

**Written Statement of Jane Liu
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**Public Briefing on Federal MeToo: Examining Sexual Harassment in
Government Workplaces
Before the United States Commission on Civil Rights**

May 9, 2019

Thank you for this opportunity to submit testimony to the United States Commission on Civil Rights. Sexual harassment in government workplaces continues to be a significant issue. It is vital that the federal government take proactive steps to create a safer, more equitable workplace free from harassment and discrimination for all of its employees, including women of color who are uniquely and disproportionately impacted by this issue.

I. Introduction

I am the Legal Director of the National Asian Pacific American Women’s Forum (NAPAWF). Founded in 1996, NAPAWF is the only national, multi-issue Asian American and Pacific Islander (AAPI) women’s organization in the country. Our mission is to build the collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. Our work includes fighting for economic justice for AAPI women and girls and advocating for the adoption of policies and laws that protect the dignity, rights, health, and equitable treatment of AAPI women workers.

As Legal Director, I lead NAPAWF’s legal advocacy and litigation strategies to ensure that the voices and experiences of AAPI women and girls are heard and considered in the courts and in the context of legal issues that impact AAPI women and girls. Our work seeks to elevate an intersectional lens that centers the lived realities of AAPI women at the intersections of the multiple identities that we hold, particularly at the intersection of race and gender. One of the key issues on which we work is workplace sexual harassment. We employ a variety of strategies, from presenting “Know Your Rights” trainings for AAPI women and providing direct legal services, to working with other employment attorneys and workers’ rights advocates to advance intersectional approaches to combating sexual harassment.

Previously, I was a Partner at Terris, Pravlik & Millian, LLP, a public interest law firm in Washington, DC, where I litigated civil rights and employment cases, including cases challenging sex discrimination and sexual harassment. I began my legal career as a public defender, representing defendants charged with serious felonies in the Dorchester area of Boston.

II. “Untold” Stories

Since the emergence of #MeToo less than a couple years ago, the issue of sexual harassment in the workplace has gained unprecedented attention. It has become an integral part of public discourse, with more and more women and men working in a variety of industries coming forward about the sexual harassment they have experienced. At the same time, the voices and experiences of women of color and immigrant women, particularly those who are working in the low-wage sector, continue to be marginalized and invisibilized in the conversation. As Tarana

Burke, an African American civil rights activist who founded the MeToo movement in 2006, recently stated, “[W]omen of color, trans women, queer people—our stories get pushed aside and our pain is never prioritized... We don’t talk about indigenous women. Their stories go untold.”¹

These stories must be heard in order to understand fully the lived realities of those who are most impacted by sexual harassment. Studies show that women of color are significantly more likely to experience workplace sexual harassment.² A recent report by the National Women’s Law Center found that during the time period of 2012 through 2016, Black women workers in the private sector filed sexual harassment charges with the U.S. Equal Employment Opportunity Commission (EEOC) at the highest rate and at rates multiple times the rates of women of any other racial group.³ During the same time period, 56% of all sexual harassment charges filed by women workers in the private sector were filed by women of color, even though they make up only 37% of women in the workforce.⁴ 5.8% of all women who filed charges alleged both sexual harassment and race discrimination.⁵

Moreover, women of color often experience sexual harassment that is racialized in nature, based on specific stereotypes and bias at the intersections of race and gender. For instance, stereotypes about AAPI women, such as the geisha, the prostitute, and the “mail-order bride,” sexualize and exoticize AAPI women, impacting the ways that AAPI women experience sexual harassment and likely increasing the risk that they are targeted for harassment.

Given these realities, it is vital that any conversation about sexual harassment in the workplace center and examine the experiences of women of color workers. My testimony will focus on the issue of sexual harassment for AAPI women workers, the ways that they experience sexual harassment and the particular barriers that AAPI women workers face in resisting harassment.

