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EXTENDING THE PROGRESS OF THE FEMINIST MOVEMENT TO ENCOMPASS THE RIGHTS OF MIGRANT FARMWORKER WOMEN

RICHARD KAMM*

INTRODUCTION

One of the longest lasting and most enduring criticisms leveled against the feminist movement, ironically by feminists themselves, is that the women’s movement has focused on the needs of middle- and upper-class white women to the exclusion of women who are lower-class or belong to racial or ethnic minority groups.¹ In support of this critique, scholar feminists point to the works of such notable early mid-twentieth century feminists as Simone de Beauvoir, who as one feminist author states, “describe[s] the case of white middle- and upper-class women as the case of ‘women in general,’” thus discounting the experiences of all other women.² The solution to this problem, modern-day feminists argue, lies in pursuing a feminist strategy that is more inclusive of viewpoints and experiences beyond those held solely by middle- and upper-class white women.³ In other words, what has traditionally been a feminist coalition focusing predominately on gender needs to be broadened to take into account the complex interrelationships of race, ethnicity, and class.

While much has been written on the problem of exclusion in

* The author thanks Mr. Roger Rosenthal of the Migrant Legal Action Program in Washington, D.C., for his input and contributions to this Essay.

1. See, e.g., ELIZABETH V. SPELMAN, INESSENTIAL WOMAN 16 (1998) (describing how the process of isolating gender from other elements of human identity such as race and class, and isolating sexism from other forms of oppression, such as racism and classicism, have been instrumental in preserving white middle-class privilege in feminist theory); JOAN WILLIAMS, UNBENDING GENDER 145, 172 (2000) (explaining that women of different social, economic, racial, and ethnic groups experience gender inequalities differently, and that the feminist agenda has been shaped and molded by privileged white women to the detriment of all women for too long).

2. SPELMAN, supra note 1, at 16. Spelman devotes the entire third chapter of her book to a critical analysis of de Beauvoir’s The Second Sex. Id.

3. See WILLIAMS, supra note 1, at 172, 174 (explaining that the trend in dominant Western feminist thought of taking the experiences of “essential” white middle-class women to be representative of the experiences of all women must be abandoned and replaced with an “antiessentialism” message protesting an agenda that has been set by “essential” women).
feminist thought, little has been written on how to go about incorporating and applying a more inclusive feminist strategy in advocating for the civil rights of historically disenfranchised and marginalized groups of women. In focusing on migrant farmworker women, this Essay will explain how a more inclusive feminist movement, constructed at the grassroots level, might better meet the needs of this group of women.

There are a number of reasons that the feminist movement and the larger legal community have found it difficult to reach out and meet the needs of migrant farmworker women. One of the greatest challenges faced by advocates has been establishing and maintaining communication with migrant farmworker women. This is due in part to the fact that migrants often must move from one locale to another in search of fieldwork. Furthermore, women may work in isolated locations and lack the transportation needed to meet with their advocates. Second, many migrant women do not speak English, making communication with advocates difficult. Third, farmworker women may be hesitant to assert their rights and report abuse suffered at the hands of either their husbands or their employers for fear of retaliation. Due to cultural reluctance to speak out and assert their rights, farmworker women may be placed at even further risk. Finally, the fear of deportation keeps many women from seeking the help they need.

4. The Migrant Health Program defines a migrant farmworker as “an individual whose principal employment within the last 24 months was in agriculture on a seasonal basis . . . and who established a temporary abode for employment purposes.” Leslye E. Orloff & Rachel Rodriguez, Barriers to Domestic Violence Relief and Full Faith and Credit for Immigration and Migrant Battered Women 8 (unpublished manuscript, on file with author).

5. See SUSAN GABBARD ET AL., U.S. DEP’T OF LABOR, MIGRANT FARMWORKERS: PURSUING SECURITY IN AN UNSTABLE LABOR MARKET 19 (1994) (explaining that because migrants are marginally compensated and enjoy few job benefits, they must adopt a series of compensatory strategies to make ends meet). Strategies may include traveling to several different farms in what is known as “follow-the-crop” migration, returning to low-cost, home-base migrant camps in the off-season, or returning to a nation of origin, usually Mexico. See id.

6. See Orloff & Rodriguez, supra note 4, at 2, 5 (explaining how linguistic barriers between service providers and migrants make legal relief difficult to provide). For example, domestic violence centers may have no Spanish-speaking staff, courthouses may not have interpreters to translate, and notices sent to migrants may not be printed in their native languages. See id.

7. See Pamela Warrick, A Life of Their Own, L.A. TIMES, June 7, 1996, at E1. As one farmworker woman states, “Until I talked to other women, I didn’t understand about domestic abuse. I didn’t know there was such a thing. Growing up in Mexico, I learned the man is the boss. If you don’t do what he wants, then you must pay the price.” Id.

