain is exacerbated by her husband’s reaction: “He’s machisto.... He blames me; he thinks I

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<sup>154</sup> “Oregon Tree Farm Settles EEOC Lawsuit Over Sexual Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, April 21, 2011; see also *EEOC v. Willamette Tree Wholesale, Inc.*, cv-09-690-pk, 2011 U.S. Dist. LEXIS 25464 (D. Or. 2011).

<sup>155</sup> Human Rights Watch interview with Lucia A. (pseudonym), California, April 2011.

<sup>156</sup> Human Rights Watch interview with Emilio R. (pseudonym), California, June 2011.

<sup>157</sup> Human Rights Watch interview with Carolina M. (pseudonym), California, August 2011.

provoked [the rapist]. And now I'm telling him this man is harassing me at this job but [he won't do] anything to protect me.”<sup>158</sup>

Irma Luna, a community worker at California Rural Legal Assistance, has encountered victims who similarly were blamed by their husbands. “We had a female working in a packing house with her husband in the Arvin/Lamont area. She was harassed by the foreman.... She tried telling her husband; it went pretty ugly. She kind of got discouraged and disappeared.”<sup>159</sup>

## Limited Access to Necessary Social Services

Several farmworker survivors of severe workplace sexual harassment and sexual violence reported that they had sought therapy and other mental health services. A few were able to get some counseling and emotional support, but the vast majority were unable to access these often crucial services. Some thought it would be too expensive, not realizing free care was available. Those who were offered free care found that the wait-list was very long or the free care was inadequate.<sup>160</sup> Rosana C. was offered services, but when she tried to call a shelter number, she found no one spoke Spanish.<sup>161</sup>

Many victim advocates agree and say there is a desperate need for more mental health and support services, including transportation to therapy sessions. Spanish-speaking private counselors are extremely rare in rural areas, and even where they exist they are often hours away from the communities that need them.<sup>162</sup> As one attorney stated, “For a woman

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<sup>158</sup> Human Rights Watch interview with Rosana C., New York, August 2011. Another Mexican immigrant low-wage worker, who was a victim of rape by an acquaintance outside the workplace, reported that her husband had separated from her after hearing about the rape. Human Rights Watch interview with Tricia B. (pseudonym), California, August 2011.

<sup>159</sup> Human Rights Watch telephone interview with Irma Luna, Community Worker, Indigenous Farmworker Program, California Rural Legal Assistance, July 22, 2011. Similar stories were recounted by other farmworker advocates. Human Rights Watch telephone interviews with Victoria Mesa, Attorney, Florida Rural Legal Services, August 2, 2011; and Juanita Ontiveros, Community Education and Outreach Advocate, California Rural Legal Assistance Foundation, July 7, 2011.

<sup>160</sup> Human Rights Watch interviews with Angela G. (pseudonym), California, June 2011; Lucia A. (pseudonym), California, April 2011; and Miriam G. (pseudonym), California, August 2011. Miriam G. is not a farmworker, but as an unauthorized immigrant, her experience seeking services after being raped was similar to the experiences of farmworkers.

<sup>161</sup> Human Rights Watch interview with Rosana C. (pseudonym), New York, August 2011.

<sup>162</sup> Human Rights Watch telephone interviews with Jenifer Rodriguez, Attorney, Colorado Legal Services, August 5, 2011; and Liz Chacko, Attorney, Friends of Farmworkers, July 29, 2011. Human Rights Watch interviews with Amparo Yebra, Executive Director, Westside Family Preservation Services Network, Huron, California, June 17, 2011; Raye Bugnosen, Clinical Services Manager, Alliance Against Family Violence and Sexual Assault, Bakersfield, California, June 27, 2011; and Lorena Reyes, Peer Counselor, Alliance Against Family Violence and Sexual Assault, Bakersfield, California, June 27, 2011.

experiencing trauma, dealing with work and family, to travel two hours to speak with a therapist is not going to happen.”<sup>163</sup>

When free individual counseling is available for undocumented and uninsured workers, it is often limited to survivors of rape who are willing to assist prosecutors or are in need of emergency services. Survivors of less severe forms of sexual violence or harassment, who are not eligible for state-funded victim services, generally cannot access the care that they need.<sup>164</sup>

The experience of the women we spoke with most likely does not convey the full extent of the problem, as they at least made contact at some point with a social service agency. Many farmworker survivors of sexual violence and harassment most likely are never in touch with agencies. Lideres Campesinas, an organization that has been working to improve services for farmworker women throughout California, told Human Rights Watch that the culture of rape crisis centers and hotlines can be “incomprehensible” to farmworkers: “When women call into a number, it asks them to call another number. Or the numbers have letters [in English] like ‘GET HELP.’”<sup>165</sup>

In cases where workers we spoke to did report crimes, they most often did so because social and legal service organizations had conducted extensive outreach until “someone in the community said, ‘Go to them, you can trust these people.’”<sup>166</sup> Such trust typically cannot be gained simply through traditional outreach. For example, agencies serving survivors of domestic violence and sexual assault frequently create support groups for survivors, but these subjects are taboo in many farmworker communities. According to Cindy Marroquin at CALCASA, “what works best is just having groups in general where people get together.... It’s just hanging out with your neighbor, and there’s no specific agenda.”<sup>167</sup> Amparo Yebra, director of an agency with a strong presence in its small Central Valley, California, community concurred, saying their approach is to convene support

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<sup>163</sup> Human Rights Watch interview with Michael Meuter, Director of Litigation Advocacy & Training, California Rural Legal Assistance, Migrant Farmworker Project, April 5, 2011.

<sup>164</sup> Human Rights Watch telephone interview with Laura Contreras, Attorney, Columbia Legal Services, and Blanca Rodriguez, Attorney, Northwest Justice Project, March 17, 2011.

<sup>165</sup> Human Rights Watch interview with Daniela Ramirez, then-Executive Director, Suguet Lopez, then-Director of Programs and current Executive Director, and Ramona Felix, Statewide Coordinator of Sexual Assault, Harassment, and Trafficking Programs, Lideres Campesinas, Oxnard, California, June 29, 2011.

<sup>166</sup> Human Rights Watch telephone interview with Laura Contreras and Blanca Rodriguez, March 17, 2011.

<sup>167</sup> Human Rights Watch interview with Cindy Marroquin, Advocacy Services Coordinator, California Coalition Against Sexual Assault (CALCASA), Sacramento, California, April 4, 2011.

groups every Friday with speakers on topics as varied as nutrition and budgeting information. Her agency's clients "stay here for years, even though their problems [are] solved, they still come back if they have a letter in English they don't understand, with bills.... Anything that they need, they can come into our office."<sup>168</sup> The Alliance Against Family Violence and Sexual Assault, an agency in Bakersfield that has slowly built support groups in the smaller towns around Bakersfield, noted they "[had] to really pound the pavement," and consistently convene support meetings, even if no one showed up, in order to build trust.<sup>169</sup>

Developing the capacity to serve farmworkers who do not speak English is obviously a major challenge, particularly in states where there are few bilingual Spanish speakers, let alone speakers of other relevant languages. In upstate New York, a community worker found that when she looked at websites of local agencies, "[they're] not in Spanish or Haitian Creole; they don't have advocates or interpreters."<sup>170</sup>

Although increasing access to therapy and similar services will initially require financial investments—a difficult proposition when government budgets are tight—such services can make a tremendous difference for survivors of sexual violence and harassment. As recounted in the beginning of this report, Patricia M. reported that she first came to an agency because she hoped to file for disability insurance due to her inability to work while pregnant. The workers she met there were the first people who heard what happened to her, and the agency helped her file a report with the police, something she says she could never have done without them. "For a whole year, I came all the time. They gave me the strength to move on with my child."<sup>171</sup> And greater outreach and prevention services may ultimately reduce the economic costs associated with sexual violence.<sup>172</sup>

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<sup>168</sup> Human Rights Watch interview with Amparo Yebra, Executive Director, Westside Family Preservation Services Network, Huron, California, June 17, 2011.

<sup>169</sup> Human Rights Watch interview with Raye Bugnosen, Clinical Services Manager, Alliance Against Family Violence and Sexual Assault, Bakersfield, California, June 27, 2011.

<sup>170</sup> Human Rights Watch telephone interview with Lew Papenfuse, Executive Director, and Cheryl Gee, Community Worker, Farmworker Legal Services of New York (now merged with Workers' Rights Law Center as Worker Justice Center of New York), May 5, 2011.

<sup>171</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011.

<sup>172</sup> For more on the economic impact of rape, focusing specifically on intimate partner violence, see US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, "Costs of Intimate Partner Violence Against Women in the United States," March 2003.

## Termination and Other Forms of Retaliation

Many of the cases described to Human Rights Watch involved victims who were fired, either for reporting abuse or for rebuffing advances. Monica V., for example, said she was propositioned repeatedly by a contractor when she was working in tobacco. When she said no, “I want to earn my money with the sweat of my brow,” he would not allow her to take bathroom breaks or even short breaks to stand up from stooping. When she was in so much pain that she had to stand up and rest, “he said there was no job for me.”<sup>173</sup> For Natalia B., refusing her supervisor’s advances eventually led to termination, she reported, not just for her, but also for her co-workers and friends who tried to defend her. The harassment intensified until one day, she broke down and began to cry. Her co-worker Ana D. comforted her and told the supervisor, “You’ve gone overboard.” He responded, “Anyone who doesn’t like it, get the fuck out of here.” He fired Natalia, Ana, and two other co-workers who had defended her.<sup>174</sup>

Many farmworkers work with other family members, and termination not only threatens the livelihood of one person, but of the entire household. As previously recounted, Ana I., a 16-year-old working in tobacco in North Carolina, reported she was fired twice, along with her mother and her mother’s partner, for refusing advances.<sup>175</sup> Similarly, Sergio Guzman, Secretary-Treasurer at United Farm Workers, recounted meeting a young woman from Oaxaca who cried as she told him the foreman was repeatedly asking her to have sex with him, and she did not know what to do because the last time she had refused advances, the supervisor had fired her entire family, so that five people were left without income.<sup>176</sup> Several EEOC lawsuits have involved families where one person was alleged to have been targeted for sexual harassment, but the entire family was retaliated against when he or she reported it.<sup>177</sup>

Termination as retaliation is often challenging to prove because farm work is seasonal. In some cases, a farmworker is not terminated right away but simply is not rehired the

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<sup>173</sup> Human Rights Watch interview with Monica V. (pseudonym), New York, August 2011.

<sup>174</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

<sup>175</sup> Human Rights Watch interview with Ana I. (pseudonym), North Carolina, July 2011.

<sup>176</sup> Human Rights Watch interview with Sergio Guzman, Secretary-Treasurer, United Farm Workers, Salinas, California, June 30, 2011.

<sup>177</sup> “Oregon Tree Farm Settles EEOC Lawsuit Over Sexual Harassment and Retaliation,” US Equal Employment Opportunity Commission press release, April 21, 2011; “Giumarra Vineyards Sued by EEOC for Sexual Harassment and Retaliation Against Farm Workers,” US Equal Employment Opportunity Commission press release, January 13, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/1-13-10.cfm> (accessed April 3, 2012); see also EEOC v. Giumarra Vineyards Corporation, Complaint, Case No. 1:09-cv-02255 (E.D. Calif. 2009).

following season when work starts again. Lucia A. reported she had been working for about 17 years at the same company packing broccoli and cauliflower during the season, normally from November to March, when she finally decided to report harassment she had been enduring for over 10 years. The next November, she was not rehired.<sup>178</sup> Marcela V. similarly reported she had been a forewoman at an onion packing plant for 11 years when she tried to help Veronica Z. report ongoing sexual harassment to company management. Both women were not rehired the following season.<sup>179</sup>

Many farmworkers live in employer-provided housing, and unlawful termination for reporting harassment can also lead to unlawful eviction and loss of shelter. The sexual harassment lawsuit against Giumarra Vineyards, one of the largest grape growers in the country, includes allegations that after a teenage girl was sexually harassed, all those who defended her, including members of her family, were terminated one day after complaints were made and forced to immediately vacate their employer-provided housing. The case remains pending.<sup>180</sup> Mark Heller, an attorney in Ohio, described a similar sexual harassment case where the woman first came to him reporting she had been evicted after she was harassed and then fired.<sup>181</sup>

Some farmworkers expressed fear that if they were to report the abuse, they would not only lose their jobs, but also be blacklisted by other employers. Since bringing a complaint against an onion packing plant in 2005, Veronica Z. reported she has had difficulty finding steady work: “Every packing shed where I get a job, I start for a couple of days, and then I get laid off. I think they’re checking my record. My son and I applied to work at a tomato cannery, and my son was hired but not me.”<sup>182</sup>

Even when workers are not fired, their harassers can make life difficult for them. Workers can be kept from taking breaks or from going to the bathroom, or they can see their hours or pay cut. Guadalupe F., a poultry processing worker, said that when she reported her supervisor’s harassment to the company, he began to make her life even more difficult.

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<sup>178</sup> Human Rights Watch interview with Lucia A. (pseudonym), California, April 2011.

<sup>179</sup> Human Rights Watch interview with Marcela V. (pseudonym), California, June 2011.

<sup>180</sup> *EEOC v. Giumarra Vineyards Corporation*, Case No. 1:09-cv-02255 (E.D. Calif. 2009); Human Rights Watch interview with Megan Beaman, Attorney, Migrant Farmworker Project, California Rural Legal Assistance, April 27, 2011.

<sup>181</sup> Human Rights Watch telephone interview with Mark Heller, Managing Attorney, Migrant Farmworker and Immigration Program, Advocates for Basic Legal Equality, Inc., August 29, 2011.

<sup>182</sup> Human Rights Watch interview with Veronica Z. (pseudonym), California, June 2011.

She was assigned to tasks near liquids to which she was allergic, he refused to let her take days off when she needed to take care of her children, and he threatened to go to the office and tell them she was working under someone else's papers.<sup>183</sup> Similarly, Belen F., who was harassed for being transgender, reported being demoted from being a foreman to a line worker, with corresponding cuts to her pay.<sup>184</sup>

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<sup>183</sup> Human Rights Watch interview with Guadalupe F. (pseudonym), North Carolina, August 2011.

<sup>184</sup> Human Rights Watch interview with Belen F. (pseudonym), California, June 2011.

## V. A Dysfunctional Immigration System

International human rights law requires that basic rights protections apply to all persons in a state's territory, including authorized and unauthorized non-citizens. This is critical to protecting US citizen workers, as well as non-citizen workers, because it minimizes employers' incentives to hire easily exploitable immigrant workers.<sup>185</sup>

Yet when immigrant farmworkers experience sexual violence and harassment, many choose not to report these abuses under either civil or criminal law. Many factors discourage farmworkers from reporting abuses, including the desperation that comes from poverty and lack of community support, but one of the most significant is their immigration status. Whether they are working without authorization or with guestworker visas, immigrant farmworkers live with a constant fear of deportation.

Several farmworkers we interviewed reported that fear of deportation was a major reason they chose not to report sexual violence, sexual harassment, or other workplace abuses.<sup>186</sup> Even some farmworkers with work authorization who had filed sexual harassment claims said they would not have done so had they been unauthorized.<sup>187</sup> Some attorneys pointed out that fear of deportation is particularly acute for women with children, as they fear separation from their US citizen children and loss of ability to support their families.<sup>188</sup> Another legal services lawyer noted that fear of deportation can also affect the willingness of witnesses to participate in investigations.<sup>189</sup> Blanca Rodriguez, an attorney representing farmworkers in a sexual harassment lawsuit, reported that the foreman in the case had worked at the company in question for more than 40 years and had sexually harassed women the whole time, but the women had not reported it because they were unauthorized and afraid.<sup>190</sup>

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<sup>185</sup> The US Supreme Court stated in *De Canas v. Bica*, 424 US 351, 356-57 (1976), “[A]cceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens.”