III. AAPI Women and Sexual Harassment in the Workplace

While comprehensive data on the incidence of workplace sexual harassment for AAPI women is lacking, existing research, as well as anecdotal evidence, confirm that it is a prevalent problem. At least 23% of AAPI women have experienced some form of contact sexual violence during their lifetime, and 21% have had non-contact unwanted sexual experiences.⁶ In a 2017 survey of AAPI women, including immigrant women, in the Chicagoland area, 53.5% reported that they had experienced some type of sexual violence at some point in their lives. 17.3% reported that

¹Melissa Chan, 'Our Pain Is Never Prioritized.' #MeToo Founder Tarana Burke Says We Must Listen to 'Untold' Stories of Minority Women, TIME (April 23, 2019), <http://time.com/5574163/tarana-burke-metoo-time-100-summit>

² See, e.g., Nancy Chi Cantalupo, *And Even More of Us Are Brave: Intersectionality and Sexual Harassment of Women Students of Color*, 42 HARV. J.L. & GENDER (forthcoming 2019); Nancy Krieger et al., *Social Hazards on the Job: Workplace Abuse, Sexual Harassment, and Racial Discrimination—A Study of Black, Latino, and White Low-Income Women and Men Workers in the United States*, 36 INT’L J. HEALTH SERV. 51, 63 (2006) (in study of union workers in Boston, both Black women and women of “other race/ethnicity,” including AAPI women, were more likely to report having experienced sexual harassment than white women).

³ AMANDA ROSSIE, JASMINE TUCKER, & KAYLA PATRICK, NAT’L WOMEN’S L. CTR., OUT OF THE SHADOWS: AN ANALYSIS OF SEXUAL HARASSMENT CHARGES FILED BY WORKING WOMEN 6 (2018).

⁴ *Id.* at 2.

⁵ *Id.* at 8.

⁶CENTER FOR DISEASE CONTROL, 2010-2012 NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY SUMMARY REPORT (2017).

they had experienced sexual harassment at work or school.⁷ However, due to underreporting, it is likely that a much higher number of AAPI women have experienced sexual harassment in the workplace. In an informal survey conducted in 2019 of over 200 AAPI women between the ages of 18 and 34 years old, 71% reported that they have “experienced/witnessed racism, sexism, homophobia, and/or other forms of discrimination at work,” and 68% responded that “they had not reported these issues with higher-ups.”⁸ Many responded that they “experienced racial and sexist microaggressions on a regular basis” at work.⁹

Although data on the prevalence of sexual harassment for AAPI women workers in the federal government is not available, in the U.S. Merit Systems Protection Board’s 2016 Merit Principles Survey of federal employees, 20.9% of all female respondents reported having experienced sexual harassment within the prior two years.¹⁰ Moreover, anecdotal evidence and appellate decisions published by the EEOC on its website¹¹ tell the stories of many AAPI women federal workers who have suffered severe and pervasive sexual harassment. These stories show that sexual harassment is a significant problem for AAPI women in the federal workforce, that harassment causes deep mental, physical, and economic harm, and that federal agencies have failed to respond adequately to sexual harassment in ways that protect and ensure the health, safety, and dignity of employees who experience and report sexual harassment.

For example, in January 2019, two AAPI employees of the post office in Daly City, California, May Thin Zar and Phyu Castillo, sued the U.S. Postal Service, claiming sex discrimination, harassment and retaliation in violation of Title VII.¹² According to the complaint, Ms. Zar’s supervisor had told her that “he loved her and wanted to go on a date with her” and had repeatedly asked her to go into private offices with him. On two occasions, he physically restrained her and kissed her despite her attempts to get away. After she reported the incidents, “she continued to be required to work with him.” The supervisor “would glare at her...and laugh” and “had told her co-workers that she would be fired for reporting him.”

Ms. Castillo was also similarly harassed and assaulted by the same supervisor. He “leered at [her] breasts,” making comments such as ““mmmmm”” or ““I want some of this.”” On one occasion, he grabbed her when then they were alone in a stairwell, “pressed his erect penis against her body, held her, and tried to kiss her.” Like Ms. Zar, she was required to continue to work with him after she reported his conduct. Both women were terrified for their safety, experienced severe distress, and sought medical care as a result.¹³

⁷ KAN-WIN, COMMUNITY SURVEY REPORT ON SEXUAL VIOLENCE IN THE ASIAN AMERICAN/IMMIGRANT COMMUNITY 7 (May 2017).

⁸ *We talked to 200 Asian women about their work and salary — here’s what we found*, COSMOS: Blog (April 12, 2019), <https://www.jointhecosmos.com/blog/2019/4/12/work-salary-asian-women> (the majority of the respondents worked in the tech, marketing, art and design, and healthcare industries).

⁹ *Id.*

¹⁰ U.S. MERIT SYS. PROT. BD., OFFICE OF POLICY & EVALUATION, UPDATE ON SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE (March 2018) (the survey results are not disaggregated by race and gender).