This Essay explores some of the specific legal steps that can be taken by feminists and other legal advocates to improve the plight of migrant farmworker women and overcome some of the barriers to inclusion just mentioned. Part I provides a brief synopsis of the compositional makeup of migrant farmworker women and describes a few of the problems these women face. In Part II, some of the successes feminists have experienced thus far in reaching out to farmworker women are explored. Part III suggests some further efforts that can be taken by feminists and other legal advocates to reach out to farmworker women. The Essay concludes by arguing that, while national feminist women's organizations such as the NOW Legal Defense and Education Fund ("NOW LDEF") have and should continue to play a role in reaching out to migrant women, and legislation such as the Violence Against Women Act ("VAWA"),9 which specifically addresses immigrant and migrant women, should continue to be encouraged, the greatest need is for continued education, funding, and support for farmworker women at the local grassroots level. Migrant farmworker women themselves should and must play a role in this process.

I. MIGRANT FARMWORKER WOMEN: AN OVERVIEW

The National Agricultural Workers Survey (the "NAWS"), conducted by the U.S. Department of Labor (the "DOL"), is considered to be the preeminent source for data on the migrant farmworker population. The NAWS, which has been in existence since 1988, interviews approximately 2500 randomly selected farmworkers across the United States each year.10 According to data collected by the NAWS from 1994-1995, women comprise roughly 19% of the total migrant farmworker population of approximately 1,600,000.11 Geographically, 52% of farmworker women were born in the United States, while the remaining 48% were born abroad,
predominately in Mexico.\textsuperscript{12} Farmworker women average thirty years of age. More than half are married (62\%) or have children (58\%).\textsuperscript{13} Nearly 60\% of female farmworkers live with one or more of their family members.\textsuperscript{14}

Farmworkers of both sexes are among the poorest of the working poor. The DOL reports that over three-fifths of farmworker households live in poverty.\textsuperscript{15} Since 1988, their median total family income has not changed, meaning that when inflation is taken into account, farmworker income over the past ten years has actually declined.\textsuperscript{16} While the Fair Labor Standards Act (the "FLSA")\textsuperscript{17} contains minimum wage and overtime provisions that employers must comply with, agricultural workers employed by a farmer who uses less than five hundred "man days"\textsuperscript{18} of agricultural labor during any calendar quarter of the preceding year are left unprotected by the FLSA due to an exception in the law.\textsuperscript{19} Thus, farmworkers laboring on small farms may not be protected by the FLSA employer requirements.

Farmworkers’ transient lifestyles may make schooling difficult and also affect workers’ abilities to access state assistance program benefits.\textsuperscript{20} In addition, almost all farmworkers reside in substandard housing\textsuperscript{21} and face poor sanitary conditions in both their living and working quarters.\textsuperscript{22} Lack of bathroom access in the fields can prove

12. See MINES ET AL., supra note 10, at 6 (making a comparison to migrant farmworker men, 75\% of whom were born abroad).
13. See id. at 7, 9-10.
14. See id. at 14 (drawing an additional comparison with migrant men, only 30\% of whom live with family members).
15. See id. at 17-18 (reporting that the 1994-1995 median annual income for women farmworkers was between $2500 and $5000, while for men it was between $5000 and $7500). Low annual incomes are due at least in part to the fact that migrant farmworkers on average have employment for only 28 weeks out of the year. See GABBARD ET AL., supra note 5, at 32.
18. Every day that a farmworker works at least one hour is counted as a "man day." See 29 C.F.R. § 780.301(a) (1999).
19. See id. § 780.302(c) (1999).
20. See Doris P. Slesinger & Cynthia Ofstead, Using a Voucher System to Extend Health Services to Migrant Farmworkers, PUB. HEALTH REPS., Jan.-Feb. 1996, at 57, 58 (explaining how most state medical assistance programs require an applicant to satisfy a 30-day residence requirement to be eligible for benefits).
21. See Lori Nessel & Kevin Ryan, Migrant Farmworkers, Homeless and Runaway Youth: Challenging the Barriers to Inclusion, 13 LAW & INEQ. J. 99, 105 (1994) (describing how many farmworkers endure contaminated water, sewage problems, lack of toilets, fire hazards, lack of heat, and inadequate windows in housing that fails to comport with the minimal requirements imposed by law).
particularly deleterious for farmworker women because urinary retention leads to an increased risk of urinary infections.\textsuperscript{23} Urinary infections contracted during pregnancy may lead to an increased likelihood of miscarriage, premature labor, and neonatal death.\textsuperscript{24} Many migrant farmworkers also suffer from exposure to pesticides.\textsuperscript{25} Despite the hazardous working and living conditions that migrants of both sexes face, migrant farmworker women are particularly disadvantaged.\textsuperscript{26}

First, migrant women are significantly less likely than their male counterparts to speak English.\textsuperscript{27} Language barriers may make it particularly difficult for migrant women to seek out and receive legal assistance.\textsuperscript{28} Second, migrant women are much more likely to be plagued by employment discrimination, workplace sexual harassment, and domestic violence than are men.\textsuperscript{29} In describing the workplace sexual harassment she experienced, one migrant woman recalled:

\begin{quote}
It was like being enclosed within a problem and not knowing which way to go, which agencies would help, who would listen. I was afraid to tell my husband because I didn't know the reaction he'd take, and you're afraid to talk to the owners because they can let
\end{quote}

which guarantees basic protections in the workplace and requires that growers provide field sanitation, drinking water, and handwashing facilities in the fields, only applies to farms with 11 or more field workers. \textit{See 29 C.F.R. § 1928.110(a), (c) (1999)}.