<sup>186</sup> Human Rights Watch interviews with Claudia L. (pseudonym), California, June 2011; Maria A. (pseudonym), California, June 2011; Marisol Z. (pseudonym), New York, August 2011; and Mercedes A. (pseudonym), New York, August 2011.

<sup>187</sup> Human Rights Watch interviews with Lucia A. (pseudonym), California, April 2011; and Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

<sup>188</sup> Human Rights Watch telephone interviews with Daniela Dwyer, Staff Attorney, Florida Legal Services, Migrant Farmworker Justice Project, May 12, 2011; and Mercedes Lorduy, Attorney, VIDA Legal Assistance, May 18, 2011.

<sup>189</sup> Human Rights Watch telephone interview with Jenifer Rodriguez, Staff Attorney, Colorado Legal Services, August 5, 2011.

<sup>190</sup> Human Rights Watch telephone interview with Laura Contreras, Attorney, Columbia Legal Services, and Blanca Rodriguez, Attorney, Northwest Justice Project, March 17, 2011.

Uncertain immigration status both increases worker vulnerability to exploitation and diminishes their willingness to interact with government officials. Although reporting employees to immigration authorities for asserting workplace rights constitutes illegal retaliation, workers still have reason to fear that employers may do so. The increasing involvement of local law enforcement in immigration enforcement further fuels worker fears that contact with the police could lead to deportation. Should they nevertheless decide to file a civil claim, unauthorized workers face a system that treats them differently from other workers, from more limited access to legal services to limited remedies. The US government, instead of directly addressing the problem, continues to delay much-needed immigration reform and enables the industry's reliance on a vulnerable workforce.

## Limitations of the Current Immigration System

When people ask about food justice, I tell them you have to go contact your congressman about immigration.

—Sandy Brown, Human Resources, Swanton Berry Farm, California, July 21, 2011.

Currently, the only way to migrate legally to the US for agricultural work is through the H-2A temporary agricultural worker program.<sup>191</sup> In 2011 there were about 68,000 H-2A guestworkers in the US, only a small percentage of the total agricultural workforce.<sup>192</sup> Advocacy organizations such as Farmworker Justice and the Southern Poverty Law Center have criticized the H-2A program for permitting age and gender discrimination.<sup>193</sup> None of the farmworker women interviewed for this report stated they were H-2A workers.

The H-2A program is unpopular with both employers and farmworker advocates. Employers argue that the program is too limited and complicated to meet their labor needs. When applying for H-2A visas for workers, employers must certify that they are unable to find domestic workers and that bringing in guestworkers will not adversely affect the wages

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<sup>191</sup> 8 US Code Section 1101(a)(15)(H)(ii)(a); 20 Code of Federal Regulations Sections 655 et seq.

<sup>192</sup> US Department of Labor, "H-2A Temporary Agricultural Visa Program, FY 2011 Select Statistics," [http://www.foreignlaborcert.dol.gov/pdf/h\\_2a\\_selected\\_statistics.pdf](http://www.foreignlaborcert.dol.gov/pdf/h_2a_selected_statistics.pdf) (accessed February 23, 2012).

<sup>193</sup> Farmworker Justice, "No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers," September 2011, <http://farmworkerjustice.org/images/stories/eBook/pages/fwj.pdf> (accessed March 6, 2012); Southern Poverty Law Center, "Systematic Discrimination," in "Close to Slavery: Guestworker Programs in the United States," April 2007, <http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states> (accessed March 5, 2012).

and working conditions of US workers.<sup>194</sup> H-2A visa holders are allowed in the US for a limited period of time, generally less than 10 months, and then are required to go back to their home countries before they may return.

Farmworker advocates criticize the program for failing to protect workers' rights and for encouraging employers to prefer vulnerable guestworkers over US workers. H-2A visa-holders are dependent on their employers to remain in the US, as they are not allowed to transfer the visa to other employers.<sup>195</sup> There is no way for an H-2A guestworker to become a permanent resident, and unauthorized workers already in the US cannot regularize their status through the H-2A program. The H-2A program contains some requirements regarding wages, housing, and transportation that are intended to protect guestworkers from workplace abuses. But guestworkers are also explicitly excluded from protection under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), meaning they have no right under the AWPA to sue in federal court for lost wages, housing benefits, and other requirements of the H-2A contract.<sup>196</sup> Like other agricultural workers, they also have no right to collective bargaining.<sup>197</sup>

In view of these limitations, some farmworker advocates believe that, despite their legal status, H-2A workers can sometimes be even more vulnerable to workplace abuses than unauthorized immigrant workers. Some of the most egregious cases of forced labor in the US have involved H-2A workers whose employers held them in virtual slavery.<sup>198</sup> Jenifer Rodriguez, a legal services lawyer, has found that “[H-2A workers] have no power.... They’re so isolated, too. They don’t have the local support.... They’ll tell me horrendous stories of propositions [a grower] makes, but they’ll never want to do anything about it.”<sup>199</sup> One lawsuit filed in August 2011 in Louisiana alleges that Mexican female workers who came on H-2A visas to work in a crawfish processing plant were subject to sexual propositions by the employers, as well as

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<sup>194</sup> US Department of Labor, Wage and Hour Division, “Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA),” February 2010, <http://www.dol.gov/whd/regs/compliance/whdfs26.htm> (accessed February 24, 2012).

<sup>195</sup> Farmworker Justice, “Fact Sheet: The H-2A Temporary Agricultural Guestworker Program,” <http://farmworkerjustice.org/var/www/html/files/H-2AFactSheet.pdf> (accessed February 24, 2012).

<sup>196</sup> Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 US Code 1801-1872. See also Farmworker Justice, “No Way to Treat a Guest,” September 2011.

<sup>197</sup> National Labor Relations Act Section 2(3), 29 US Code Section 152(3).

<sup>198</sup> For example, the H-2A recruitment company Global Horizons Manpower, Inc. is currently being prosecuted for human trafficking and enslavement. *US v. Orian et al.*, Indictment, No. 1:10-CR-576 (Dist. Hi., filed September 1, 2010). See also Farmworker Justice, “No Way to Treat a Guest,” September 2011.

<sup>199</sup> Human Rights Watch telephone interview with Jenifer Rodriguez, Staff Attorney, Colorado Legal Services, August 5, 2011.

threats of violence, nonpayment of wages, forced labor, and racial discrimination.<sup>200</sup> The lawsuit further alleges that the employer requested that the local police department detain two of the plaintiffs, and that they were then detained unlawfully.<sup>201</sup>

Given the limitations of the H-2A program, farmworker advocates, as well as employers, have pushed for legislation that would both revise the H-2A program and create a program of earned legalization for unauthorized farmworkers already in the US. The Agricultural Job Opportunities, Benefits, and Security Act, or AgJOBS, was negotiated by farmworker advocates, led by the United Farm Workers, and major agricultural employers, and it initially enjoyed broad, bipartisan support.<sup>202</sup> Now, almost 10 years later, it is no closer to passing than it was when it was first introduced in 2003. It was last included in a comprehensive immigration reform bill in 2011, but the current political climate makes it unlikely that any comprehensive immigration reform bill will pass Congress in the near future.<sup>203</sup>

In response, Congress has recently debated several different bills proposing revisions to the H-2A guestworker program.<sup>204</sup> While the precarious immigration status of many farmworkers can only be fully addressed through comprehensive reform, reforming the H-2A program to be more protective of workers' rights would help to ensure greater workplace safety for farmworkers, including prevention of sexual violence and harassment.

## The Government's Competing Interests: Immigration Enforcement versus Worker Protection

In recent years, the federal government has ramped up enforcement of immigration laws, and the Obama administration has presided over a record number of deportations.<sup>205</sup> According to a 2009 report by the National Employment Law Project (NELP), these immigration enforcement actions have had serious repercussions on efforts to protect workers' rights.<sup>206</sup>

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<sup>200</sup> *Huerta et al. v. L.T. West, Inc., et al.*, Complaint and Jury Demand (W.D. La. August 31, 2011), Case 6:11-cv-01589.

<sup>201</sup> *Huerta et al. v. L.T. West, Inc., et al.*, Complaint and Jury Demand (W.D. La. August 31, 2011), Case 6:11-cv-01589.

<sup>202</sup> Agricultural Jobs, Opportunity, Benefits and Security Act of 2003 (AgJOBS), H.R. 3142 and S. 1645.

<sup>203</sup> Comprehensive Immigration Reform Act of 2011, S. 1258.

<sup>204</sup> Helping Agriculture Receive Verifiable Employees Securely and Temporarily (HARVEST) Act of 2011, S. 1384; American Specialty Agriculture Act of 2011, H.R. 2847; Legal Agricultural Workforce Act of 2011, H.R. 2895.

<sup>205</sup> Brian Bennett, "Obama administration reports record number of deportations," *Los Angeles Times*, October 18, 2011, <http://articles.latimes.com/2011/oct/18/news/la-pn-deportation-ice-20111018> (accessed April 3, 2012).

<sup>206</sup> National Employment Law Project, AFL-CIO, and American Rights at Work Education Fund, "ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights," October 2009, [http://nelp.3cdn.net/75a43e6ae48f67216a\\_w2m6bp1ak.pdf](http://nelp.3cdn.net/75a43e6ae48f67216a_w2m6bp1ak.pdf) (accessed February 29, 2012).

US Immigration and Customs Enforcement (ICE) has conducted high-profile workplace raids where worker's rights investigations are ongoing; ICE agents have even masqueraded as Occupational Safety and Health Administration (OSHA) agents and held information sessions where they then arrested the attendees; and local police have arrested workers at employers' requests and then turned them over to immigration authorities.<sup>207</sup> One farmworker interviewed by Human Rights Watch was deported while her sexual harassment lawsuit against her employer was pending, and she feared her employer had reported her to immigration to intimidate her.<sup>208</sup>

There is a fundamental conflict between the priorities of ICE and the priorities of worker protection agencies such as the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), and others. ICE has taken some important steps to address the conflict, but they do not fully address the scope of the problem.

The DOL recently updated its Memorandum of Understanding (MOU) with ICE to provide greater protection to unauthorized workers. The updated memorandum states in part, "ICE agrees to refrain from engaging in civil worksite enforcement activities at a worksite that is the subject of an existing DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding."<sup>209</sup> However, no similar agreements have been made with other agencies that enforce workplace rights—such as the EEOC, which would most likely handle sexual harassment claims—or with state labor agencies. It is thus unlikely that ICE would be on notice of a worker whose claim is being investigated by other federal or state agencies.<sup>210</sup>

A recent ICE memorandum also sets out guidelines for how prosecutorial discretion should be exercised in cases involving victims and witnesses of crimes and individuals seeking to protect their civil and labor rights. It states, "Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an

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<sup>207</sup> National Employment Law Project et al., "ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights," October 2009.

<sup>208</sup> Human Rights Watch interview with Angela G. (pseudonym), California, June 2011.

<sup>209</sup> US Department of Labor and Immigration and Customs Enforcement, "Revised Memorandum of Understanding Between Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites," December 7, 2011, <http://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf> (accessed February 5, 2012).

<sup>210</sup> Human Rights Watch telephone interview with Eunice Cho, Skadden Fellow, National Employment Law Project, April 5, 2012.

individual known to be the immediate victim or witness to a crime.”<sup>211</sup> The memorandum, however, does not set out a policy of screening immigrants to determine if they would qualify for an exercise of prosecutorial discretion under this memorandum, and immigrants would have to affirmatively provide this information to ICE agents. Although attorneys who know about the prosecutorial discretion memorandum might provide this information to ICE, immigrants in removal proceedings do not have a right to court-appointed counsel, and thus many who would qualify for an exercise of prosecutorial discretion may never be identified as such.

The Department of Homeland Security’s Operating Instruction 287.3 also requires ICE agents to determine whether information concerning the employment of undocumented individuals was provided to ICE in an effort to interfere with the rights of employees to “form, join or assist labor organizations or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe work places; to receive compensation for work related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.”<sup>212</sup> Advocates in at least one case have successfully used the Operating Instruction, as they were able to persuade ICE agents and local police officers who had been called by the employer to leave a deposition during a wage claim dispute,<sup>213</sup> but other incidents described to NELP by advocates around the country indicate that agents have not been trained on the Operating Instruction.<sup>214</sup>

As important as it is for ICE to enact MOUs and follow its own memoranda and operating instructions, these policies can only be applied if workers report workplace abuses. All too often, unauthorized immigrant workers are too afraid to report abuses altogether, and these policies are not triggered.

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<sup>211</sup> US Department of Homeland Security, US Immigration and Customs Enforcement, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” June 17, 2011, <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf> (accessed April 6, 2012).

<sup>212</sup> Department of Homeland Security Operating Instruction 287.3, “Questioning Persons During Labor Disputes,” <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-53690/0-0-0-61072/0-0-0-61097.html> (accessed April 7, 2012).

<sup>213</sup> National Employment Law Project et al., “ICED OUT: How Immigration Enforcement Has Interfered with Workers’ Rights,” October 2009,

<sup>214</sup> Human Rights Watch telephone interview with Eunice Cho, April 5, 2012.

## Limitations of U Visas

Certain provisions of US immigration law recognize that fear of deportation may intimidate victims from reporting crimes. Where sexual violence or harassment includes rape, trafficking, sexual assault, or certain other violent crimes, the victim may be eligible for a U visa, a temporary visa that allows the victim to gain legal status in the US and, in some cases, eventually apply for permanent resident status.<sup>215</sup> The visa is not available for survivors of sexual abuses that are not among the listed crimes. U visas are currently capped at 10,000 per year; that cap was met in fiscal years 2010 and 2011, only a few years after the visa was first made available.<sup>216</sup>

Several farmworkers we interviewed had applied or were in the process of applying for U visas. Legal services organizations funded by the federal Legal Services Corporation are generally barred from representing unauthorized immigrants but are permitted to represent those who are eligible for U visas, and so the availability of the visa has been critical in enabling some farmworkers to get legal representation.<sup>217</sup>

However, several law enforcement representatives and survivor advocates expressed concern and frustration with the U visa application process, particularly the requirement of certification by a law enforcement official or judge that the victim “has been helpful, is being helpful or is likely to be helpful to a certifying agency in the investigation or prosecution” of a crime.<sup>218</sup> Survivor advocates report that certifying agencies have interpreted this provision in varying and inconsistent ways across jurisdictions. Ileana Herrera, a survivor advocate in Fresno, California, says some police complain they are signing certifications for “green cards” and accuse victims of “using [crimes] to get an immigration visa.”<sup>219</sup> They also sometimes interpret “cooperation” narrowly and arbitrarily.

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<sup>215</sup> Immigration and Nationality Act Section 101(a)(15)(U), 8 US Code Section 1101(a)(15)(U)(i).

<sup>216</sup> “USCIS Reaches Milestone: 10,000 U Visas Approved in Fiscal Year 2010,” US Citizenship and Immigration Services news release, July 15, 2010, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=5d5d58a734cd9210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed March 7, 2012); “Relief Provided to Thousands of Victims of Crimes,” US Citizenship and Immigration Services news release, September 19, 2011, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ea0c39d112b72310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed March 7, 2012).