¹¹ Federal sector employees who disagree with their agency’s decision regarding their employment discrimination complaint can file an appeal with the EEOC; appellate decisions since 2000 are published online at <https://www.eeoc.gov/federal/decisions.cfm>.

¹² Plaintiffs’ Complaint for Damages and Declaratory and Injunctive Relief, *Zar and Castillo v. Brennan*, (N.D. Cal, Jan. 14, 2019) (No. 19-cv-250).

¹³ *Id.*

Recently, Anna Kowalski, an AAPI woman, reported that she had been sexually assaulted and harassed by a male co-worker in 2016 when she was employed at a post office in Fargo, North Dakota.¹⁴ The co-worker repeatedly called her in the middle of the night and “propositioned her.” On one occasion, he grabbed her face and tried to kiss her, and when she resisted, he “licked the whole top of [her] face.” Ms. Kowalski reported the conduct and the case went before an arbitrator. The U.S. Postal Service claims that the arbitrator required them to give the job back to the male employee and that “because the worker [wa]s a member of the union, managements’ hands were tied.” Ms. Kowalski ended up quitting the job and working for a different company, where she makes half of what she made as a postal worker.

IV. AAPI women are particularly at risk of harassment

AAPI women workers, both in the federal workforce and in the private sector, are particularly at risk of sexual harassment for a number of reasons.¹⁵

a. Intersectional Stereotypes and Racialized Sexual Harassment

As mentioned above, AAPI women confront racialized sexual harassment based on stereotypes about AAPI women. These stereotypes include assumptions that AAPI women are docile and subservient, erotic or sensual, manipulative and untrustworthy, and hardworking, conscientious employees.¹⁶ A recent study on intersectional discrimination faced by AAPI women also found the following prevailing stereotypes about AAPI women - “not a leader,” “submissive and passive,” “cute and small” and “invisible and silent,” and assumptions that all AAPI women are “service workers,” such as nannies, nail salon workers, and maids. In addition to these stereotypes, AAPI women also confront related stereotypes about AAPIs, particularly the model minority myth, which refers to the stereotype that all AAPIs are high-achieving and hard-working, and the stereotype of the “perpetual foreigner.”

These stereotypes, particularly those that sexualize AAPI women and those that depict AAPI women as passive, weak, and unwilling to stand up for themselves, increase the risk of AAPI women being targeted for sexual harassment.

My review of appellate decisions of the EEOC yielded a number of cases in which AAPI female complainants alleged racialized sexual harassment on the basis of these stereotypes, often alleging discrimination on the bases of sex and race, as well as color and/or national origin.¹⁷ For instance, Erline S. filed a complaint of employment discrimination on the bases of race, national origin, sex, disability, age and retaliation against the Department of Justice’s U.S. Marshalls Service, alleging that a supervisor had grabbed her and caressed her back, and that after reporting

¹⁴ *Sexual assault allegations at Prairiewood post office*, VALLEY NEWS LIVE (April 23, 2018), <https://www.valleynewslive.com/content/news/Sexual-assault-allegations-at-Prairiewood-post-office--480619131.html>.

¹⁵ For many of the same reasons, as well as for other reasons unique to each group based on their experiences, Black women, Latinas, and Native women are also at greater risk of sexual harassment.

¹⁶ Shrutti Mukkamala & Karen L. Suyemoto, *Racialized Sexism/Sexualized Racism: A Multimethod Study of Intersectional Experiences of Discrimination for Asian American Women*, 9 ASIAN AM. J. PSYCHOL. 32, 33 (2018). See also Joan C. Williams, *Double Jeopardy? An Empirical Study with Implications for the Debates over Implicit Bias and Intersectionality*, 37 HARV. J.L. & GENDER 185, 213-214 (2014).

¹⁷ See, e.g., *Beebe v. Department of Agriculture*, Appeal No. 01200612741 (Vietnamese female employee claiming sexual harassment and discrimination on the bases of race, disability and reprisal), <https://www.eeoc.gov/decisions/0120061274.txt>.

the incident, the supervisor became “aggressive and abusive” towards her during daily interactions observed by other employees. In her complaint, she stated that the supervisor “engaged in such conduct against her because he believed that as an Asian female,” she was “a shy, passive and weak Asian woman whom he could molest without any consequences” and “would not defend herself.”¹⁸