\textsuperscript{23} \textit{See Farmworker Women's Health Project, 17 NAT'L WOMEN'S HEALTH NETWORK—THE NETWORK NEWS 6 (1992).}

\textsuperscript{24} \textit{See id.}

\textsuperscript{25} \textit{See FARMWORKER JUSTICE FUND, INC., AN OVERVIEW OF MIGRANT AND SEASONAL FARMWORKERS IN THE 1990s, at 1 (undated material) (stating that as many as 300,000 farmworkers suffer pesticide poisonings each year). Pesticides can have numerous serious health effects, ranging from acute poisonings to cancers, neurological effects, and effects on reproduction and development. \textit{See GINA M. SOLOMON, NATIONAL RESOURCES DEFENSE COUNCIL, TROUBLE ON THE FARM: GROWING UP WITH PESTICIDES IN AGRICULTURAL COMMUNITIES viii (1998)}.}

\textsuperscript{26} \textit{See NOW LEGAL DEFENSE & EDUC. FUND, 1998-1999 LEGAL DOCKET 15 (1999) (explaining that problems of employment discrimination based on gender, sexual harassment at work, inadequate child care, discrimination in education, and the need to be safe from violence, which plague all women, hit poor women particularly hard). This is because these women are closest to the margin of economic and physical safety and have the fewest resources at their disposal to fight back for their rights. \textit{See id.}}

\textsuperscript{27} \textit{See Warrick, supra note 7 (noting how limited language proficiency leads to an increased risk of exploitation and makes farmworker women all but invisible to society).}

\textsuperscript{28} \textit{See supra text accompanying note 6.}

\textsuperscript{29} \textit{See Orloff & Rodriguez, supra note 4, at 2 (citing data from a 1994 survey of migrant farmworker women revealing that one of three women reported suffering physical abuse within the past year and one in five reported forced sexual activity within the past year); see also Nessel & Ryan, supra note 21, at 122 (relating the testimony of one migrant farmworker woman who told how she had been raped by a crew leader as a child, and how years later she and her coworkers had been awarded as sexual prizes by a crew leader to the male worker who had picked the most that week).}
you go.\textsuperscript{30}

Cultural practices such as male machismo may also serve to dampen women’s voices and serve to ensure their passivity.\textsuperscript{31} A third problem unique to migrant women is lack of adequate childcare. Finally, and perhaps most importantly, the concerns of migrant women have gone largely unaddressed, both by farmworker activists themselves,\textsuperscript{32} and the larger feminist and legal community.\textsuperscript{33}

Nonetheless, it is important to note that individual women and farmworker advocacy groups have done much on behalf of migrant farmworker women. For example, Dolores Huerta, cofounder and Secretary-Treasurer of the United Farm Workers of America, AFL-CIO (the “UFW”) has been instrumental in securing public assistance program benefits for migrant workers, including Temporary Assistance to Needy Families (“TANF”) (formerly known as Aid to Families with Dependent Children) and disability insurance.\textsuperscript{34} Lideres Campesinas (the Farmworker Women’s Leadership Project), the only grassroots farmworker women’s advocacy project in the nation, has developed a Domestic Violence Outreach and Education project, which in its first year alone reached out to more than 17,000 women.\textsuperscript{35} The point to be made is simply that more should and must be done to protect the civil rights and liberties of migrant farmworker women. This effort will involve expanding upon what the feminist


\textsuperscript{31} See WILLIAMS, \textit{supra} note 1, at 161 (hypothesizing that, in the absence of traditional male hierarchical advantages attendant to career or salary, lower-class husbands may be more inclined to exert their masculinity and maintain dominance over their wives in other ways such as by engaging in spousal abuse or making specific demands for submissiveness).

\textsuperscript{32} See VALERIE A. WiLK, FARMWORKER JUSTICE FUND, FARMWORKER WOMEN SPEAK OUT: PRIORITIES AND POLICY RECOMMENDATIONS TO IMPROVE THE LIVES OF FARMWORKER FAMILIES 3 (1994) (stating that, because the leadership within the farmworker movement is largely male, scant attention has been paid to the unique problems facing farmworker women). Farmworker women report that it is hard for them to speak out in their communities, saying that they feel intimidated at the thought of addressing largely male groups. See \textit{id}. Women who do get involved report being shunned or gossiped about in their communities by both men and women. See \textit{id}.

\textsuperscript{33} See Nessel & Ryan, \textit{supra} note 21, at 101, 103, 105 (explaining how migrant farmworkers are disenfranchised from the law and its processes).

\textsuperscript{34} See United Farmworkers of America, AFL-CIO, \textit{Dolores Huerta Biography} (visited Jan. 20, 2000) <http://www.ufw.org/ufw/dh.htm> (noting that Ms. Huerta also succeeded in removing citizenship requirements from public assistance programs, and in 1966 organized and negotiated the first successful collective bargaining agreement on behalf of migrant farmworkers with an agricultural corporation).

\textsuperscript{35} See Orloff & Rodriguez, \textit{supra} note 4, at 9; see also Maria M. Dominguez, \textit{Sex Discrimination and Sexual Harassment in Agricultural Labor}, 6 AM. U. J. GENDER & L. 231, 243 (1997) (explaining how Lideres Campesinas, “organized under the aegis of the California Rural Legal Assistance Program, takes on a host of issues facing Latina farmworkers, from domestic violence to AIDS, education, housing and pesticide use”).
movement has accomplished thus far.