<sup>217</sup> Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, Sec. 504 (11), 100 Stat. 1321.

<sup>218</sup> 8 Code of Federal Regulations Section 214.4(b)(2).

<sup>219</sup> Human Rights Watch telephone interview with Ileana Herrera, Project Advocate, Marjaree Mason Center, July 22, 2011; follow-up to in-person interview, Fresno, California, April 8, 2011.

In one case, an advocate complained that the police refused to certify that a victim had cooperated because they had not been able to reach her, though she had been in a shelter.<sup>220</sup> Ana Vallejo, a legal services lawyer in Florida, described a case in which a survivor of domestic violence had called the police, who then came and arrested everyone in the household and never investigated the allegation of domestic violence. The woman, although a victim of a crime, is now in immigration proceedings with no documentation that an investigation was ever conducted, and thus no ability to apply for a U visa.<sup>221</sup>

Interpretation can be inconsistent even between agencies in the same locality. While the Riverside County District Attorney recently implemented a new policy that allows for certification of a wide range of cases, based on a literal interpretation of the regulations,<sup>222</sup> a victim advocate reported that the Riverside County Sheriff's Department refuses to certify any U visa applications.<sup>223</sup>

From the perspective of some law enforcement officials, the federal government has not provided enough guidance on what is required for certification. Rachel Sorratos at the Salinas Police Department stated, "There was nothing, no assistance. I did my research online. I don't even know who to call."<sup>224</sup> Pamela Patterson at Victim Services at the Monterey County District Attorney's Office agreed that there is widespread misunderstanding about what the U visa is.<sup>225</sup>

The EEOC and the DOL also have the authority to certify U visa applications, but advocates have been disappointed with the DOL's decision to limit certification to only five crimes it detects in the course of wage and hour investigations: involuntary servitude, peonage,

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<sup>220</sup> Ibid.

<sup>221</sup> Human Rights Watch telephone interview with Ana Vallejo, Attorney, VIDA Legal Assistance, May 6, 2011.

<sup>222</sup> Human Rights Watch interview with Lachelle Crivello, Victim Services Assistant Director, Riverside County District Attorney's Office, Riverside, California, August 9, 2011.

<sup>223</sup> Human Rights Watch interview with victim advocate (name withheld), Riverside, California, August 2011. The Riverside County Sheriff's Department stated in a subsequent email communication, "The Riverside Sheriff's Department receives and reviews all certification of U Visa applications submitted. They are reviewed by the area commander in which the application was requested. Each request is taken into consideration in the applicants [sic] eligibility for U Visa certification." Email communication from Deputy Alberto Martinez, Public Information Officer, Riverside County Sheriff's Department, to Human Rights Watch, April 11, 2012. Human Rights Watch asked how many U visa certifications had been granted in the past 5 years. As of the date of publication, the Sheriff's Office had not responded to this query.

<sup>224</sup> Human Rights Watch telephone interview with Rachel Sorratos, Salinas Police Department, June 20, 2011.

<sup>225</sup> Human Rights Watch interview with Pamela Patterson, Victim Witness Assistance Program Manager, Monterey County District Attorney's Office, California, June 16, 2011.

trafficking, obstruction of justice, and witness tampering;<sup>226</sup> advocates had hoped it would certify crimes of physical violence and perjury as well. With regard to the EEOC, one attorney reported that the process is cumbersome and slow, and “it daily undermines the protective function of the visa while the worker is making critical decisions to go forward.”<sup>227</sup>

Another major limitation of the U visa is that it provides no protection for unauthorized witnesses who are not direct or indirect victims of the crime.<sup>228</sup> Even if the victim is willing to go forward, the threat of deportation can hinder the investigation by keeping witnesses from testifying. Attorney Jenifer Rodriguez explained that she has seen that fear at work in her own legal work, with witnesses in one case claiming they forgot what had happened. As she explained of one of the witnesses, “[H]e was trying to lay low and not draw attention to himself in a small community.”<sup>229</sup>

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<sup>226</sup> US Department of Labor, Wage and Hour Division, “Field Assistance Bulletin No. 2011-1: Certification of Supplement B Forms of U Nonimmigrant Visa Applications,” April 28, 2011, [http://www.dol.gov/whd/FieldBulletins/fab2011\\_1.htm](http://www.dol.gov/whd/FieldBulletins/fab2011_1.htm) (accessed February 23, 2012); National Employment Law Project, “Protection for Immigrant Victims of Workplace Crimes: United States Department of Labor Protocol for U Visa Certification,” May 3, 2011, <http://www.nelp.org/page/-/Justice/2011/ProtectionforImmigrantVictimsofWorkplaceCrimes-Uvisas.pdf?nocdn=1> (accessed February 23, 2012).

<sup>227</sup> Human Rights Watch telephone interview with legal services attorney (name withheld), April 29, 2011.

<sup>228</sup> Human Rights Watch telephone interviews with Jenifer Rodriguez, August 5, 2011; and Ana Vallejo, May 6, 2011. The “S” visa is available in a limited way to non-citizens who cooperate in investigations of criminal or terrorist organizations. 8 US Code Section 1184(k)(1).

<sup>229</sup> Human Rights Watch telephone interview with Jenifer Rodriguez, August 5, 2011.

## VI. Inadequate Civil Law Protections for Agricultural Workers

US law in theory protects all workers, including unauthorized workers, from sexual violence and sexual harassment. Title VII of the federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, national origin, or sex. The law also prohibits retaliation, including threats to report a worker to immigration authorities, against people who report discrimination. Sexual harassment is a form of sex discrimination prohibited under Title VII.<sup>230</sup>

But many survivors of workplace sexual violence and harassment find it difficult to gain meaningful protection under these laws. Several of the farmworkers identified for this report had filed claims for sexual harassment under Title VII or similar state law, but the vast majority had never filed a claim for sexual harassment or for any other workplace violation they had experienced.

### Exclusion of Farmworkers from Worker Protection Laws

Historically, US labor law has excluded agricultural workers from federal protections that apply to workers in nearly every other industry.

Agricultural workers do not have collective bargaining rights under the National Labor Relations Act (NLRA).<sup>231</sup> Agricultural workers are also excluded from many of the protections of the Fair Labor Standards Act (FLSA). As a result, agricultural workers are not entitled under federal law to overtime pay, rest periods, or meal periods during the workday. They are also exempt from minimum wage requirements if they work on small farms.<sup>232</sup> The child labor provisions of the FLSA treat agricultural work differently from work in other industries. While the minimum age to work in most industries is 16, the standard

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<sup>230</sup> Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 701 et seq., 42 US Code, 2000e et seq., amended by the Civil Rights Act of 1991 (Pub. L. 102-166) and the Lily Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2). See also *Contreras v. Corinthian Vigor Ins. Co.*, 25 F. Supp. 2d 1053 (N.D. Cal. 1998); *Singh v. Jutla & C.D. & R.'s Oil, Inc.*, 214 F. Supp. 2d 1056 (N.D. Cal. 2002) (finding that employer threats to turn workers in to immigration authorities violate the anti-retaliation provisions of the FLSA).

<sup>231</sup> National Labor Relations Act (NLRA) Section 2(3), 29 US Code Section 152(3).

<sup>232</sup> Fair Labor Standards Act (FLSA), 29 US Code Sections 201 et seq. See also US Department of Labor, Wage and Hour Division, “Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA),” revised July 2008, <http://www.dol.gov/whd/regs/compliance/whdfs12.htm> (accessed January 26, 2012).

minimum age for agriculture is 14; on small farms, there is no minimum age for children to work outside of school hours with their parents' permission.<sup>233</sup> Although agricultural work includes some of the most dangerous work in the country,<sup>234</sup> the Occupational Health and Safety Administration (OSHA) does not enforce federal workplace health and safety standards on farms with fewer than 11 employees, effectively excluding a third of all farmworkers.<sup>235</sup> Similarly, agricultural employers may require or allow 16- and 17-year-olds to work in particularly hazardous occupations, while in nonagricultural occupations, the minimum age for particularly hazardous work is 18.<sup>236</sup>

State worker protection legislation varies considerably. California provides collective bargaining rights for farmworkers excluded under the NLRA,<sup>237</sup> but no other state has such a law. California, Oregon, and Washington include farmworkers in state wage and hour, as well as rest and meal period, protections;<sup>238</sup> in other states, agricultural employers are subject only to the minimal federal requirements. California has no agricultural exemptions for workers' compensation, but most other states do, excluding small farms or migrant and seasonal farmworkers altogether.<sup>239</sup>

Agriculture is one of the most hazardous industries, with workers facing a higher risk of fatal and nonfatal injuries than workers in most other industries. In 2010 the injury rate for agricultural workers was over 20 percent higher than the rate for all workers; the fatality rate for farmworkers was over 7 times higher than for all workers.<sup>240</sup> Although several states require employers to provide clean drinking water, toilets, and other equipment to

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<sup>233</sup> Fair Labor Standards Act. See also US Department of Labor, Wage and Hour Division, "Fact Sheet #40: Federal Youth Employment Laws in Farm Jobs," revised July 2008, <http://www.dol.gov/whd/regs/compliance/whdfs40.htm> (accessed January 26, 2012).

<sup>234</sup> US Department of Labor, Bureau of Labor Statistics, "Census of Fatal Occupational Injuries," <http://www.bls.gov/iif/oshcfoi1.htm> (accessed January 26, 2012).

<sup>235</sup> Bon Appetit Management Company and United Farm Workers, "Inventory of Farmworker Issues and Protections in the United States," March 2011.

<sup>236</sup> 29 US Code Section 213(c).

<sup>237</sup> California Agricultural Labor Relations Act, California Labor Code, Division 2, Part 3.5, Section 1140.2.

<sup>238</sup> California Labor Code Section 1171 and California Industrial Welfare Commission, Order No. 14-2001, Regulating Wages, Hours and Working Conditions in the Agricultural Occupations; Oregon Revised Statutes Sections 653.020, 653.022, 653.025, 653.261, and Oregon Administrative Rules Sections 839-020-0010, 839-020-0004(4), 839-020-0135, 839-020-0050; Washington Minimum Wage Act, Revised Code of Washington Section 49.46, Washington Administrative Code Section 296-131-020.

<sup>239</sup> Bon Appetit Management Company and United Farm Workers, "Inventory of Farmworker Issues and Protections in the United States," March 2011.

<sup>240</sup> US Department of Labor, Occupational Health and Safety Administration, "Agricultural Operations," <http://www.osha.gov/SLTC/agriculturaloperations/> (accessed February 23, 2012).

ensure sanitation and protection from heat stress, many farmworkers reported to Human Rights Watch that they had worked for employers who violated these rules. Employers must also abide by certain health and safety standards when applying pesticides, but again, farmworkers told us they had to work in areas that were still being sprayed or had been recently sprayed.<sup>241</sup>

## Inadequate Enforcement of Existing Worker Protection Laws by DOL and Other Federal and State Agencies in Agricultural Workplaces

I would like to see the Department of Labor come. They should not announce their visits; they should show up without warning.

—Mercedes A., New York farmworker, August 2011.

Although farmworkers are highly vulnerable to a wide range of workplace abuses, the federal and state agencies charged with enforcing laws that do apply to farmworkers are seriously understaffed and unable to address the full scope of violations.

The Department of Labor (DOL) is charged with investigating violations under the Fair Labor Standards Act and the Agricultural Worker Protection Act (AWPA). Although surveys indicate that low-wage workers, particularly immigrant workers, experience high rates of wage theft,<sup>242</sup> from 2002 to 2008, DOL investigations of farms under the FLSA declined from 229 investigations to 110 investigations. During that same period, DOL investigations of farms under the AWPA declined from 1,849 investigations to 1,499, although the percentage of employers found to be violating the law held steady at 60 percent.<sup>243</sup> The penalties imposed are also very low. From 2002 to 2008, the average penalty assessed for a violation of the AWPA was only \$342.<sup>244</sup> DOL's enforcement of child labor laws is equally spotty. Child labor violations in agriculture decreased from 36 cases (involving 109

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<sup>241</sup> Similar reports were documented by Human Rights Watch in *Fields of Peril*. Human Rights Watch, *Fields of Peril: Child Labor in US Agriculture*, May 5, 2010, <http://www.hrw.org/reports/2010/05/05/fields-peril-o>.

<sup>242</sup> Farmworker Justice and Oxfam America, “Weeding out abuses: Recommendations for a law-abiding farm labor system,” 2010, [http://www.fwjustice.org/files/reports/Farmworker\\_Justice-lowres-spreads.pdf](http://www.fwjustice.org/files/reports/Farmworker_Justice-lowres-spreads.pdf) (accessed January 31, 2011). A report by the Southern Poverty Law Center similarly found 41 percent of Latino immigrants surveyed in the South had experienced wage theft. Southern Poverty Law Center, “Under Siege: Life for Low-Income Latinos in the South,” April 2009, <http://www.splcenter.org/get-informed/publications/under-siege-life-for-low-income-latinos-in-the-south> (accessed April 23, 2012).

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

children) in 2009 to 31 cases (involving 49 children) in 2010; overall civil monetary penalties assessed DOL for child labor decreased by almost half from 2009 to 2010.<sup>245</sup>

Enforcement by state agencies varies, but is rarely better. Some states exempt farmworkers from their state worker protection laws. Other states inadequately enforce laws that on paper should protect such workers. According to Nathan Dollar, director of a farmworker health program in North Carolina, when reports of violations are actually investigated and fines are levied, the fines are often negotiated down by the grower and end up not being paid at all.<sup>246</sup> North Carolina Legal Aid recently filed a complaint in November 2011 against the North Carolina Department of Labor for failing to ensure safe working and housing conditions for farmworkers in North Carolina.<sup>247</sup>

Many farmworkers interviewed by Human Rights Watch reported having worked at some point with an employer who violated wage and hour laws or occupational health and safety laws. This is significant because, as Daniela Dwyer, a legal services attorney in Florida, stated, there is a “broken windows” problem: “You can have all the workplace rights posters that you want, [but] if two out of three requirements are not being met, it gives people less confidence in their ability to act on their rights.”<sup>248</sup>

The same supervisor who sexually harassed several women at a cauliflower packing plant in California had also created a dangerous and abusive workplace. The women reported that when another woman was seriously injured at work, she was not taken to the hospital. And while workers were told to gather at 6 a.m., the work would not start until 9 a.m., and they were not paid for the hours they spent waiting. Workers were never given lunch breaks or other breaks, and the bathroom was placed far away, further than allowed under California law. Magdalena C. said that when she complained about the bathrooms being far away, the supervisor lifted his middle finger, “as if he were sticking it inside [my vagina],” and said, “Now where are the bathrooms?”<sup>249</sup>

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<sup>245</sup> Letter from Human Rights Watch to Secretary of Labor Hilda Solis on Child Farmworkers, August 6, 2011, <http://www.hrw.org/news/2011/08/05/letter-secretary-labor-hilda-solis-child-farmworkers> (accessed March 12, 2012).

<sup>246</sup> Human Rights Watch telephone interview with Nathan Dollar, Executive Director, Vecinos, July 17, 2011.

<sup>247</sup> Chris Liu-Beers, “NC Dept. of Labor Neglects to Enforce Laws that Protect Farmworker Health and Safety,” post to untitled blog, North Carolina Farmworker Advocacy Network, ncfan.org, October 12, 2011, <http://www.ncfan.org/blog/2011/10/12/nc-dept-of-labor-neglects-to-enforce-laws-that-protect-farmw.html#.T1jK18CvJ8E> (accessed March 8, 2012).