Even in cases where the complainant alleged only sexual harassment and did not allege race discrimination, race, ethnicity and/or national origin bias were often part of the harassment. For example, Teresita Diggs filed a complaint of sex discrimination and sexual harassment against the Department of the Army, alleging that her supervisor had repeatedly made sexual comments to her and had sexually assaulted her. While she did not allege ethnic or national origin bias, the EEOC decision mentions that she alleged that “when [her supervisor] needed something from her,” he would tell her to “get your little Filipino ass over here.”¹⁹

b. Power Imbalance and the Glass/Bamboo Ceiling

Because workplace sexual harassment is an “expression of power” that is “used to reinforce cultural norms about appropriate roles, behavior and work for women and men, and to exert control over people with less power and status in society,”²⁰ the risk of harassment is greater in work environments with significant power imbalances and issues of gender inequity and other inequities such as racial inequities.

Data show that AAPI women federal workers confront power imbalances and issues of gender/race inequities that place them at greater risk of sexual harassment. For instance, AAPI women workers in the federal sector continue to face a glass ceiling, sometimes referred to as the “bamboo ceiling” for AAPI’s, at the Senior Executive Service (SES) level, which includes top federal agency officials and senior personnel. A 2012 EEOC report found that “[w]hile participation rates for AAPI female employees in the GS-13 and GS-14 grade levels exceeded the total workforce participation rate, they drop dramatically at the SES levels.”²¹

The EEOC report also found that AAPI employees had voluntary separation rates that were higher than their participation in the federal workforce and also higher than other minority groups. The report identified a number of possible factors to explain these higher attrition rates, including “barriers to promotion” for AAPI employees, “management’s negative perceptions of AAPI employees’ national origin (including accent and language), “leadership abilities resulting in discriminatory practices impacted decisions regarding discipline, evaluations, and advancement in the workplace,” and “agencies not holding management accountable when AAPI employees voluntarily resigned due to discrimination.” Thus, the report suggested that national origin discrimination was a significant issue for AAPI federal employees, that such discrimination impacted discipline, evaluation and promotion, likely causing AAPI employees to

¹⁸ *Erline S. v. Department of Justice (U.S. Marshalls Service)*, Appeal No. 0120160618, <https://www.eeoc.gov/decisions/0120160618.txt>.

¹⁹ *Diggs v. Department of the Army*, Appeal No. 1A12480, <https://www.eeoc.gov/decisions/01A12480.txt>.

²⁰ MAYA RAGHU AND JOANNA SURIANI, NAT’L WOMEN’S L. CTR., #METOOWHATNEXT: STRENGTHENING WORKPLACE SEXUAL HARASSMENT PROTECTIONS AND ACCOUNTABILITY 1 (Dec. 2017).

²¹ U.S. EQUAL EMP’T OPPORTUNITY COMM’N, A PRACTICAL GUIDE TO ADDRESSING COMMON ISSUES AND POSSIBLE BARRIERS WHICH ASIAN AND NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER EMPLOYEES MAY FACE IN THE FEDERAL WORK FORCE 4 (Sept. 2012).

leave the federal workforce at disproportionate rates, and that failure to hold managers accountable for discriminating against AAPI workers was also a problem.

AAPI women federal workers are also at greater risk of harassment in federal agencies or offices that are male-dominated, particularly those that are dominated by white males. For example, Anuradha Bhagwati, founder of the Service Women’s Action Network and a former member of the Marine Corps who has spoken out publicly and testified before Congress regarding widespread sexual harassment and assault that she witnessed while in the military, writes in her recently released memoir, *Unbecoming: A Memoir of Disobedience*, about her experience of being a woman of color in military spaces dominated by white males: “[i]n the national security world, my Brownness and my gender were so loud and obvious in a sea of white dudes that it often felt like I was screaming even when I said nothing.”²²

AAPI women federal workers working in the sciences or engineering are also likely at greater risk of sexual harassment and discrimination due to gender inequities and intersectional stereotypes. In a 2014 study of gender bias against women of color in science, Asian American women were far more likely than women of other racial groups to report backlash for stereotypically masculine behaviors, such as being assertive and self-promoting; in this way, Asian American women in the sciences are “policed into femininity.”²³

c. Immigrant AAPI Women

AAPI women workers who are immigrants may also be at increased risk of sexual harassment. 73% of Asian American adults are foreign-born, and more than 1 in 3 Asian Americans are limited English proficient (LEP).²⁴ AAPI immigrant workers face other types of discrimination, such as language and accent discrimination and xenophobia, which may increase the risk of sexual harassment. Moreover, AAPI women workers who are LEP face language barriers in reporting that could make them more vulnerable to harassers.