II. FEMINIST MOVEMENT ADVOCACY EFFORTS ON BEHALF OF MIGRANT WOMEN TO DATE

Returning to the notion of exclusion in feminist thought as espoused by Elizabeth V. Spelman, Joan Williams, and other modern-day feminist scholars, it is interesting to note that none of these women address the current agendas and advocacy efforts of women's organizations such as NOW. In reading each of their works, it is difficult to determine who it is that is guilty of the exclusion they seem so determined to eradicate. Nevertheless, in light of the criticism offered, the essential question for this Essay is whether modern-day feminists and modern-day women's organizations are indeed guilty of the same charges that have been leveled against earlier feminists such as Simone de Beauvoir, who worked and wrote during the mid-twentieth century. In this Section, the advocacy efforts of feminists, women's organizations, legal advocates, and others on behalf of migrant farmworker women are explored. It is not until Part III, however, that these efforts are critiqued.

Looking at the recent women's rights agendas of national women's organizations such as NOW LDEF, one sees immediately that these organizations have done much—not just for middle-class women, but for lower-class women as well. Smaller local organizations, such as Ayuda and the Farmworker Justice Fund, both located in Washington, D.C., are also having a significant impact in their outreach efforts to marginalized and disenfranchised groups of women. Even federal agencies, such as the Equal Employment Opportunity Commission (the "EEOC"), are joining hands with migrant farmworker women's organizations such as Lideres Campesinas in California to confront such issues as workplace sexual harassment and employment discrimination. Important and

36. See supra text accompanying note 1.
38. The EEOC is the agency of the United States charged with administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin. See 42 U.S.C. § 2000e-5 (1994).
39. See Davan Maharaj, EEOC Sex Harassment Suit Names Farm Labor Contractor, L.A. TIMES, Nov. 15, 1998, at C2 (describing the first sexual harassment suit brought in the
groundbreaking legislation, specifically referencing and addressing the needs of migrant farmworker women, has also been passed in recent years. This Section explores in more detail a few of these advances that feminists and others have made in pressing forward on behalf of migrant farmworker women.

Returning to NOW LDEF, the 1998-1999 NOW legal docket reports that much is being done by this organization on behalf of lower-income women. Migrant farmworker women have directly benefited from a number of cases in which NOW has participated. In May of 1999, for example, NOW successfully served as co-counsel in *Saenz v. Roe*, a case brought before the U.S. Supreme Court challenging the constitutionality of a California law that required one year of residency in the state before new Californians could receive full welfare benefits. In a 7-2 decision, the Court struck down the residency requirement, ruling that it violated the plaintiffs' right to travel, as protected by the Privileges and Immunities Clause of the Fourteenth Amendment.

The *Saenz* decision is important to migrant farmworkers on several levels. First, it prohibits a state from denying public benefits to migrant workers who, because of their transient lifestyles, might reside in a particular state for only a short period of time. While the California residency requirement in *Saenz* affected U.S. citizens and noncitizens alike, in that it denied both groups immediate access to public benefits, it is important to note that many migrant farmworkers, even if not born in the United States, may be eligible for certain types of public assistance benefits.

The issue of public assistance benefits for non-U.S. citizens has become increasingly complex with the passage of welfare legislation on August 22, 1996. Under the new laws, aliens are now classified into one of two categories, either "qualified" or "non-qualified." agricultural industry by the California EEOC); see also infra notes 67-71 and accompanying text.

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42. See id. at 510-11.
44. "Qualified aliens" include lawful permanent residents, refugees and asylees, persons who have had deportation withheld under certain provisions, persons granted parole for at least one year, persons granted conditional entry under certain provisions, and battered immigrants meeting certain criteria. See Families USA, Fact Sheet: Immigrants' Eligibility for Medicaid and CHIP and the "Public Charge" Issue (visited Jan. 20, 2000) <http://www.familiesusa.org/imm.htm>. All other documented and undocumented immigrants are considered "non-
“Qualified aliens” are in turn subdivided into those who entered the United States before and after August 22, 1996.46 Those entering before August 22, 1996, are eligible for state benefits the state chooses to offer.47 Eligibility usually extends to TANF, Medicaid, Children’s Health Insurance Program (“CHIP”), and Title XX block grant funds.48 “Qualified aliens” are generally not entitled to Supplemental Security Income (“SSI”) or food stamps unless they fall under certain enumerated exceptions.49

Those “qualified aliens” entering after August 22, 1996, are not entitled to federal means-tested public benefits for the first five years after entering the United States.50 Thus, at least initially, they are ineligible for TANF, Medicaid, CHIP, and Title XX block grant funds. In most cases, they are also permanently ineligible for SSI and food stamps.51 “Qualified aliens” entering after August 22, 1996, may receive Medicaid coverage for emergency services only.52

Those termed “non-qualified aliens” are barred from receiving Medicaid, CHIP, SSI (certain exceptions apply here), or any other designated federal means-tested public benefit until they become “qualified aliens.”53 These aliens may, however, still be eligible for emergency Medicaid, domestic violence services, immunizations from communicable diseases, and a few other types of assistance.54 It is important to note that even if a “non-qualified alien” is ineligible for a certain public benefit, his or her child may still be eligible, and the parent should be encouraged to petition for benefits on behalf of that qualified aliens.” See id.