<sup>248</sup> Human Rights Watch telephone interview with Daniela Dwyer, Staff Attorney, Florida Legal Services, Migrant Farmworker Justice Project, May 12, 2011.

<sup>249</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

Attorneys representing women in sexual harassment cases said their clients reported seeing other violations at work. Many of their clients initially came in with questions about other issues or were represented in other matters, and as the clients came to trust them, they revealed that they had also been victims of sexual violence and harassment at work.<sup>250</sup> For example, one community worker had a client initially come with a question about unpaid wages. When she questioned her further about why she had not been paid, the client broke down and said the foreman had claimed the check was in his truck, had taken her to an isolated field, and had raped her. She reported, “She was just a vulnerable person.... She still wasn’t given her check.<sup>251</sup>

In 2002 the EEOC reached a \$1.5 million settlement with DeCoster,<sup>252</sup> an egg farm in Iowa that had a long history of being charged with other workplace violations, including child labor, failure to pay overtime, failure to comply with previous orders to install safety guards, and employing undocumented workers.<sup>253</sup>

Some seemingly unrelated workplace violations directly make women more vulnerable to sexual violence and harassment. For example, if bathrooms are not provided, as required by law, a man might be able to relieve himself discretely, but a woman might have to go far from the fields into woods or other secluded areas where she can more easily be assaulted.<sup>254</sup>

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<sup>250</sup> Human Rights Watch telephone interview with Mercedes Lorduy, Attorney, VIDA Legal Assistance, May 18, 2011; Human Rights Watch interviews with Michael Marsh, Directing Attorney, California Rural Legal Assistance, Salinas, California, April 26, 2011; and Megan Beaman, Attorney, Migrant Farmworker Project, California Rural Legal Assistance, April 27, 2011.

<sup>251</sup> Human Rights Watch telephone interview with Irma Luna, Community Worker, California Rural Legal Assistance, July 22, 2011.

<sup>252</sup> “EEOC and DeCoster Farms Settle Complaint for \$1,525,000,” US Equal Employment Opportunity Commission press release, September 30, 2002.

<sup>253</sup> Institute for Women’s Policy Research, *Ending Sex and Race Discrimination in the Workplace*, March 2011, <http://www.iwpr.org/initiatives/pay-equity-and-discrimination> (accessed March 12, 2012).

<sup>254</sup> Human Rights Watch interview with Adrienne Dervartanian and Virginia Ruiz, Senior Attorneys, Farmworker Justice, Washington, DC, March 23, 2011.

## California's Unique Position in Agriculture

California annually generates \$37.5 billion in revenue from agriculture, more than any other state in the US.<sup>255</sup> The major crops of fruits, vegetables, and nuts are particularly dependent on human labor. Thirty-six percent of all farmworkers in the US work in California; the next closest state is Washington, with only 8 percent.<sup>256</sup> California also has a higher proportion of unauthorized farmworkers, a higher percentage of workers employed by farm labor contractors, and a more rapidly increasing population of indigenous workers than other states.<sup>257</sup>

California also has some of the best legal protections for farmworkers, stronger in many cases than federal law.<sup>258</sup> The base of Cesar Chavez and the United Farm Workers, California has a long history of farmworker organizing and advocacy, and state law explicitly protects farmworkers' right to form unions.<sup>259</sup> There are more bilingual Spanish speakers working at social service agencies, law enforcement agencies, and regulatory agencies in California than in states where the Latino population is newer, such as North Carolina. Although there is still a serious lack of resources available to indigenous language speakers, California Rural Legal Assistance employs more indigenous language speakers than the US federal government.<sup>260</sup>

California law requires that employers with 50 or more employees provide sexual harassment training to their supervisors and managers once every two years.<sup>261</sup> The San Francisco Division of the Equal Employment Opportunity Commission (EEOC) was the first within the EEOC to investigate and conduct outreach regarding sexual harassment among low-income immigrant women, including farmworkers. As the EEOC's William

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<sup>255</sup> California Department of Food and Agriculture, "California Agricultural Production Statistics," <http://www.cdfa.ca.gov/statistics/> (accessed February 5, 2012).

<sup>256</sup> Aguirre International, "The California Farm Labor Force: Overview and Trends from the National Agricultural Workers Survey," June 2005, <http://agcenter.ucdavis.edu/AgDoc/CalifFarmLaborForceNAWS.pdf> (accessed March 7, 2012).

<sup>257</sup> Ibid.

<sup>258</sup> Bon Appetit Management Company and United Farm Workers, "Inventory of Farmworker Issues and Protections in the United States," March 2011.

<sup>259</sup> California Agricultural Labor Relations Act, California Labor Code, Division 2, Part 3.5, Section 1140 et seq.

<sup>260</sup> Human Rights Watch interview with Jeff Ponting, Director, Indigenous Farmworker Program, California Rural Legal Assistance, Oxnard, California, June 29, 2011.

<sup>261</sup> Assembly Bill 1825, California Government Code 12950.1.

Tamayo explained, “The \$1.855 million verdict against the largest lettuce grower, Tanimura & Antle, was an earthquake in Monterey County. The bigger growers are aware of the EEOC.”<sup>262</sup>

Michael Meuter, an attorney at California Rural Legal Assistance, noted, “Success breeds success and interest.”<sup>263</sup> California also has its own state law prohibiting sexual harassment, a provision of which gives California workers up to 300 days after the prohibited conduct to file charges with the EEOC, not 180 days as in states without this provision. California workers may also seek damage awards higher than those available under Title VII.

Our research does not allow us to draw firm conclusions on this point, but California farmworkers interviewed by Human Rights Watch seemed to have more awareness of their legal rights than farmworkers interviewed by the organization in less-regulated states, including New York and North Carolina. All but one of the farmworkers we spoke with who reported receiving sexual harassment training at work was in California (the exception was a poultry processing worker in North Carolina), although many of them noted that the training was performed perfunctorily or not taken seriously.

Organizations like Lideres Campesinas also provide Know-Your-Rights trainings for many farmworker women in California, and several of its members believe these trainings have made a difference.

Several California farmworkers we spoke with said their work conditions had improved, at least a little, over the years.<sup>264</sup> Ines R., an 18-year-old who performs agricultural work during the summers when she is not in college, told us her farmworker parents had “nothing, no water” at their first workplaces in California, while she works with a supervisor who “really takes care of people.”<sup>265</sup> Several of the sexual harassment cases in California involved farmworkers who had previously asserted their rights in other

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<sup>262</sup> Human Rights Watch interview with William Tamayo, Regional Attorney, US Equal Employment Opportunity Commission, San Francisco, California, April 7, 2011.

<sup>263</sup> Human Rights Watch interview with Michael Meuter, Director of Litigation Advocacy & Training, California Rural Legal Assistance, Migrant Farmworker Project, April 5, 2011.

<sup>264</sup> Human Rights Watch interviews with Luz S. (pseudonym), California, August 2011; and Rosa O. (pseudonym), California, August 2011.

<sup>265</sup> Human Rights Watch interview with Ines R. (pseudonym), California, August 2011.

matters or who came seeking assistance in another matter. Lucia A. knew where she could go for help because she had previously filed a claim for unemployment.<sup>266</sup> The mother of the teenager who filed a sexual harassment lawsuit at Giumarra Vineyards had also previously been represented by California Rural Legal Assistance in a housing habitability case.<sup>267</sup> In California, workers who are pregnant can get disability benefits, and that is what first brought Patricia M. to the social service agency that helped her report her rape to the police.<sup>268</sup>

All of these farmworkers were careful to note, however, that abuses still occur. And the most marginalized of California's farmworkers, who are often young, recent arrivals, or indigenous workers, still face formidable barriers to accessing services and reporting abuses. As several cases in this report illustrate, even when a survivor is able to make contact with services, such contact does not guarantee that she will be able to seek or obtain redress.<sup>269</sup>

The experience of California farmworkers suggests that strong labor laws can help improve working conditions. The continued persistence of workplace abuses, however, demonstrates that more comprehensive changes—including federal immigration reform—are needed to transform an industry that has relied for too long on an unauthorized, marginalized workforce.

## Particular Barriers for Unauthorized Immigrants

In the rare instances in which unauthorized farmworkers decide to bring claims under civil sexual harassment law, they face significant barriers. Legal services organizations that receive federal funding through the Legal Services Corporation (LSC) are prohibited, with some exceptions, from representing unauthorized immigrants,<sup>270</sup> and in many rural areas, LSC-funded organizations are the only legal service organizations that exist.

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<sup>266</sup> Human Rights Watch interview with Lucia A. (pseudonym), California, April 2011.

<sup>267</sup> Email communication from Megan Beaman, Attorney, California Rural Legal Assistance to Human Rights Watch, May 1, 2011.

<sup>268</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011.

<sup>269</sup> Human Rights Watch interviews with Fidelina Espinoza and Oralia Maceda, Community Workers, Centro Binacional para el Desarrollo Indígena Oaxaqueño (CBDIO), Fresno, California, June 20, 2011; and Ines R. (pseudonym), California, August 2011.

<sup>270</sup> Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, Sec. 504 (11), 100 Stat. 1321.

Furthermore, although US law is clear that Title VII and its provisions prohibiting sexual harassment apply to unauthorized workers, the Supreme Court's 2002 decision in *Hoffman Plastic v. National Labor Relations Board (NLRB)* has raised questions about which remedies are available to unauthorized workers. In *Hoffman Plastic*, the Supreme Court ruled that the NLRB had erred in awarding back pay (as defined under the NLRA) to an unauthorized worker wrongfully terminated for participating in a union organizing campaign.<sup>271</sup>

This decision has led some employers to argue that unauthorized workers are not entitled to other remedies beyond the specific remedy at issue in *Hoffman Plastic*, including those under Title VII, which prohibits sexual harassment. The decision has also emboldened employers to argue that inquiries into immigration status are relevant during discovery. For example, in *Rivera v. Nibco*, where immigrant workers brought claims of national origin discrimination under Title VII, the employer sought to inquire into their immigration status.<sup>272</sup> In a decision in the case, the Ninth Circuit Court of Appeals noted, “[T]he overriding national policy against discrimination would seem likely to outweigh any bar against the payment of back wages to unlawful immigrants in Title VII cases. Thus, we seriously doubt that *Hoffman* applies in such actions.”<sup>273</sup> Although the court ultimately declined to decide this question, it did hold that the harm to employees would outweigh benefit to the employer if discovery into immigration status were allowed.<sup>274</sup> Other courts have similarly declined to extend *Hoffman* to analogous cases,<sup>275</sup> and the EEOC has sought and won protective orders prohibiting inquiries into immigration status.<sup>276</sup>

The issue, however, has not been decisively settled. A federal court in Washington held in 2010 that immigration status is relevant to determination of actual damages, although the court bifurcated the liability and statutory damages determinations to limit the chilling effect of the decision. Liz Chacko, a farmworker attorney in Pennsylvania, stated that even though she believes *Hoffman Plastic* does not apply to remedies under Title VII, in practice, “we

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<sup>271</sup> *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137, 122 S.Ct. 1275, 152 L.Ed.2d 271 (2002)

<sup>272</sup> *Rivera v. Nibco, Inc.*, 364 F.3d 1057 (9<sup>th</sup> Cir. 2004).

<sup>273</sup> *Ibid.* at 1069.

<sup>274</sup> *Ibid.* at 1070.

<sup>275</sup> *Cano v. Mallory Mgmt.*, 195 Misc. 2d 666, 760 N.Y.S.2d 816, 818 (N.Y. Sup. Ct. 2003); *De La Rosa v. N. Harvest Furniture*, 210 F.R.D. 237, 238-39 (C.D.Ill. 2002); *Escobar v. Spartan Sec. Serv.*, 281 F. Supp. 2d 895, 897 (S.D. Tex. 2003); *Flores v. Amigon*, 233 F. Supp. 2d 462, 464-65 (E.D.N.Y. 2002); *Zeng Liu v. Donna Karan Int'l, Inc.*, 207 F. Supp. 2d 191, 192-93 (S.D.N.Y. 2002).

<sup>276</sup> *EEOC v. First Wireless*, 225 F.R.D. 404 (E.D.N.Y. 2004); *EEOC v. City of Joliet*, 239 F.R.D. 490 (N.D. Ill. 2006).

can't guarantee [unauthorized workers] that the employer won't try to inquire into immigration status." Out of caution, she sometimes chooses not to seek certain remedies.<sup>277</sup>

Chacko further noted that if sexual harassment is severe, she can seek compensatory damages based on emotional distress to make up for the remedies she is not claiming. But this strategy does not work for clients who suffer less severe, though real, sexual harassment. Limited remedies not only reduce compensation for the survivor, of course, but also weaken the deterrent effect of the law on employers who engage in unlawful practices.

## The EEOC: Positive Efforts but Limited Resources

EEOC investigators and attorneys display a wide range of understanding and sensitivity about different forms of discrimination—some truly do not understand the unique challenges faced by farmworkers and particularly indigenous farmworkers. As a result of this combination of factors, the EEOC process is cumbersome, inefficient, and often causes repeated re-traumatization and/or loss of interest among clients. Put bluntly, the administrative process, handled incorrectly, can sometimes be worse for complainants than if they had made no complaint at all.

—Megan Beaman, Attorney, California Rural Legal Assistance, May 1, 2011.

The Equal Employment Opportunity Commission (EEOC) is charged with enforcing Title VII, along with other anti-discrimination laws, in the workplace. An employee who wants to bring a claim under Title VII must first file a complaint, or "charge of discrimination," with the EEOC. In general, the charge must be filed within 180 days of the last act of discrimination, a time period extended to 300 days if a state or local agency enforces a law that prohibits employment discrimination on the same basis.<sup>278</sup> Some cases are sent to mediation; others go directly to an investigator. If an investigator finds evidence of illegal discrimination, the EEOC seeks to reach a settlement with the employer. If the EEOC does not reach a settlement, the agency may bring a lawsuit on behalf of the employee. In deciding whether or not to bring a lawsuit, the EEOC considers such factors as the

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<sup>277</sup> Human Rights Watch telephone interview with Liz Chacko, Friends of Farmworkers, July 29, 2011.

<sup>278</sup> US Equal Employment Opportunity Commission, "Time Limits for Filing a Charge," <http://www.eeoc.gov/employees/timeliness.cfm> (accessed February 5, 2012).

seriousness of the violation, the type of legal issues in the case, and the potential impact a lawsuit could have on workplace discrimination in general.<sup>279</sup>

If the investigator does not find evidence of illegal discrimination, or the EEOC decides not to bring a lawsuit, the employee is given a Right to Sue letter, and he or she may still personally sue the employer but must do so within 90 days.<sup>280</sup> The EEOC must issue a Right to Sue letter when 180 days have passed since the charge was first filed.<sup>281</sup>

In 1999 the EEOC began to prioritize assisting low-wage workers, including immigrant workers.<sup>282</sup> The EEOC has since taken significant steps toward addressing sexual harassment of low-income immigrant workers—including unauthorized workers—with some positive results, including in the two dozen sexual harassment lawsuits it has brought against agricultural and food industry employers. Several have resulted in significant settlements, while the one case that went to trial resulted in a verdict of over \$1 million in favor of the farmworker.<sup>283</sup> These cases have generated some publicity, which increases the likelihood that farmworker survivors will discover they have a right to redress. Attorneys at several rural legal services organizations praised the EEOC for its efforts to reach farmworker communities and noted that the increased outreach seems to have led to more farmworkers being willing to bring lawsuits against their employers.<sup>284</sup>

The EEOC process also sometimes allows farmworkers to bring claims anonymously. In the lawsuit against Evans Fruit in Washington, the EEOC filed a “Jane Doe” complaint.<sup>285</sup> In the lawsuit against Knouse Foods in Pennsylvania, the lawsuit was brought as a Commissioner’s Charge, so that the farmworkers who initially brought the claim to the EEOC did not have to be named.<sup>286</sup> The attorney who brought this case stated, “It afforded

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<sup>279</sup> US Equal Employment Opportunity Commission, “Filing a Lawsuit,” <http://www.eeoc.gov/employees/lawsuit.cfm> (accessed February 5, 2012).