The case of Meili Ng, an AAPI female postal worker, illustrates how immigrant AAPI women federal workers are targeted for sexual harassment. Ng filed a complaint of discrimination on the bases of race and sex, alleging that her supervisor had sexually harassed her. Noting that many of the employees that her supervisor supervised were Chinese, she alleged that her supervisor had “exhibited a disgust of Chinese workers and had stated that if he had the power, he would deport all foreigners to their countries of birth.”²⁵ She alleged that her supervisor targeted Chinese women “because he felt that he could get away with it” and that “Chinese workers were intimidated because they did not want to lose their jobs.”²⁶

²² V.V. Ganeshanathan, *A Former Marine Looks Back on Her Life in a Male-Dominated Military*, N.Y. TIMES (Apr. 21, 2019), <https://www.nytimes.com/2019/04/21/books/review/aunuradha-bhagwati-unbecoming.html>.

²³ JOAN C. WILLIAMS, KATHERINE W. PHILLIPS & ERIKA V. HALL, *WORKLIFE L, DOUBLE JEOPARDY? GENDER BIAS AGAINST WOMEN IN SCIENCE* 5-7 (2014).

²⁴ Gustavo López, Neil G. Ruiz, & Eileen Pattien, *Key facts about Asian Americans, a diverse and growing population*, PEW RES. CTR. (Sept. 8, 2017), <https://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans>.

²⁵ *Ng v. U.S. Postal Service*, Appeal No. 01200618051, <https://www.eeoc.gov/decisions/01200618051.txt>.

²⁶ *Id.*

V. Barriers to Reporting

According to a 2016 report by the EEOC's Select Task Force on the Study of Harassment in the Workplace, approximately 70% of individuals who experience harassment never tell a supervisor, manager, or union representative about the conduct.²⁷ Moreover, between 87 to 94% of those who experience sexual harassment never file a formal complaint.²⁸ The reasons for underreporting are myriad, but fear of retaliation is likely one of the largest barriers. 68% of sexual harassment charges also include a charge of retaliation, and 64% of those filing sexual harassment charges report losing their jobs as a result of filing a complaint.²⁹

Data suggests that AAPI women are less likely to report sexual violence and assault than women in other racial groups³⁰ due to particular barriers that AAPI women face.³¹ It is important that employers, including the federal government, consider these barriers as they consider ways to increase reporting of sexual harassment in their workplaces.

a. Social Stigma, Cultural Beliefs and Victim-Blaming

Social stigma and victim-blaming are significant barriers for AAPI women targeted by sexual harassment. The stigma and blame that AAPI women who experience sexual harassment face are shaped in part by traditional Asian cultural beliefs that “tend to adhere to the patriarchal hierarchy that endorses a dominant role for males and a submissive role for females. Women are expected to practice modesty and sexual restraint³² and are held responsible for sexual activities outside of marriage.”³³

A 2017 survey of Asian American women in the Chicagoland area regarding sexual violence found that victim-blaming attitudes were prevalent in the AAPI community, with many respondents placing the responsibility of preventing sexual violence on the victim.³⁴ The majority of the respondents stated that they would not or were unsure that they would tell anyone

²⁷ CHAI R. FELDBLUM & VICTORIA A. LIPNIC, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, REPORT OF SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE (June 2016).

²⁸ *Id.*

²⁹ CARLY MCCANN, DONALD TOMASKOVIC-DEVEY, & M. V. LEE BADGETT, CTR. FOR EMP'T EQUITY, U. MASS. AMHERST, EMPLOYER'S RESPONSES TO SEXUAL HARASSMENT 12 (Dec. 2018).

³⁰ In a 2017 nationwide survey of women of all racial groups regarding discrimination, AAPI women were the least likely to report that they or a female family member had been sexually harassed. They were also the least likely to report that they had been threatened or experienced violence on the basis of their sex. NAT'L PUB. RADIO, ROBERT WOOD JOHNSON FOUND., & HARV. T.H. CHAN SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF AMERICAN WOMEN 14-23 (Dec. 2017).

³¹ Cathy Hu, *What we know about intimate partner violence in Asian American and Pacific Islander communities*, May 31, 2018, <https://www.urban.org/urban-wire/what-we-know-about-intimate-partner-violence-asian-american-and-pacific-islander-communities>.