45. While “non-qualified aliens” include undocumented immigrants, temporary resident aliens, those with temporary protected status, those receiving humanitarian parole for less than one year, and those with pending applications for status are also included within this category. See id.
46. See id.
47. See id.
48. See Orloff & Rodriguez, supra note 4, at 7.
49. See Families USA, supra note 44.
50. See id.
51. A new bill sponsored by the late Senator John H. Chafee of Rhode Island would amend Title IV of the Personal Responsibility and Work Opportunity Act to allow states the option of providing medical assistance under the Medicaid program and extending CHIP eligibility to “qualified” immigrant pregnant women and children who would otherwise be ineligible for such benefits until five years after their arrival. The bill is currently before the Senate Committee on Finance. See Immigrant Children’s Health Improvement Act of 1999, S. 1227, 106th Cong.
52. See Families USA, supra note 44.
53. See id.
54. See id.
child.\textsuperscript{55}

\textit{Saenz v. Roe} has significant implications for migrant farmworkers, and migrant women in particular, on a second level as well. Before the residency requirement at issue in the case was repealed, if a battered woman fleeing her abuser tried to seek refuge in California, she would be forced to wait one year before receiving public assistance benefits. Now, she will be immediately eligible for public assistance benefits.

NOW LDEF has also taken a strong interest in sexual harassment litigation.\textsuperscript{56} This subject is central to the lives of low-income women.\textsuperscript{57} While none of the four sexual harassment/discrimination cases dealt specifically with migrant farmworker women,\textsuperscript{58} the cases have established important precedents that can now be used by migrant women in bringing future employer sexual discrimination suits against agricultural employers and crew leaders.

A few cases have already been adjudicated in which agribusiness employers have been found liable for sexually harassing and discriminating against employee migrant farmworker women.\textsuperscript{59} In the first successful sexual harassment suit to be brought against an agribusiness employer in California,\textsuperscript{60} for example, Santa Maria Berry Farms and a crew supervisor were found liable in the amount of


\textsuperscript{57} See Laboy, supra note 30 (noting that for low-income women, and migrants in particular, reporting sexual harassment may be particularly difficult). Not only do language barriers, cultural differences, lack of education, and unfamiliarity with U.S. law make filing a complaint difficult, but a migrant woman who reports her harasser may be retaliated against and fired from her job, a job which she desperately needs to support herself and her family. See id.

\textsuperscript{58} See supra note 56. All four cases are considered victories for plaintiffs.

\textsuperscript{59} Two successful Title VII wage/sex discrimination cases brought by migrant farmworker women against agribusinesses are \textit{Sandoval v. Saticoy Lemon Ass'n}, 747 F. Supp. 1373 (C.D. Cal. 1990), and \textit{Guzman v. Oxnard Lemon Ass'n}, 60 Fair Empl. Prac. Cas. (BNA) 436 (C.D. Cal. 1992). In \textit{Sandoval}, Saticoy was found liable under Title VII for routinely hiring women for women's jobs only and for passing over women when positions became available for higher paying general labor work, even though such positions required no specialized skills. 747 F. Supp. at 1382, 1387, 1392-93, 1395. In \textit{Guzman}, which was decided two years later, the defendant company agreed to a settlement of $575,000 after its discriminatory work assignments were shown to have resulted in women receiving fewer hours of work, longer layoff periods, and lower earnings than men. 60 Fair Empl. Prac. Cas. (BNA) at 437.

$52,700 for sexual harassment, employment discrimination, and wrongful termination of a farmworker employee. In the case, Cecilia Romero, a thirty-three-year-old strawberry picker, and a farmworker for sixteen years, described how her crew supervisor had constantly badgered her for dates and sexual favors. After trying to complain, she was suspended from her employment.

On the federal level, the EEOC has been addressing farmworker sexual harassment as well, working with organizations such as the UFW, CRLA, and others, to bring reform to the agricultural industry. In September 1998, for example, EEOC San Francisco brought the first sexual harassment suit to be filed against the agricultural industry in California. In its complaint, the EEOC charged C & M Packing, Inc. (doing business as Fresh West Harvesting) and Inocente Morales, the agricultural company’s CEO, owner, and sole corporate officer, with sexually harassing and retaliating against farmworker women employees in violation of Title VII of the Civil Rights Act of 1964. Specifically, the complaint alleges that supervisors at Fresh West, which hires between 1000 and 1200 migrant workers annually, routinely touched, groped, and demanded sex from female employees. When the workers named in the suit rejected and opposed their harassers, they were retaliated against; one woman was fined, while the other had her workload reduced. While EEOC v. C & M Packing, Inc. has not yet gone to trial, the EEOC is seeking both compensatory and punitive damages in the case. Although only a few female farmworkers have filed formal sexual harassment/discrimination complaints with the EEOC, and a mere handful have ever brought court actions against agribusinesses, it can only be hoped that the few successes women have had thus far in the courts will encourage similar legal actions by

61. See id.
62. See id.
63. See id.
64. See Letter from William R. Tamayo, Regional Attorney, EEOC San Francisco, to Roger Rosenthal, Executive Director, Migrant Legal Action Program (Nov. 10, 1998) (on file with author). The letter describes how EEOC San Francisco has conducted training for the attorneys and community workers of California Rural Legal Assistance on sexual harassment issues and has worked with Lideres Campesinas on sexual harassment initiatives. See id. The EEOC also played a role in Sandoval v. Saticoy Lemon Ass’n. See supra note 59.
66. See id.
67. See id.
68. See id.
69. See id.
other women in the future.