<sup>280</sup> US Equal Employment Opportunity Commission, “Filing a Charge of Discrimination,” <http://www.eeoc.gov/employees/charge.cfm> (accessed February 5, 2012).

<sup>281</sup> US Equal Employment Opportunity Commission, “Filing a Lawsuit.”

<sup>282</sup> William R. Tamayo, “The EEOC and Immigrant Workers,” *University of San Francisco Law Review*, vol. 44, Fall 2009, p. 253.

<sup>283</sup> “Sexual Harassment Verdict Upheld in Favor of EEOC Against Ag Industry Giant Harris Farms,” US Equal Employment Opportunity Commission press release, April 25, 2008, <http://www.eeoc.gov/eeoc/newsroom/release/4-25-08.cfm> (accessed March 7, 2012).

<sup>284</sup> Human Rights Watch telephone interviews with Jenifer Rodriguez, Attorney, Colorado Legal Services, August 5, 2011; Joe Morrison, Attorney, Columbia Legal Services, March 1, 2011; and Victoria Mesa, Attorney, Florida Rural Legal Services, August 2, 2011.

<sup>285</sup> *EEOC v. Evans Fruit Co. Inc.*, No. CV-10-3033-LRS, Complaint, June 17, 2010.

<sup>286</sup> Human Rights Watch telephone interview with Liz Chacko, July 29, 2011.

a level of protection that [the workers] wouldn't otherwise have had, especially to the worker who was still at the employer.”<sup>287</sup>

At the same time, however, several farmworker advocates expressed some frustration with the EEOC and the way it processes and investigates claims. The basic steps required for filing a complaint under Title VII were clearly not designed for a rural and often isolated and migratory workforce. Given the distrust many farmworkers have of government authorities, as well as the fear many have of deportation, it can be difficult for a farmworker to even enter a federal building to file a charge with the EEOC. One woman stated, “I wanted to complain to an agency, but I don’t have documents. They always want to see your ID.”<sup>288</sup> Other than the office in Fresno, California, EEOC offices tend to be located in major urban areas nationwide. Farmworkers without cars can find it difficult to reach these offices, let alone take time away from work. William Tamayo, Regional Attorney with the EEOC, acknowledged that the location of EEOC offices is a problem and stated that if the agency had more funding, it would locate more offices in rural areas.<sup>289</sup> Antonio Flores, a community worker for the Indigenous Farmworker Program at California Rural Legal Assistance, further noted that EEOC staff cannot simply sit in their offices, because “indigenous people will not go knock on their doors.”<sup>290</sup>

Should a farmworker overcome all the barriers to filing a charge, she will encounter a system for processing charges that can last several years. Survivors often find it difficult to understand the EEOC’s enforcement capabilities. An attorney described how one client was frustrated and wondered, “Why aren’t they putting him in jail? Why aren’t they acting faster?”<sup>291</sup> The EEOC generally will not issue a Right to Sue letter before 180 days after the charge is filed. If the EEOC decides to investigate a case, it generally takes at least six months for an investigator to be assigned to the case, and that is the best case scenario for expedited cases. The investigation itself can take anywhere from six months to several years. One attorney acknowledged that the EEOC has a tremendous workload, but felt that the length of time it takes to complete an investigation is “terrible,” especially for migrant

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<sup>287</sup> Ibid.

<sup>288</sup> Human Rights Watch interview with Guadalupe F. (pseudonym), North Carolina, August 2011.

<sup>289</sup> Human Rights Watch interview with William Tamayo, April 7, 2011.

<sup>290</sup> Human Rights Watch interview with Antonio Flores, Community Worker, Indigenous Workers Project, California Rural Legal Assistance, Oxnard, California, June 29, 2011.

<sup>291</sup> Human Rights Watch interview with Jenifer Rodriguez, August 5, 2011.

workers, stating further, “We lose track of our clients, they lose faith in the system, they think, ‘What’s the point of staying in touch?’ It’s a big, big problem.”<sup>292</sup> The delays can also adversely affect the viability of a class action in situations where many workers suffer sexual harassment, as it makes it more difficult to locate witnesses and claimants, and memories fade.<sup>293</sup>

The quality of investigations also ranges widely. While some attorneys felt investigations had been carried out rigorously, others reported encountering investigators who lacked sensitivity, with regard to both the cultural background of the survivors (especially with indigenous workers) and the sensitive subject at issue. One woman who had been traumatized by the sexual harassment she experienced reported that the investigation had been “very stressful” and that the investigator had only interviewed her by telephone.<sup>294</sup> Telephone interviews are particularly difficult for survivors of rape. Attorneys further reported that some investigators are not sensitive to the unique challenges farmworkers face. In one case, an investigator tried to do interviews of witnesses at the workplace. Not surprisingly, “when she approached people at work, they said, ‘I don’t know anything, I’m not a witness.’”<sup>295</sup> That same investigator resisted doing interviews outside of work hours from nine to five, even though farmworkers are more available before 7 a.m. and after 7 p.m., their typical work day.<sup>296</sup> Some attorneys reported that supposedly bilingual Spanish-speaking investigators did not speak Spanish fluently and had even less capacity to interview indigenous workers with limited Spanish proficiency. In one case, an investigator grew so frustrated with an indigenous farmworker that he reportedly began pushing the client, declaring, “You’re contradicting yourself! This doesn’t make any sense!”<sup>297</sup>

When settlement offers are made, “the pressure to settle low and early is intense.”<sup>298</sup> One attorney expressed concern that when cases settle at the mediation stage of the EEOC process, it adversely affects the rights of other workers who might potentially have formed a class for a class action. The settlement offers are also often extremely low: “What she was offered was a

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<sup>292</sup> Human Rights Watch interview with Michael Meuter, April 5, 2011.

<sup>293</sup> Human Rights Watch interview with Michael Marsh, April 26, 2011.

<sup>294</sup> Human Rights Watch interview with Lucia A. (pseudonym), California, April 2011.

<sup>295</sup> Human Rights Watch telephone interview with Victoria Mesa, August 2, 2011.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid.

<sup>298</sup> Email communication from Megan Beaman, May 1, 2011.

joke; it didn't even pay for a week's work."<sup>299</sup> But given the financial precariousness of a farmworker's life, many "end up taking the first \$1,000 offered to them."<sup>300</sup>

The damages available to farmworkers are also statutorily limited. Title VII places caps on compensatory and punitive damages at \$50,000 for employers with 101 employees or fewer, a figure that has been unchanged since 1991.<sup>301</sup> These caps can affect how seriously employers take these charges.<sup>302</sup> A worker who brings a claim under state and federal law can often seek greater damages, but there are several states, including four in the south, that do not have state laws prohibiting sexual harassment.<sup>303</sup> In some states, like Pennsylvania, the law specifically exempts agricultural workers.<sup>304</sup>

The *Terra Linda* case is a good example of how long and difficult a civil harassment claim can be and how contractors can complicate the issue of liability. In 2006 two women filed claims against Terra Linda Farms, a grower, and Green Valley Ag, Inc., a farm labor contractor, with the California Department of Fair Employment and Housing (DFEH), alleging sexual harassment and retaliation by a supervisor working for Terra Linda Farms. In 2008 the Department of Fair Employment and Housing Commission (Commission) issued a decision, after a three-day evidentiary hearing, ordering Terra Linda Farms to pay \$110,000, deciding that although the women were employees of Green Valley, Terra Linda Farms was a joint employer. Terra Linda Farms appealed, and in 2009 a California superior court affirmed the Commission decision. Terra Linda Farms appealed again, and in January 2012 the Fifth Appellate District Court of California issued a decision upholding the superior court decision.<sup>305</sup> In all, it took almost six years before the women received this decision, and as this report went to publication, they had yet to receive the money awarded to them.<sup>306</sup>

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<sup>299</sup> Human Rights Watch telephone interview with Victoria Mesa, August 2, 2011.

<sup>300</sup> Ibid.

<sup>301</sup> 42 US Code Section 1981A(b)(3)(A).

<sup>302</sup> Human Rights Watch telephone interview with Liz Chacko, July 29, 2011.

<sup>303</sup> Human Rights Watch interview with William Tamayo, April 7, 2011.

<sup>304</sup> Pennsylvania Human Relations Act, 43 Pa. Cons Stat. Ann. Section 954(c); Liz Chacko, an attorney with Friends of Farmworkers, noted that at least with workers in packing or processing houses, they can categorize them as not being agricultural workers. Human Rights Watch telephone interview with Liz Chacko, July 29, 2011.

<sup>305</sup> *Terra Linda Farms v. California Fair Employment and Housing Commission*, 2012 Cal. App. Unpub. LEXIS 395, January 19, 2012.

<sup>306</sup> Human Rights Watch telephone interview with Anthony Seferian, Assistant Attorney General, California Office of the Attorney General, April 13, 2012.

## **VII. Obstacles to Enforcement of Applicable Criminal Law**

Better that I not call the police, better that I not say anything.

—Marisol Z., New York farmworker, August 2011.

If I had called the police, they wouldn't have helped me because I'm undocumented.

—Monica V., New York farmworker, August 2011.

Many of the acts of sexual violence and sexual harassment experienced by farmworkers can also be classified as crimes and are prohibited by criminal law. But in most of the cases we investigated, the workers did not report the crimes to police or did so only after making contact with a social service agency that actively encouraged and supported them. Human Rights Watch did not do extensive interviews in any particular jurisdiction, and due to confidentiality concerns, we were unable to follow up with police departments about specific cases. While we thus can reach no conclusions about the adequacy of efforts of any particular police department or other law enforcement agency, the incidents described show that law enforcement agencies can and should do more to investigate and prosecute sexual violence against farmworkers.

### **Fears of Police Fueled by Police Involvement in Immigration Enforcement**

Numerous immigrants and advocates reported that unauthorized immigrants are often reluctant to report any crimes to the police. Lourdes Carrillo, who heads a Latino community organization in North Carolina, stated, “I know victims of domestic violence who don’t report [to the police].... I know three women ... they’re afraid police will deport them.”<sup>307</sup> Police officers also acknowledged that fear of deportation is a major barrier. Sergeant Kevin Smith at the Fresno County Sheriff’s Department stated that when reports of crimes do come in, “Some of the reporting is second-hand. Families are afraid they’ll get deported.... [They are] not coming immediately to the police, not initially.”<sup>308</sup>

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<sup>307</sup> Human Rights Watch interview with Lourdes Carrillo, Director, HOLA, Wilkesboro, North Carolina, August 24, 2011.

<sup>308</sup> Human Rights Watch telephone interview with Sergeant Kevin Smith, Fresno County Sheriff’s Department, July 25, 2011.

As noted above, the increasing cooperation of local law enforcement agencies with Immigration and Customs Enforcement (ICE) has only exacerbated immigrant farmworkers' fears. Over the last several years, ICE has pushed the adoption of programs like the Criminal Alien Program, 287(g), and Secure Communities. Through these programs, unauthorized immigrants who come into contact with law enforcement, often through incidents as minor as traffic stops, have been checked against an immigration database and then referred to ICE for removal proceedings.<sup>309</sup> ICE claims that the vast majority of immigrants deported under these programs have been dangerous criminals, but ICE's own data state that as of April 30, 2011, a third of the individuals administratively arrested or booked into ICE custody through the Secure Communities program had no criminal convictions.<sup>310</sup>

Local law enforcement agencies have also increasingly become identified with immigration agents as state governments pass laws that require local law enforcement involvement in immigration enforcement. Arizona, Alabama, South Carolina, Georgia, and Utah have all passed laws that require or authorize law enforcement agencies to check the immigration status of individuals during any lawful stop or arrest.<sup>311</sup> Alabama is the only state thus far in which such provisions were not immediately enjoined by courts, and Human Rights Watch subsequently received reports of incidents in Alabama in which, due to the new law, victims of crimes were unwilling to report them to the police.<sup>312</sup>

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<sup>309</sup> American Immigration Lawyers Association, "Immigration Enforcement Off Target: Minor Offenses with Major Consequences," August 2011, <http://www.aila.org/content/fileviewer.aspx?docid=36646&linkid=236762> (accessed April 13, 2012).

<sup>310</sup> US Department of Homeland Security, Immigration and Customs Enforcement, "Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through April 30, 2011," May 23, 2011, [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interoperability\\_stats-fy2011-feb28.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-feb28.pdf) (accessed March 5, 2012). An additional 38 percent had non-“aggravated felony” convictions.

<sup>311</sup> American Civil Liberties Union, Immigrants' Rights Project, "SB 1070-Type Legislation," updated November 1, 2011, [http://www.law.nyu.edu/ecm\\_dlv1/groups/public/@nyu\\_law\\_website\\_\\_centers\\_\\_bickel\\_brewer\\_latino\\_institute\\_for\\_human\\_rights/documents/documents/ecm\\_pro\\_070426.pdf](http://www.law.nyu.edu/ecm_dlv1/groups/public/@nyu_law_website__centers__bickel_brewer_latino_institute_for_human_rights/documents/documents/ecm_pro_070426.pdf) (accessed February 29, 2012).

<sup>312</sup> Human Rights Watch, *United States—No Way to Live: Alabama's Immigrant Law*, December 14, 2011, <http://www.hrw.org/reports/2011/12/14/no-way-live>.

## The Importance of Police Outreach in Developing Community Trust

It can make a significant difference when a law enforcement agency takes steps to overcome an immigrant community's distrust and assures them it is working to protect all residents from crime, regardless of their immigration status.

Sergeant Dave Shaw of the Salinas Police Department in Salinas, California, stated, "If they are victims, we don't care about their status."<sup>313</sup> To communicate that message, the police department has conducted extensive outreach, with presentations on radio and television, articles in newspapers, and appearances at Latino churches by the police chief. When Sergeant Shaw first started in 1987, such outreach was nonexistent. Since then, however, he believes the outreach has led to more victims coming forward, including victims of sexual assault.

Sergeant Shaw remembered one case in particular where he had encountered a man and a woman in a vehicle and interrupted what he later learned was an attempted rape. At the time, the woman pretended they were in a relationship, but the next day, she came in and reported the assault. Sergeant Shaw stated, "I honestly believe our efforts over the years led to that woman reporting the assault. When I first started, she would have been more afraid of the police than of him."<sup>314</sup>

Sergeant Shaw, however, is aware that all the work the department has done could be undone easily: "You have to back up what you say. It may take 10 years to build up trust, and then one incident can betray that trust."<sup>315</sup>

Farmworkers and farmworker advocates across the country reported that police behavior varied greatly from jurisdiction to jurisdiction. But where the police are active in reporting unauthorized immigrants they encounter to immigration, farmworkers are well-aware that even a routine traffic stop<sup>316</sup> or a phone call reporting domestic violence<sup>317</sup> can lead

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<sup>313</sup> Human Rights Watch telephone interview with Sergeant Dave Shaw, Community Services Unit, Salinas Police Department, June 22, 2011.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Mayor Thomas Menino of Boston sent a letter to the Department of Homeland Security in July 2011 seeking to withdraw from Secure Communities in part because many immigrants had been detained and arrested by ICE after being stopped for

to deportation proceedings. In California and North Carolina, two states Human Rights Watch visited, Secure Communities is now active in every county.<sup>318</sup>

In New York, Secure Communities was activated in half of the counties, including many of the counties engaged in agriculture, but New York suspended its participation in Secure Communities statewide in June 2011.<sup>319</sup> Even after the suspension, farmworker advocates in New York report that local police continue to call Border Patrol for interpretation assistance, leading to situations in which, for example, a Spanish-speaking victim who calls the police for help will see immigration authorities, with the power to deport her, arrive on the scene to interpret.<sup>320</sup> They further reported that police and Border Patrol officers often sit outside churches, laundromats, and other places where Latino immigrants congregate.<sup>321</sup>

In one small town in California's Central Valley, several farmworkers said they distrusted the police because they felt police had "arrested and deported [people] for no reason" or for offenses like driving without a driver's license,<sup>322</sup> and that a

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traffic violations. Julia Preston, "Resistance Widens to Obama Initiative on Criminal Immigrants," *The New York Times*, August 13, 2011, <http://www.nytimes.com/2011/08/13/us/politics/13secure.html?pagewanted=all> (accessed March 6, 2012).

<sup>317</sup> Maria Bolanos, an unauthorized immigrant in Maryland, was identified by Secure Communities as unauthorized after she called the police to report a domestic dispute and was arrested for illegally selling a phone card, a charge that was eventually dropped. Shankar Vedantam, "Call for help leads to possible deportation for Hyattsville mother," *The Washington Post*, November 1, 2010, <http://www.washingtonpost.com/wp-dyn/content/story/2010/11/01/ST2010110106818.html?sid=ST2010110106818> (accessed March 6, 2012).

<sup>318</sup> US Immigration and Customs Enforcement, "Activated Jurisdictions," updated March 6, 2012, <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf> (accessed March 6, 2012).

<sup>319</sup> Letter from Governor Andrew M. Cuomo to John Sandweg, Counselor to the Secretary, US Department of Homeland Security, June 1, 2011, <http://www.governor.ny.gov/assets/Secure%20Communities.pdf> (accessed March 6, 2012). Other states have also expressed reluctance to participate in Secure Communities, but it is unclear whether New York will be permitted to continue to opt-out. Although Secure Communities was originally described by ICE as a voluntary program, ICE released a memorandum in response to a Freedom of Information Act request indicating that it plans to make Secure Communities mandatory by 2013. US Immigration and Customs Enforcement, Memorandum to Beth N. Gibson, Assistant Deputy Director, "Secure Communities—Mandatory in 2013," October 2, 2010, <http://images.politico.com/global/2012/01/icefoiaoptoutdocs.pdf> (accessed March 6, 2012).

<sup>320</sup> Human Rights Watch telephone interview with Lew Papenfuse, Director, and Cheryl Gee, Community Worker, Farmworker Legal Services of New York (now Worker Justice Center of New York), May 5, 2011. The same practice was reported in Ohio. Human Rights Watch telephone interview with Mark Heller, Managing Attorney, Migrant Farmworker and Immigration Program, Advocates for Basic Legal Equality, August 29, 2011.

<sup>321</sup> Human Rights Watch telephone interview with Lew Papenfuse and Cheryl Gee, May 5, 2011; Human Rights Watch interview with Alina Diaz, farmworker advocate, Rochester, New York, August 20, 2011. Human Rights Watch has contacted Customs and Border Patrol for comment, but as of the date of publication, we had not received a response.

<sup>322</sup> Human Rights Watch interviews with Lupe S. (pseudonym), California, June 2011; Juliana T. (pseudonym), California, June 2011; and Lorena U. (pseudonym), California, June 2011.

particular police officer “helps ICE” and “doesn’t like Mexicans.”<sup>323</sup> In Kern County, California, a major agricultural area, a sheriff’s deputy was convicted in 2011 of pulling over unauthorized immigrants and stealing money from them.<sup>324</sup> In Jackson County, North Carolina, a farmworker advocate reported that he has heard rumors of one particular deputy, nicknamed “El Gordo,” who “puts his hands on people and says ugly things to them.”<sup>325</sup> The Department of Justice recently concluded that illegal racial profiling by local law enforcement has occurred in Maricopa County, Arizona, and East Haven, Connecticut.<sup>326</sup> The perception that unauthorized workers can be stopped by police and deported “for no reason” is a powerful deterrent to reporting crimes.

Although no one reported incidents to us in which farmworker survivors of sexual violence or harassment were turned over to immigration authorities after reporting crimes to police, several people reported incidents in which minor interactions with police, such as a phone call to report domestic violence, had led to inquiries into the victim’s immigration status and, in some cases, deportation proceedings.<sup>327</sup> Several farmworkers and farmworker advocates stated that such stories raise the level of fear in immigrant communities.<sup>328</sup>

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<sup>323</sup> Human Rights Watch interviews with Emilio R. (pseudonym), California, June 2011; and director of social service agency (name withheld), California, June 2011. Human Rights Watch calls to the police department in this town were not returned.

<sup>324</sup> Jason Kotowski, “Some local law enforcement have fallen on wrong side of the law,” *The Bakersfield Californian*, April 4, 2011, <http://www.bakersfield.com/news/local/x529880740/Some-local-law-enforcement-have-fallen-on-wrong-side-of-the-law> (accessed February 5, 2012). Police across the country have been arrested for extorting money from unauthorized immigrants. See Cynthia Roldan, “Lantana cop charged with robbery for allegedly pulling over, shaking down Hispanic men,” *Palm Beach Post News*, June 29, 2011, [http://www.palmbeachpost.com/news/crime/lantana-cop-charged-with-robbery-for-allegedly-pulling-1484923.html?cxntcid=breaking\\_news](http://www.palmbeachpost.com/news/crime/lantana-cop-charged-with-robbery-for-allegedly-pulling-1484923.html?cxntcid=breaking_news) (accessed February 5, 2012).

<sup>325</sup> Human Rights Watch interview with farmworker advocate (name withheld), North Carolina, August 25, 2011. When asked for a response, Major Shannon Queen of the Jackson County Sheriff’s Office stated that they had not received any complaints of such misconduct. Human Rights Watch telephone interview with Major Shannon Queen, Jackson County Sheriff’s Office, March 21, 2012.

<sup>326</sup> Letter from US Department of Justice, Civil Rights Division, to Bill Montgomery, County Attorney, Maricopa County, Arizona, December 15, 2011, [http://www.justice.gov/crt/about/spl/documents/mcsa\\_findletter\\_12-15-11.pdf](http://www.justice.gov/crt/about/spl/documents/mcsa_findletter_12-15-11.pdf) (accessed March 6, 2012); Letter from US Department of Justice, Civil Rights Division, to Mayor Joseph Maturo, Jr., East Haven, Connecticut, December 19, 2011, [http://www.justice.gov/crt/about/spl/documents/easthaven\\_findletter\\_12-19-11.pdf](http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf) (accessed Marcy 7, 2012).

<sup>327</sup> Human Rights Watch interviews with Alejandro Celorio, Consul de Protección, Mexican Consulate, Sacramento, California, April 4, 2011; community leader (name withheld), North Carolina, August 2011; Paz B. (pseudonym), New York, August 2011; and Carlos U. (pseudonym), New York, August 2011.

<sup>328</sup> Human Rights Watch interviews with Ana I. (pseudonym), North Carolina, July 2011; Marisol Z. (pseudonym), New York, August 2011; and Barbara L. (pseudonym), California, August 2011. Human Rights Watch telephone interviews with Leoncio Vasquez, Director, Centro Binacional para el Desarrollo Indígena Oaxaqueña, April 21, 2011; Lew Papenfuse and Cheryl Gee, May 5, 2011; Laura Contreras, Attorney, Columbia Legal Services, and Blanca Rodriguez, Attorney, Northwest Justice Project, March 17, 2011; and Lourdes Carrillo, August 2011.

## Failure to Investigate Sexual Assault

Survivors of sexual assault in the US—regardless of ethnicity, occupation, or legal status—face significant barriers to justice, including police departments that fail to adequately investigate their complaints.<sup>329</sup>

According to the Centers for Disease Control, nearly one in five women in the US, and one in 71 men, has been raped in his or her lifetime.<sup>330</sup> Reporting rates for sexual assault in the general population are low. According to the Bureau of Justice Statistics, in 2008 only 41 percent of victims of rape or sexual assault reported the incidents to the police.<sup>331</sup> In 2010, according to the Federal Bureau of Investigation, only 24 percent of forcible rapes reported to police resulted in an arrest.<sup>332</sup>

The rate of reporting is even lower in the Latino community. According to a recent survey of sexual assault among Latinas, only 6.6 percent of Latinas who had experienced sexual victimization (defined to include sexual assault, attempted sexual assault, and fondling/forced touch) reported that they had contacted the police, and only 21 percent reported that they had sought formal help of any kind (defined as medical care, police involvement, social service agency involvement, restraining order, or criminal charges).<sup>333</sup>

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<sup>329</sup> Human Rights Watch, *United States—“I Used to Think the Law Would Protect Me:” Illinois’s Failure to Test Rape Kits*, July 7, 2010, <http://www.hrw.org/reports/2010/07/07/i-used-think-law-would-protect-me-o>; Human Rights Watch, *United States—Testing Justice: The Rape Kit Backlog in Los Angeles City and County*, March 31, 2009, <http://www.hrw.org/en/reports/2009/03/31/testing-justice-o>.

<sup>330</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, “National Intimate Partner and Sexual Violence Survey: 2010 Summary Report,” November 2011, <http://www.cdc.gov/violenceprevention/nisvs/index.html> (accessed January 4, 2012).

<sup>331</sup> US Department of Justice, Bureau of Justice Statistics (BJS), “National Crime Victimization Survey, 2008,” <http://bjs.ojp.usdoj.gov/content/pub/pdf/cvuso805.pdf> (accessed April 24, 2012), Table 91. Estimates of the reporting rate for rape and other sexual assault vary considerably. For example, the BJS survey shows that in 2008, 64 percent of rapes and 36 percent of sexual assaults were reported to the police, while a 2007 study found that only 16 percent of rapes were reported to law enforcement. Dean G. Kilpatrick et. al., “Drug-facilitated, Incapacitated, and Forcible Rape: A National Study,” NCJ 219181, July 2007, <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf> (accessed April 24, 2012).

<sup>332</sup> US Department of Justice, Federal Bureau of Investigation, “Crime in the United States 2010,” <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u-s/2010/crime-in-the-u-s-2010> (accessed March 13, 2012). The FBI recently expanded its definition of rape beyond “forcible rape,” to be more in keeping with state law definitions, but this new definition has not yet been incorporated into FBI statistics. “Attorney General Eric Holder Announces Revisions to the Uniform Crime Report’s Definition of Rape,” Federal Bureau of Investigation press release, January 6, 2012, <http://www.fbi.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape> (accessed March 13, 2012).

<sup>333</sup> Carlos A. Cuevas and Chiara Sabina, *Sexual Assault Among Latinas (SALAS) Study*, April 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/230445.pdf> (accessed March 27, 2012).

The study surveyed women in high-density Latino areas; the numbers are likely even starker for Latina farmworkers, let alone unauthorized Latina farmworkers.<sup>334</sup>

Even when rapes are reported, US law enforcement agencies often fail to adequately investigate them. Human Rights Watch has previously documented the failure of Illinois and Los Angeles County authorities to test rape kits (the results of medical examinations intended to collect DNA evidence),<sup>335</sup> while a recent investigation by the *Baltimore Sun* uncovered serious and pervasive problems with Baltimore police response to allegations of sexual assault, including an unusually high rate of classification of such allegations as “unfounded” (meaning the police did not believe a crime had occurred) and aggressive and rude questioning of victims by police.<sup>336</sup>

Some farmworkers told us that police seemed indifferent when they reported other crimes or did not fully understand them because of language gaps.<sup>337</sup> Lideres Campesinas, a farmworker women’s advocacy organization, reported that when a police department only has one Spanish-speaking officer, that person is often “pigeon-holed” and “gets burnt out.”<sup>338</sup> When Lideres Campesinas has offered to do outreach with local police departments, they have not been interested, showing little “institutional commitment to providing services.”<sup>339</sup> Maria A., who reported that she was raped, also reported that she called the police about harassing phone calls she was getting before the rape, but they showed no interest in helping her.<sup>340</sup>

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<sup>334</sup> US Department of Justice, Bureau of Justice Statistics, “National Crime Victimization Survey, 2005.” Seventy-three percent of female victims of rape or sexual assault reported being assaulted by a nonstranger. The SALAS study found similar high rates of victimization by a nonstranger: 44.1 percent of victims of sexual violence reported the perpetrator was a partner or spouse; 48.7 percent reported it was someone else known to the victim. The study also found that immigrants reported sexual victimization to the survey at lower rates than US-born Latinas and those with greater acculturation to the US. The study did not provide a conclusion as to why this would be true, but posited, among other explanations, that American-born Latino women may be more likely to disclose victimization in response to a phone survey than foreign-born Latino women. Carlos A. Cuevas and Chiara Sabina, *Sexual Assault Among Latinas (SALAS) Study*, April 2010.

<sup>335</sup> Human Rights Watch, “*I Used to Think the Law Would Protect Me*,” July 2010; Human Rights Watch, *Testing Justice*, March 2009.

<sup>336</sup> Justin Fenton, “City rape statistics, investigations draw concern,” *The Baltimore Sun*, June 27, 2010, [http://www.baltimoresun.com/news/bs-md-ci-rapes-20100519,0\\_5338041.story](http://www.baltimoresun.com/news/bs-md-ci-rapes-20100519,0_5338041.story) (accessed March 13, 2012). A *Philadelphia Inquirer* investigation in 1999 found similar problems with the investigation of rape by Philadelphia police. Mark Fazlollah, Michael Matza, Craig R. McCoy, and Clea Benson, “Women victimized twice in police game of numbers,” *Philadelphia Inquirer*, October 17, 1999, <http://inquirer.philly.com/packages/crime/html/sch101799.asp> (accessed March 13, 2012).

<sup>337</sup> Human Rights Watch interviews with Belen F. (pseudonym), California, June 2011; Santiago I. (pseudonym), California, June 2011; Pilar D. (pseudonym), North Carolina, July 2011; Isabel H. (pseudonym), North Carolina, July 2011; and Cristina N. (pseudonym), California, August 2011.

<sup>338</sup> Human Rights Watch interview with Daniela Ramirez, then-Executive Director, Suguet Lopez, then-Director of Programs and current Executive Director, and Ramona Felix, Statewide Coordinator of Sexual Assault, Harassment, and Trafficking Programs, Lideres Campesinas, Oxnard, California, June 29, 2011.

<sup>339</sup> Ibid.

<sup>340</sup> Human Rights Watch interview with Maria A. (pseudonym), California, June 2011.