In addition to bringing lawsuits on behalf of migrant farmworker women in the courts, legal advocates (feminists and women’s organizations in particular) have also successfully advocated on behalf of lower-income disenfranchised groups of women by passing crucial civil rights legislation. Perhaps the most far-reaching and significant of these legislative efforts has been VAWA, which was passed by Congress in 1994.\textsuperscript{70} In addition to providing financial support to a wide variety of violence prevention programs and agencies serving victims of violence, including battered women’s shelters and a nationwide hotline, VAWA also allows women who are the victims of gender-motivated violent crime to seek civil remedies against their assailants in a court of law.\textsuperscript{71}

VAWA is notable for the fact that its drafters specifically recognized that certain groups of underserved women—migrants and immigrants in particular—face unique barriers affecting their ability to access legal remedies and end abuse.\textsuperscript{72} Two of VAWA’s immigration provisions are particularly useful to battered women, including migrant farmworkers who may lack legal status.\textsuperscript{73}

Before looking at these specific provisions, however, it is important to note how the issue of immigration status may be used by an abusive spouse as a tool of abuse and means of control. The abusive process oftentimes begins when an undocumented immigrant woman marries a U.S. citizen or permanent resident and becomes dependent on him to obtain legal status.\textsuperscript{74} Using his newfound source of power, an abusive husband may refuse to file an immigration petition on behalf of his spouse, or threaten or blackmail her by saying that he will report her to immigration authorities as a means of


\textsuperscript{71} See NOW LEGAL DEFENSE AND EDUC. FUND, supra note 26, at 8.

\textsuperscript{72} See Orloff & Rodriguez, supra note 4, at 1 (noting that, to be effective, domestic violence laws need to reflect an understanding of the specific obstacles and difficulties faced by the women that the law is seeking to protect). Such obstacles might include social and economic conditions, lifestyle choices, language, and culture. See id.

\textsuperscript{73} While unfortunately the data on farmworkers’ legal status has not been broken down by gender, fiscal year 1994-1995 data for all farmworkers shows that 37% of farmworkers were unauthorized and 4% had temporary or pending status. See MINES ET AL., supra note 10, at 35. Of the additional 59%, 32% were U.S. citizens, 25% were legal permanent residents, and 2% had unknown legal status. See id.

\textsuperscript{74} See Orloff & Rodriguez, supra note 4, at 3 (citing a survey conducted by Ayuda between 1993 and 1995, which documented that 31% of women reported an increase of abuse with immigration from their home country and an additional 9% reported that the abuse began with immigration).
controlling her. The battered immigrant woman may be afraid to leave her abuser or turn to anyone for help because she fears deportation or being separated from her children.75

The first form of relief offered by VAWA in this type of situation is allowing the battered woman to self-petition for permanent resident status without the sponsorship of her abusive spouse.76 In effect, VAWA’s self-petition provision bypasses old law requiring the woman’s spouse to file petition papers on her behalf for immigration status. The second form of relief under VAWA is cancellation of removal.77 Under this provision, a battered immigrant woman married to a U.S. citizen or permanent resident may have her deportation waived, and, if successful, she will be granted lawful permanent residency.78

While less than half of female migrant farmworkers are born outside the United States, most of those who do immigrate come to join their husbands who have already entered the United States.79 Should these women face abusive situations, the relief provisions offered by VAWA may offer them at least some form of legal recourse. Although VAWA relief provisions are by no means a perfect solution to the problems faced by battered immigrant women, they do offer victims at least one form of relief should they seek to leave an abusive spouse without fear of jeopardizing their legal status.

In conclusion, legislation such as VAWA, which owes its creation and passage in large part to the efforts of such organizations as NOW LDEF and Ayuda,80 and case law addressing the needs of lower-income women have done much to benefit migrant farmworker women. In light of all that has been done, organizations such as NOW have clearly exceeded the goals outlined in their mission

75. See id. at 3.
76. To qualify under the self-petition provision, a woman must show: (1) good moral character; (2) residence in the United States at some point with a citizen or permanent resident spouse; (3) current residence in the United States; (4) marriage to the abuser at the time of filing for self-petition; (5) proof that the spouse is a U.S. citizen or lawful permanent resident; (6) good faith marriage; (7) proof that the self-petitioner or her child was subjected to battery or extreme cruelty during the marriage; and (8) proof that deportation will result in extreme hardship to the self-petitioner or her child. See id. at 6; see also 8 U.S.C.A. § 1154(a)(1)(iii) (West 1999).
77. 8 U.S.C.A. § 1229b(2) (West 1999).
78. In order to qualify for cancellation of removal, an applicant must show: (1) continuous presence in the United States for three years; (2) that she or her child has been subjected to battery or extreme cruelty; (3) good moral character; and (4) that deportation would cause her or her child extreme hardship. See id.
79. See MINES ET AL., supra note 10, at 6, 13.
80. See NOW LEGAL DEFENSE & EDUC. FUND, supra note 26, at 1.
statements of providing economic opportunity and security for all women, not just middle-class white women. The final section of this Essay seeks to evaluate the efforts undertaken by feminists and others thus far, and determine whether any alternative means and strategies may even better serve to meet the needs of migrant farmworker women.