After two farmworkers in different states reported rapes to local law enforcement, they reported the perpetrators were deported but not criminally prosecuted. Rosana C. stated the police never followed up with her complaint and never arrested the perpetrator as they had promised after she gave them his name and other information. Rather, she found out through others that he had been deported: “When he returns to Mexico, he’s going to make me pay back. What is the point of asking for justice when there is no justice? They should have put him in jail.”<sup>341</sup> Patricia M. was less visibly outraged, but she expressed concern that a relative of her rapist told her that he was planning to return to visit her and her child.<sup>342</sup>

Police and prosecutors may opt not to pursue investigations and prosecutions for a variety of reasons. Jeff Ponting, an attorney with California Rural Legal Assistance, believes inaction is more likely given pervasive prejudice against and misconceptions of unauthorized immigrants.<sup>343</sup> Kern County District Attorney Lisa Green emphasized other problems, including the loss of evidence that results when sexual assault is not reported immediately and difficulties getting juries to connect with Spanish speakers and understand why survivors of workplace sexual assault would go back to work in the same place.<sup>344</sup>

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<sup>341</sup> Human Rights Watch interview with Rosana C. (pseudonym), New York, August 2011.

<sup>342</sup> Human Rights Watch interview with Patricia M. (pseudonym), California, June 2011. Human Rights Watch did not contact the police departments in these cases, to protect the identities of Rosana C. and Patricia M.

<sup>343</sup> Human Rights Watch interview with Jeff Ponting, Director, Indigenous Farmworker Program, California Rural Legal Assistance, Oxnard, California, June 29, 2011.

<sup>344</sup> Human Rights Watch interview with Lisa Green, Kern County District Attorney, Bakersfield, California, June 28, 2011.

## **VIII. Employer Failure to Address Sexual Violence and Harassment**

There are a lot of businesses that benefit from a cheap, docile labor supply that won't cause any problems because they don't want any attention. It's why nothing happens; the status quo works economically.

—Rick Rominger, California farmer, September 9, 2011.

When I tell a lot of workers what their rights are, they say, "Could you tell the grower?"

—Daniela Dwyer, Attorney, Florida Legal Services, Migrant Farmworker Justice Project, May 12, 2011.

Some employers work hard to keep their workers safe from sexual harassment and comply fully with worker safety laws. One California farmworker who reported suffering harassment from a supervisor had also worked for companies who did things differently: "I've seen companies that take care of their workers. Where they provide bathrooms, have you wash [your] hands, have everything ready."<sup>345</sup>

Unfortunately, some do not. Some are ignorant of, or choose not to see, what is happening at their workplace, while others retaliate against employees who try to report violations and abuses. Some are even actively belligerent toward those who seek to provide farmworkers with information about their rights.

### **Taking Advantage of the Dysfunctional Immigration System**

Every grower and industry representative we interviewed expressed frustration with the current US immigration system. Although agricultural labor is often seen as unskilled work, several farmers stated that they value their employees for their experience and their skills. Phil Foster, a farmer in California, described his farm as a "complex operation" where it is "key to have people who've worked on the farm for years." For Foster, "we rely on people with agrarian skills who are valuable employees and valuable members of the community.

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<sup>345</sup> Human Rights Watch interview with Natalia B., Magdalena C., Ana D., and Soledad E. (pseudonyms), California, April 2011.

If they are not legal, then we should work towards fixing that.”<sup>346</sup> Manuel Cunha, president of the Nisei Growers League, and Rob Roy, president and general counsel of the Ventura County Agricultural Association, both stated that their organizations have worked to reform immigration and guestworker laws for farmworkers. For Roy, it is important that they “take care of people who are here, who have built families and are very skilled.”<sup>347</sup>

Despite industry interest in reforming immigration, there are unscrupulous employers who take advantage of their workers’ unauthorized status. As discussed above, the ever-present fear of deportation helps to create a workplace where workers will put up with abuses rather than report them. The threat of an employer calling ICE does not have to be stated explicitly for it to silence workers, but some supervisors and employers go further and explicitly use workers’ unauthorized status to intimidate them.

As noted previously, Mercedes A. reported that the supervisor who touched her and her co-workers on their bottoms and breasts threatened to call immigration when they protested.<sup>348</sup> Angela G., a farmworker who brought a sexual harassment lawsuit against her company, was deported while the lawsuit was pending, and she believes the company may have called immigration authorities to silence her.<sup>349</sup> Similarly, Mercedes Lorduy, a legal services attorney in Florida, reported that one of her clients was told by her rapist, “Who do you think is going to believe you? You’re illegal, you don’t have any papers.”<sup>350</sup> Monica V., whose story is recounted in greater detail below, tried to discuss what the company could do about a workplace injury, but the employer reminded her that she was unauthorized and threatened to call the police.<sup>351</sup>

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<sup>346</sup> Human Rights Watch telephone interview with Phil Foster, California farmer, July 1, 2011.

<sup>347</sup> Human Rights Watch interview with Rob Roy, President and General Counsel, Ventura County Agricultural Association, Camarillo, California, August 10, 2011.

<sup>348</sup> Human Rights Watch telephone interview with Mercedes A. (pseudonym), August 2011.

<sup>349</sup> Human Rights Watch interview with Angela G. (pseudonym), California, June 2011.

<sup>350</sup> Human Rights Watch telephone interview with Mercedes Lorduy, Attorney, VIDA Legal Assistance, May 18, 2011.

<sup>351</sup> Human Rights Watch interview with Monica V. (pseudonym), New York, August 2011.

## Monica V.'s Story

Monica V. has six children in Guatemala. She reported that she came to the US 12 years ago because the father of her children left her, and she could no longer take care of her children. Her family was eating only one meal a day, consisting of a tortilla with salt.

When Monica first arrived in the United States, she began working in sanitation at a turkey processing plant in Georgia. About three years after she started, she was injured when the hose she used to spray the machines hit her eye. The company clinic told her she was fine and she could keep working, but her eye continued to bleed. The company then brought her into the office and asked her for “good papers,” even though she had already been working at the company for three years. Because she was unauthorized, they fired her.

She had been working two shifts a day, from 10 pm to 7 am, and then from noon to 6 pm. She then took on another two hours injecting turkeys from 6 to 8 pm. Monica only slept three hours a night and had to have her friend bring her coffee and her uniform between shifts. “But when I had the accident,” she says, “they started to disregard me. I was no longer good for them.”

She reported that her lack of immigration status was used against her again when she was injured after seven years of work at a chicken processing plant. Monica’s hand had been injured so badly, she said, that two of her fingers still have no feeling. The company called her into the office and asked, “Do you want us to call the police or do you want to leave on your own?” She said, “Why would you want to call the police?” and they responded, “Because the papers are not good. You have to leave or I’ll call the police.” Her supervisor asked her where she lived; he was “very clear what he was looking for.” If Monica had sex with him, she could have her job back. Monica says, “I cried so bitterly, why God, why so many things? And they didn’t give me back my job.”

After 12 years in the US and numerous injuries, Monica said, “I feel so sad in this country.... Does the president not know how much we do? How much we sacrifice? And now we are criminals?”<sup>352</sup>

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<sup>352</sup> Human Rights Watch interview with Monica V. (pseudonym), New York, August 2011.

## Inadequate Sexual Harassment Trainings and Policies

Some growers and employers take a strong stance on sexual harassment, and some farmworkers reported that they were able to report abuses to their employers and have the problems dealt with immediately and effectively. For example, Santiago I. stated that he had once worked with a foreman who would harass women and who even went to one woman's house. Santiago told his employer, and the foreman was fired.<sup>353</sup> Lorena U. reported that she when she told the owner of the farm where she worked that the foreman had sexually harassed her, the owner fired him.<sup>354</sup>

In both of these examples, the workers fully understood their rights. Santiago declared that although other unauthorized immigrants might not call the police if victimized, he would, "because I have rights."<sup>355</sup> Lorena similarly stated, "I knew it was an abuse of my rights. It was a failure to respect me as a person."<sup>356</sup> And in Lorena's case, she approached the employer with a caseworker at a local agency who encouraged her. She said the employer told her he had previously received complaints from other employees, and he regretted not believing the other women.<sup>357</sup>

Unfortunately, other farmworkers reported that their employers are ignorant of, or choose to ignore, what is happening to their workers. Jimena H., who has worked in North Carolina and Georgia, stated, "In some places, the boss is good, but the manager is very mean and abusive."<sup>358</sup> Angela G., whose report of rape is recounted above, stated, "I know there are a lot of laws, but the problem is [with] the company and the supervisors, and they don't enforce these laws because they have their own agenda."<sup>359</sup> Bianca H. concurred: "[The owners] only know production; they don't know what's going on, it doesn't matter to them if people are exploited.... When they hurt with money, they will care."<sup>360</sup> Ana I., a 16-year-old who described sexual harassment by a contractor, emphasized, "Ranchers should go out and see how workers are being treated."<sup>361</sup>

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<sup>353</sup> Human Rights Watch interview with Santiago I. (pseudonym), California, June 2011.

<sup>354</sup> Human Rights Watch interview with Lorena U. (pseudonym), California, June 2011.

<sup>355</sup> Human Rights Watch interview with Santiago I. (pseudonym), June 2011.

<sup>356</sup> Human Rights Watch interview with Lorena U. (pseudonym), June 2011.

<sup>357</sup> Ibid.

<sup>358</sup> Human Rights Watch interview with Jimena H. (pseudonym), North Carolina, August 2011.

<sup>359</sup> Human Rights Watch interview with Angela G. (pseudonym), California, June 2011.

<sup>360</sup> Human Rights Watch interview with Bianca H. (pseudonym), California, June 2011.

<sup>361</sup> Human Rights Watch interview with Ana I. (pseudonym), North Carolina, July 2011.

In cases where they tried to report abuses, farmworkers and attorneys reported that their complaints were not fully investigated, abuses were tolerated, and they suffered retaliation, including reduced hours, less desirable work, and termination.<sup>362</sup> Veronica Z. stated that when she reported being raped by her supervisor to company management, they gave her an English-language document that they said confirmed she would not lose her job and that they would stop the abuse; they also pressured her to sign the document. When she brought the paper to a counselor at a social services agency, however, the counselor discovered that it actually said she would not sue the company.<sup>363</sup>

Few farmworkers interviewed by Human Rights Watch had ever received training on workplace safety, including sexual harassment. At most, they received brief instructions on how to do their tasks, such as how to cut plants when harvesting crops. Mercedes A. reported that “sometimes … we get a video saying we have a right to water, etc.,” but such trainings are perfunctory and the workers “still do not receive water.”<sup>364</sup>

In California, state law specifically requires employers with at least 50 employees to provide trainings on sexual harassment to supervisors and managers once every two years. They must also create anti-harassment policies, provide information on these policies to all employees, and post a copy of the Department of Fair Employment and Housing’s anti-harassment poster.<sup>365</sup>

Several grower associations based in California expressed their commitment to ensuring their members obey the law. Jim Bogart, counsel for the Grower-Shipper Association, stated, “We take [sexual harassment] very, very seriously.”<sup>366</sup> The association conducts educational workshops, assists members in drafting policies prohibiting sexual harassment, ensures that posting requirements are being met, and conduct audits. He believes the current requirements are “fair and sufficient” and that the steps they are taking are working because he has not been called on to defend any sexual harassment

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<sup>362</sup> For more information, see p. 44 of this report, “Termination and Other Forms of Retaliation,” in “IV. The Lasting Impact of Workplace Sexual Violence and Sexual Harassment.”

<sup>363</sup> Human Rights Watch interviews with Veronica Z. (pseudonym), California, June 2011; and counselor (name withheld), California, June 2011.

<sup>364</sup> Human Rights Watch interview with Mercedes A. (pseudonym), New York, August 2011.

<sup>365</sup> AB 1825, California Government Code 12950.1.

<sup>366</sup> Human Rights Watch telephone interview with Jim Bogart, Grower-Shipper Association (Salinas, California), June 30, 2011.

claims against members.<sup>367</sup> Rob Roy of the Ventura County Agricultural Association described similar policies to assist members in complying with the law, though he felt it was not a big issue in his county and had not seen any rise or decline in claims because of the law.<sup>368</sup> Manuel Cunha, president of the Nisei Growers League, stated that the association takes sexual harassment seriously and interviews growers and labor contractors before accepting them as members. He did, however, also express some skepticism of sexual harassment claims and believes that although some claims have merit, others involve employees who have been dating but then have a falling out, or “problems within people’s own culture,” resulting in a “flurry of false claims for money.”<sup>369</sup>

Some farmers in California told us they realize that sexual harassment happens and they address it. Rick Rominger stated, “Like any large operation, we’ve had some complaints and we’ve dealt with [them].”<sup>370</sup> Larry Jacobs has fired an employee for sexual harassment, and he feels employers should be able to address the issue: “Sexual harassment is easy—just fire [him].... When you hire someone, go over the policy, explain it to them ... in written and oral form.”<sup>371</sup>

Some farmworkers in California say that companies seem to be improving. Rosa O. stated, “It helps when companies take it seriously; they talk about it, do trainings.”<sup>372</sup> Luz S. was more measured, but noted, “With training, it’s better, more or less. There are some supervisors who’ve been paying attention, [though] some don’t do anything at all.”<sup>373</sup>

However, some farmworkers reported incidents in which employers failed to meet their obligations to address sexual harassment complaints, even as they instituted sexual harassment policies and trainings. Eva P. worked with a co-worker who would make derogatory statements about women. Although she had been required to watch a video and been given a booklet on sexual harassment when she began, when her co-worker made these statements, the foreman did nothing to stop him.<sup>374</sup> When Laura G., a poultry

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<sup>367</sup> Ibid.

<sup>368</sup> Human Rights Watch interview with Rob Roy, August 10, 2011.

<sup>369</sup> Human Rights Watch interview with Manuel Cunha, President, Nisei Farmers League, Fresno, California, August 12, 2011.

<sup>370</sup> Human Rights Watch telephone interview with Rick Rominger, California farmer, September 9, 2011.

<sup>371</sup> Human Rights Watch telephone interview with Larry Jacobs, Jacob’s Farm, July 1, 2011.

<sup>372</sup> Human Rights Watch interview with Rosa O. (pseudonym), California, August 2011.

<sup>373</sup> Human Rights Watch interview with Luz S. (pseudonym), California, August 2011.

<sup>374</sup> Human Rights Watch interview with Eva P. (pseudonym), California, August 2011.

processing worker, reported sexual harassment to company officials, they simply showed her and her harasser the same video they had shown her when she started and took no further steps to stop the harassment.<sup>375</sup>

Training materials are sometimes poorly translated from English to Spanish. Michael Marsh, an attorney with California Rural Legal Assistance, found in one case that a major multinational agricultural company had a Spanish-language policy filled with nonsensical phrases and errors. In one place, the policy stated in Spanish, “If you complain about sexual harassment, you will be retaliated against,” the key word “not” having been left out.<sup>376</sup> He stated that in another case he had seen a piece of paper signed by employees to indicate they had received sexual harassment training, but the signatures had clearly been forged.<sup>377</sup>

Some farmworker organizations and employers have created special mechanisms for protecting workers from sexual harassment. The Coalition of Immokalee Workers in Florida has pushed both growers and large corporate buyers of tomatoes to raise wages and improve working conditions for tomato farmworkers. As a result, supermarket and fast food companies have agreed to a penny-per-pound increase in payments for tomatoes and now require growers supplying the tomatoes to abide by a code of conduct that includes trainings and complaint procedures for sexual harassment, as well as protection from retaliation.<sup>378</sup> The Farm Labor Organizing Committee has similarly pressed corporate buyers of tobacco and pickle cucumbers to take responsibility for abuses in the supply chain.<sup>379</sup> Where United Farm Workers has a collective bargaining agreement with a grower, any complaint of sexual harassment is covered by the grievance procedure.<sup>380</sup>

These organizations, however, represent only a tiny percentage of farmworkers in the US.

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<sup>375</sup> Human Rights Watch interview with Laura G. (pseudonym), North Carolina, August 2011.