III. A CRITIQUE OF WHAT HAS BEEN DONE THUS FAR AND FURTHER SUGGESTIONS

To effectively address the needs of any given population, one must first look at the conditions unique to that particular group of people. For example, increasing the number of rural health clinics to improve healthcare will prove fruitless if the work schedules of the intended beneficiaries prevent them from accessing the centers or they lack transportation.

In looking at the unique circumstances confronting migrant farmworker women, five key variables stand out. The first of these is language. To effectively reach out to migrant farmworker women as a group, one must be able to speak Spanish. A second key variable is economic status. Unlike some other groups of women, migrant women are financially dependent upon their jobs, and upon their spouses if they are married. Thus, gaining financial independence is virtually impossible. Third, migrant farmworkers lead transient lifestyles. They lack a year-round place of permanent residence, making access by legal advocates difficult. Fourth, many farmworker women are not U.S. citizens or lawful U.S. permanent residents. Thus, they may be ineligible for public assistance benefits, unlike other groups of similarly situated women. Finally, unlike almost all other groups of women, farmworker women labor under extremely poor working conditions. Despite their jobs, most farmworkers continue to live in poverty. Many are not protected by workplace rights such as adequate sanitation facilities, collective

81. See Orloff & Rodriguez, supra note 4, at 2 (describing how services that assist battered women are not accessible to them, are not culturally sensitive, offer few services to victims who are not shelter residents, and often have no Spanish-speaking staff).
82. Migrants' transient lifestyles also make it difficult for them to access public assistance. In addition, because most, if not all, states do not engage in reciprocity regarding federal assistance program benefits, farmworkers are forced to reestablish eligibility in each state.
83. See GABBARD ET AL., supra note 5, at 19 (noting that most farmworkers do not earn enough from U.S. seasonal farmwork to sustain themselves and their families); see also supra text accompanying note 15.
84. Under OSHA guidelines, only farms employing 11 or more field workers must provide
bargaining power, 85 a minimum wage, 86 protection from pesticide exposure, medical insurance, or unemployment compensation. 87

While a number of the issues facing farmworker women may be addressed through the courts or by enacting legislation, 88 other issues cannot be addressed in this manner. For example, language barriers, transient lifestyles, and to a certain extent domestic violence are all issues that cannot be adequately addressed by either the courts or Congress. In considering the plight of migrant farmworkers, one author suggested that to really get at the root of the economic exploitation that migrant farmworkers face, one would need to begin by diverting the costs of instability from migrants back to the employers, taxpayers, and consumers who benefit from their labor. 89

So long as migrants find it economically feasible to work on U.S. farms, and lack sufficient alternatives, however, it is doubtful that this will occur anytime soon. Even if the problem of addressing the economic needs of migrant farmworkers is ignored, migrant farmworker women still need someone who will advocate on their behalf.

Many of the earliest successes and milestones achieved by migrant farmworkers came in the 1960s during the Civil Rights movement. In 1962, for example, Dolores Huerta and Cesar Chavez founded the National Farm Workers Association, the predecessor of the UFW. 90 It was also during the 1960s that (1) farmworkers became organized for the first time, (2) citizenship requirements were removed from public assistance programs, (3) the Delano Grape Strike was launched as Filipinos and farmworkers joined together to

field sanitation, drinking water, and handwashing facilities in the fields. See 29 C.F.R. § 1928.110(a) (1999); see also GABBARD ET AL., supra note 5, at 32 (noting that one-third of migrant farmworkers lack adequate drinking water, water for washing, or toilets at their work sites).


86. See Nessel & Ryan, supra note 21, at 105 (noting that two-thirds of all farmworkers are not covered by the FLSA's minimum wage requirements due to threshold requirements triggering the Act's applicability).

87. Under federal law, farmworkers are exempt from unemployment compensation coverage unless their employers pay more than $20,000 in wages in a calendar quarter or employ more than 10 employees for at least one day in 20 different weeks. See 26 U.S.C. § 3306(a)(2) (1994).

88. The Food Quality Protection Act passed by Congress in 1996, for example, mandated a broad overhaul of pesticide regulations to better assess and prevent risks to public health, particularly in children. See Food Quality Protection Act of 1996, Pub. L. No. 104-170, § 405, 110 Stat. 1513, 1517.

89. See GABBARD ET AL., supra note 5, at viii.

90. See United Farmworkers of America, AFL-CIO, supra note 34.
demand higher wages, (4) the first collective bargaining agreement was struck with an agricultural corporation, and (5) dangerous pesticides such as DDT and Parathion were permanently banned from field use.\textsuperscript{91}

During the 1960s, the UFW effectively became both a union and a civil rights movement. As one author describes, “the dual character of the farmworker’s organization gave it a depth of moral pressure and sense of mission felt by members and supporters alike.”\textsuperscript{92} Unfortunately, just as the fervor behind the Civil Rights movement has largely dissipated, so too has the fervor behind such organizations as the UFW.

In light of the fact that the UFW has significantly diminished in power, the greatest hope for migrant farmworker women today appears to lie with local grassroots organizations such as Lideres Campesinas, the only grassroots farmworker women’s advocacy project in the nation. Increasing the accessibility of existing public services to migrant farmworker women also needs to be explored. These two options are discussed in turn.

Founded by Milly Trevino-Sauceda in 1992, the staff of Lideres Campesinas is comprised entirely of migrant farmworker women. Many, including current President Laura Caballero, continue to work in the fields:

I am still in the fields and that is where I reach the women. I could leave the fields, but I will not, not now. The women I work with say, “You understand. You are my friend.” If you leave the fields, you forget. If you stay here, you will never forget.\textsuperscript{93}

While national women’s organizations such as NOW LDEF have done much for lower-income, marginalized groups of women, and should continue their work, ultimately the burden falls on migrant women to help themselves. Even Lideres founder Trevino-Sauceda recognizes this point, saying, “It is up to us to take control of our lives . . . we rely on ourselves ultimately.”\textsuperscript{94} By talking with each other, the women draw strength. They help each other with childcare, encourage one another to leave an abusive spouse and come live with them, and educate one another about the issues affecting their lives.

\textsuperscript{91} See id.


\textsuperscript{93} Warrick, supra note 7.

\textsuperscript{94} Id.
After providing further funding and support for the creation of additional organizations such as Lideres Campesinas, the next step is to bring migrant women together to address policymaking agencies such as the DOL (responsible for monitoring OSHA), Housing and Urban Development (in part responsible for constructing farmworker housing), the Environmental Protection Agency (responsible for establishing pesticide regulations), and Health and Human Services (responsible for issues surrounding the creation of and access to health clinics) with their concerns. This process began on March 1, 1991, when the Farmworker Justice Fund in Washington, D.C., raised funds to organize the first National Farmworker Women's Conference in San Antonio, Texas. The conference was organized to achieve four goals. The first was to provide farmworker women from across the country with a forum for discussing their concerns and developing an action agenda to address them. Second, the conference sought to supply farmworker women with information and technical assistance about issues that concern them, as well as provide them with skills development in areas ranging from leadership to lobbying. Third, the conference was designed to help the women who attended work toward establishing a national network of farmworker women. Finally, the conference sought to make farmworker women more visible to the general public, national policymakers, and funders. Through such conferences, farmworker women are able to take on leadership roles in their communities, lobby government officials to uphold existing laws designed to protect farmworkers, and become further educated about the issues affecting their lives. Migrant farmworker women will eventually become their own best advocates.

The second inroad to improve the lives of migrant women is making existing public benefits more accessible. For example, if injunctive relief such as a protection order is secured in one state, that protection order should continue to be enforceable as migrants cross jurisdictional lines from one state to another. State assistance program residence requirements should be abolished so that migrant

95. See Wilk, supra note 32, at 1.
96. See id.
97. See id.
98. See id.
99. See id.
100. See id.
farmworkers will immediately qualify for assistance, and federal assistance program reciprocity across state lines should be further explored. Currently, there is very little continuity in services provided to farmworker women as they migrate from state to state. Outreach and education programs linking migrant women with service providers need to be created. As one author states, the goal should be to create a network of farmworker women leaders, health care providers, service providers, battered women’s advocates, and legal providers who will all be trained to respond to the needs of migrant women.¹⁰¹ Last, but not least, all information needs to be provided in migrant women’s native languages. Shelters should have bilingual staff on hand, translators need to be available in the courts, and communications and notices for migrant women should be posted in both English and Spanish. Efforts to expand access to public benefits such as these, best carried out on the local grassroots level, will go a long way towards bettering the lives of migrant farmworker women.

CONCLUSION

In addressing the feminist movement’s outreach efforts to lower-class and minority women, the majority of critics have been negative. Authors such as Williams and Spelman argue that the feminist coalition needs to be broadened and made more inclusive.¹⁰² Unfortunately, the evidence offered by these authors to support their argument is largely anecdotal or outdated. Using migrant farmworker women as a case study, this Essay demonstrates that national feminist organizations such as NOW LDEF, government agencies including the EEOC, and regional grassroots organizations such as Lideres Campesinas have done much, not only for migrant farmworkers, but also for other groups of poor disenfranchised women as well.

While there is cause for celebration, migrant farmworker women continue to suffer from gross inequalities in educational opportunities, workplace rights, and basic human rights. Rather than addressing the problems migrant women face through a top-down approach, this Essay argues that what is needed is a bottom-up approach. More money and resources must be made available to

¹⁰¹ See Orloff & Rodriguez, supra note 4, at 4.
¹⁰² See generally SPELMAN, supra note 1; WILLIAMS, supra note 1.
local grassroots organizations to enable them to assist farmworker women directly. Migrant farmworkers themselves need to be trained, educated, and empowered so that they can help both themselves and their communities. In the end, national organizations, government organizations, and legal advocates can only do so much; migrant farmworker women must do the rest.