<sup>376</sup> Human Rights Watch interview with Michael Marsh, Directing Attorney, California Rural Legal Assistance, Salinas, California, April 26, 2011.

<sup>377</sup> Ibid.

<sup>378</sup> Kristofer Rios, “After Long Fight, Farmworkers in Florida Win an Increase in Pay,” *The New York Times*, January 18, 2011, <http://www.nytimes.com/2011/01/19/us/19farm.html> (accessed March 9, 2012); Human Rights Watch telephone interviews with Steve Hitov, General Counsel, Coalition of Immokalee Workers, March 14, 2011; and Julia Perkins, spokesperson, Coalition of Immokalee Workers, May 20, 2011.

<sup>379</sup> Human Rights Watch telephone interview with Justin Flores, Organizer, Farm Labor Organizing Committee, June 20, 2011.

<sup>380</sup> Human Rights Watch interview with Sergio Guzman, Secretary-Treasurer, United Farm Workers, Salinas, California, June 30, 2011.

## IX. International Legal Obligations

### Sexual Violence and Sexual Harassment as Human Rights Violations

Human rights law imposes an obligation on states to take measures to protect all persons against human rights violations—including sexual violence and sexual harassment perpetrated by private actors—and also to provide a remedy where fundamental protections, such as those relating to the right to life and bodily integrity, have been violated.

The International Covenant on Civil and Political Rights (ICCPR), ratified by the US in 1992, declares, “Everyone has the right to liberty and security of person.”<sup>381</sup> This right has been interpreted to protect an individual’s security of person even when the threat arises from a private actor. The ICCPR also prohibits discrimination on “any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>382</sup> Both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”) and article 7 of the ICCPR guarantee the right to be free from torture and cruel, inhuman, or degrading treatment.<sup>383</sup> International tribunals and other bodies have established that rape is covered by these prohibitions on torture.<sup>384</sup>

The United Nations Human Rights Committee (HRC) has made clear that states parties to the ICCPR and other conventions are in violation of their obligations not only when state actors are responsible for violation of treaty provisions, but also when the state fails to take necessary steps to prevent violations caused by private actors. The HRC’s General Comment 31 to the ICCPR notes that states parties must “take appropriate measures ... or exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”<sup>385</sup>

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<sup>381</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992.

<sup>382</sup> Ibid, art. 26.

<sup>383</sup> Ibid., art. 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994.

<sup>384</sup> See, for example, European Court of Human Rights (ECHR), *Aydin v. Turkey*, judgment of 25 September 1997, 25 EHRR 251, paras. 62-88; and ECHR, *Prosecutor v. Furudnija, ICTY*, judgment of 10 December 1998, Case No. IT-95-17/1-T, paras. 163-86.

<sup>385</sup> UN Human Rights Committee (HRC), General Comment No. 31, “Nature of the general legal obligation on states parties to the Covenant,” U.N. Doc. CCPR/C/21/Rev. 1/Add.13 (2004), para. 9.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates states party to combat discrimination against women.<sup>386</sup> Although the US has not yet ratified CEDAW, as a signatory, it is obliged to refrain from acts that would defeat the treaty's object and purpose.<sup>387</sup> The Committee on the Elimination of Discrimination against Women, the treaty body that interprets and monitors compliance with CEDAW, has affirmed that violence against women is a form of discrimination against women and that states parties should have effective legal, preventive, and protective measures in place to provide justice for victims, hold offenders accountable, and protect society from future acts of sexual violence.<sup>388</sup> CEDAW requires states parties to take into account the particular problems faced by rural women, and the Committee has made specific recommendations for provision of legal aid, training for police and others working with victims of violence, and counseling services in rural areas.<sup>389</sup>

Article 11 of CEDAW specifically protects the “right to protection of health and to safety in working conditions.”<sup>390</sup> The Committee has issued two statements specifically on sexual harassment: Recommendation No. 12 identifies the prevention of sexual harassment as an obligation undertaken by state parties, and Recommendation No. 19 notes that sexual harassment seriously impairs equality in the workplace.<sup>391</sup>

The United States has similarly signed but not ratified the Convention on the Rights of the Child (CRC).<sup>392</sup> As a signatory to the CRC, the United States is obliged to refrain from acts that would defeat the treaty's object and purpose.<sup>393</sup> The CRC sets out the minimum protections to which children—defined as persons under age 18—are entitled. Article 32 of

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<sup>386</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. The United States signed CEDAW in 1980 but has not ratified.

<sup>387</sup> See Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, entered into force January 27, 1980, art. 18.

<sup>388</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 19, “Violence against Women,” U.N. Doc. A/47/38 at 1 (1993), para. 24 (t).

<sup>389</sup> CEDAW Committee, “Concluding Observations: Germany,” U.N. Doc. CEDAW/C/DEU/CO/6, February 10, 2009; CEDAW Committee, “Concluding Comments: Czech Republic,” U.N. Doc. CEDAW/C/CZE/CO/3, August 25, 2006; CEDAW Committee, “Concluding Observations: Bangladesh,” U.N. Doc. CEDAW/C/BGD/CO/7, February 4, 2011.

<sup>390</sup> CEDAW, art. 11.

<sup>391</sup> CEDAW Committee, General Recommendation No. 12, “Violence against Women,” U.N. Doc. A/44/38 at 75 (1989); CEDAW Committee, General Recommendation No. 19, “Violence against Women,” U.N. Doc. A/47/38 at 1 (1993).

<sup>392</sup> Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. The United States signed the CRC in 1995 but has not ratified.

<sup>393</sup> See Vienna Convention on the Law of Treaties, art. 18.

the CRC provides specifically that children have a right “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development,”<sup>394</sup> while article 34 requires that states parties “undertake to protect the child from all forms of sexual exploitation and sexual abuse.”<sup>395</sup>

The Inter-American Commission on Human Rights (IACHR) has also ruled that under the American Declaration of the Rights and Duties of Man, a state can be held responsible for acts perpetrated by private actors in certain circumstances. Specifically, the IACHR has recognized that “gender-based violence is one of the most extreme and pervasive forms of discrimination, severely impairing and nullifying the enforcement of women’s rights,” and that “a State’s failure to act with due diligence to protect women from violence constitutes a form of discrimination and denies women their right to equality before the law.”<sup>396</sup>

## **Human Rights Standards on Immigrant Workers, Including Unauthorized Workers**

The protections of the Universal Declaration of Human Rights and the ICCPR apply to “all persons,” including immigrant workers, regardless of legal status. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) further affirms the equality of all persons before the law and prohibits governments from discriminating in policy or practice on ethnic grounds.<sup>397</sup> The Committee on the Elimination of Racial Discrimination, which monitors state compliance with the ICERD, has interpreted the convention to prohibit laws and policies that have “an unjustifiable disparate impact” on racial and ethnic minorities.<sup>398</sup> In the US, the burden of weaker labor law protections for agricultural workers falls disproportionately on Latino citizens and immigrants.

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<sup>394</sup> CRC, art. 32.

<sup>395</sup> CRC, art. 34.

<sup>396</sup> Inter-American Commission on Human Rights, Report no. 80/11, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, paras. 110-111.

<sup>397</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States on November 20, 1994.

<sup>398</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 14, “Definition of discrimination” (Forty-second session, 1993), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), p. 277.

## X. Recommendations

### To the United States Congress

Reform federal laws to better protect unauthorized immigrant farmworkers from sexual violence and harassment:

- Pass the Senate version of the Violence Against Women Act (VAWA) reauthorization bill (S. 1925) or similar legislation that strengthens the U visa and other protections for immigrant victims of domestic and sexual violence, including farmworker women and girls. However, because more protections are needed, also pass legislation that:
  - Removes the arbitrary caps on the number of U and T visas available for immigrant victims of serious crimes.
  - Allows immigrant victims to present secondary evidence that they have been helpful in the investigation of the crimes against them, in lieu of law enforcement certification, for U visas.
  - Allows immigrant witnesses who are helpful in the investigation of serious crimes, such as sexual violence, to be eligible for legal status similar to that conferred by the U visa.

Reform immigration law to reduce the vulnerability of farmworkers to sexual violence and sexual harassment, as well as other abuses:

- Enact legislation that creates a program of earned legalization for the unauthorized farmworkers already in the US.
- Enact reforms that better protect migrant workers entering the US on guestworker visas from workplace abuses:
  - Eliminate worker dependency on abusive employers by making visas portable between employers, with a grace period in which workers can find new employment if their current job ends for any reason.
  - Protect guestworkers from discrimination on the basis of race, color, religion, sex, national origin, age, and disability, in accordance with anti-discrimination laws applied to other workers in the US.

- Include guestworkers in protections under the Seasonal and Migrant Agricultural Worker Protection Act, as well as the National Labor Relations Act.
- Create a path to permanent resident status for guestworkers and family members who have been in the US for a set period of time.

Reform or repeal federal laws that dissuade agricultural workers, both authorized and unauthorized, from reporting workplace sexual violence, sexual harassment, and other abuses:

- Enact legislation to ensure equality of remedies for all workers who suffer workplace violations or seek to enforce workers' rights, regardless of immigration status, and thereby rectify the Supreme Court's decision in *Hoffman Plastic*.
- Revise the caps on damages available under Title VII of the Civil Rights Act of 1964 to keep pace with inflation and to provide a sufficient deterrent to unscrupulous or irresponsible employers.
- Eliminate the exclusion of farmworkers from the National Labor Relations Act and acknowledge that, like all other workers, they have the right to collective bargaining.
- Amend the Fair Labor Standards Act to:
  - Give agricultural workers the right to overtime pay, ensure payment of the minimum wage, and cover small farms, in keeping with the protections available to workers in most other industries;
  - Apply the same age and hour requirements to children working for hire in agriculture as already apply to all other working children;
  - Set or raise the minimum age for agricultural work to at least 14, with the sole exception being children working on farms owned and operated by their parents.
- Eliminate restrictions on the ability of organizations funded by the Legal Services Corporation to represent unauthorized farmworkers.

## To the US Department of Homeland Security

- Repeal programs such as Secure Communities which require or encourage local police to enforce federal immigration laws.
- Screen immigrants arrested in enforcement actions for eligibility for U and T visas, and ensure that appropriate prosecutorial discretion policies, as outlined in Immigration and Customs Enforcement (ICE) memoranda, are applied to them.
- Ensure consistent, accurate application of U visa laws and regulations by local law enforcement agencies by disseminating information on the specific legal

requirements for U visa certification and the role played by certifying law enforcement agencies.

- Issue a directive to all ICE field offices to abide by the terms of Operating Instruction 287.3, which requires agents to determine whether employers or others have supplied information about unauthorized workers in an effort to interfere with their workplace rights, and ensure all agents and local law enforcement agents involved in immigration enforcement are trained on the use of the Operating Instruction.

### To the US Equal Employment Opportunity Commission

- Continue outreach and prioritization of services to low-income immigrant victims of sexual violence and sexual harassment, including those in rural areas.
- Eliminate unnecessary delays in processing claims, and ensure investigators are trained to work with victims of sexual violence, are aware of and responsive to cultural differences, and, wherever possible, have appropriate language capacity.

### To the US Department of Labor (DOL) and the Occupational Safety and Health Administration (OSHA)

- Increase agricultural workplace inspections, particularly those targeting child labor and minimum wage violations, and increase civil money and criminal penalties within the limits allowed by law to improve compliance with relevant laws.
- Make referrals to the appropriate agencies when evidence of sexual harassment is encountered during an investigation, and promulgate regulations and remedies related to sexual harassment as an occupational health and safety issue.
- Make use of the joint-employer concept under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) to hold growers responsible along with farm labor contractors for providing farmworkers protections under the AWPA.
- Make use of the “hot-goods” provision of the Fair Labor Standards Act to allow courts to issue emergency orders barring companies from shipping or selling goods produced by improperly paid workers.
- Vigorously enforce OSHA’s Field Sanitation Standard, which requires employers to provide workers with drinking water, toilets, and hand-washing facilities.
- Halt yearly approval of a rider exempting almost all farms with 10 or fewer employees from the jurisdiction of OSHA.

## To All State Governments

- Ensure that state laws provide farmworkers adequate protection from sexual harassment and other workplace abuses where federal legislation fails to accomplish this.
- Enact comprehensive anti-sexual harassment laws if no such laws currently exist, and, if they do exist, eliminate exemptions for agricultural workers and ensure broader coverage of employers with provision for remedies sufficient to deter employers from violating these laws.
- Ensure that victim services, including services to address the short- and long-term physical and psychological consequences of sexual violence, are available and accessible for all victims, regardless of immigration status, and that farmworker communities are made aware of these services.
- Assess the linguistic needs of farmworker populations in the state and, wherever possible, take steps to increase the capacity of state labor agency staff to provide effective assistance to immigrant farmworkers, including indigenous farmworkers who cannot communicate effectively in English or Spanish.
- Refrain from passing immigration legislation similar to Arizona's SB 1070 or Alabama's HB 56, which increase fears of police and discourage reporting of crimes in immigrant communities.

## To Local Law Enforcement Agencies

- Investigate vigorously all complaints of sexual violence by immigrants, regardless of immigration status.
- Hire bilingual and culturally sensitive staff; do not call upon federal immigration officers as interpreters.
- Take all necessary and appropriate steps to assure immigrant communities that unauthorized immigrants who report crimes will not be reported to immigration authorities.
- Undertake outreach to build relationships with farmworker and immigrant communities.
- Ensure that the agency's U visa certification process is transparent and accessible to eligible immigrant victims of crime.

## To Agricultural Employers

- Create and enforce clear policies prohibiting sexual harassment and abuse and accessible channels by which employees can safely report sexual harassment and other workplace violations.
- Provide culturally and linguistically appropriate trainings on sexual harassment and abuse, and, where possible, work with farmworker advocacy organizations to create materials and conduct trainings.
- Investigate every reported instance of sexual violence or harassment and take prompt, corrective action to remedy the problem.
- Contract only with licensed contractors who can demonstrate that they are able to comply with worker protection laws and create and enforce policies prohibiting sexual harassment.

## To Agencies Providing Services for Victims of Sexual Violence and Harassment

- Conduct culturally sensitive and linguistically appropriate outreach to immigrant workers, including, wherever possible, indigenous farmworkers who cannot communicate effectively in English or Spanish.
- Advocate for additional resources to increase access by rural immigrant workers to bilingual therapists.

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# Cultivating Fear

## The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment

Producing food consumed throughout the country, hundreds of thousands of immigrant women and girls in the United States today work in fields, packing houses, and other agricultural workplaces where they face a real and significant risk of sexual violence and sexual harassment.

*Cultivating Fear*, based on interviews with over 50 farmworkers and 110 advocates, agricultural industry representatives, and government officials, documents cases of rape, stalking, unwanted touching, exhibitionism, and verbal harassment, perpetrated by supervisors, co-workers, employers, and others in positions of power.

Although farmworkers are protected in theory from workplace sexual violence and harassment under US civil and criminal law, farmworker women and girls face systemic barriers—as farmworkers and often as unauthorized immigrants—to reporting abuses and helping bring perpetrators to justice.

Human Rights Watch calls on employers to take responsibility for the safety of their workers and on local police to ensure unauthorized immigrant victims are able to report crimes without fear of deportation. Most critically, Human Rights Watch calls on the US government to reform immigration and labor law and policy, at the federal and state levels, to ensure that the workers whose labor sustains US agriculture are able to fully assert their rights to protection from workplace sexual violence and harassment.



*A group of farmworkers makes their way across a field, hoeing weeds out of the rows, in the early morning on July 11, 2011.*

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