³² AAPI women may also find it difficult to tell others, particularly family members, about sexual harassment, because sex and sexuality are often considered taboo topics to discuss within AAPI communities. See Lee, C. et al., *Sex Education Among Asian American College Females: Who is Teaching them and What is Being Taught*, 15 J. IMMIGRANT MINORITY HEALTH 350 (Apr. 2013).

³³ Yuying Tsong & Sarah E. Ullman, *Asian American Women Sexual Assault Survivors' Choice of Coping Strategies: The Role of Post-Assault Cognitive Responses*, 41 WOMEN & THERAPY 298 (2018).

³⁴ KAN-WIN, *supra* note 7, 15. See also *id.* (discussion of studies finding “Asian American women sexual assault survivors had high levels of self-blame and suicidal ideation,” and “[c]ompared to White women survivors, Asian American survivors showed greater symptoms of helplessness, shame, embarrassment, and concerns about family and/or others' reactions, following their sexual assault victimization”).

if they experienced sexual violence, citing concerns about how disclosure would affect their own reputation and their family's reputation as their primary reasons for not disclosing.³⁵

b. Difficulty Identifying Sexual Harassment

Studies have shown that AAPI women have difficulty or are unwilling to identify conduct that is consistent with sexual harassment as sexual harassment.³⁶ In the 2017 Chicagoland survey, 42% of the respondents answered "I was not aware that my experience was sexual violence" as a barrier in getting help.³⁷ The issue appears to be prevalent across age groups, as a 2018 study of Asian American college students similarly found that "relatively few women were willing to label behaviors consistent with sexual and racial harassment as such."³⁸ Moreover, this issue is likely even more salient among immigrant Asian Americans; in a 2017 nationwide survey of AAPI's regarding discrimination, non-immigrant Asian Americans were four times as likely to report that they or a member of their family had experienced sexual harassment because they are Asian, compared to their immigrant counterparts.³⁹

c. Lack of Familiarity with Sexual Harassment Laws and Workers' Rights

Related to the barrier of difficulties in identifying sexual harassment, many AAPI women do not report harassment because they are unfamiliar with the laws and their rights. As a result, they may not know or are unsure that the conduct they are confronting constitutes sexual harassment that is prohibited by the law, or they may not know how to seek help or enforce their rights. In the 2017 Chicagoland survey, less than 18% of the respondents received help from resources or services for their experience(s) of sexual violence.⁴⁰ While the vast majority of the respondents knew of first-responder services like 911 and law enforcement, the majority of the respondents did not know about other available services and options, such as sexual assault crisis lines and psychiatric help.⁴¹ The service that respondents were least likely to know about was "court advocacy." Moreover, the respondents identified reporting mechanisms such as court advocacy, 911 and law enforcement as the least appealing services and identified supportive services like counseling and sexual assault crisis lines as most appealing.⁴²

d. Language Barriers

As mentioned above, AAPI women workers also face language barriers in reporting sexual harassment. 35% of AAPI's are limited English proficient.⁴³ Lack of language access in the complaint process could be a problem, if an interpreter is not provided or made available to the

³⁵ KAN-WIN, *supra* note 7, at 12.

³⁶ My own work with NAPAWF confirms these studies' findings, as I have interacted with a number of AAPI women who express surprise at the wide range of behaviors that could constitute sexual harassment.

³⁷ KAN-WIN, *supra* note 7, at 11.

³⁸ NiCole T. Buchanan et al., *Sexual Harassment, Racial Harassment, and Well-being among Asian American Women: An Intersectional Approach, Women & Therapy*, 41 WOMEN & THERAPY 261 (2018).

³⁹ NAT'L PUB. RADIO, ROBERT WOOD JOHNSON FOUND., & HARV. T.H. CHAN SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF ASIAN AMERICANS 9-10 (Nov. 2017).

⁴⁰ KAN-WIN, *supra* note 7, at 9-10.

⁴¹ *Id.* at 9-10.

⁴² *Id.* at 13-14.

⁴³ Karthick Ramakrishnan & Farah Z Ahmad, "Language Diversity and English Proficiency," Center for American Progress (May 27, 2014), <https://www.americanprogress.org/wp-content/uploads/2014/04/AAPI-LanguageAccess1.pdf>.

complainant by the federal agency or the EEOC. Language barriers may also create difficulties for AAPI's workers in learning about their rights and understanding the complaint process. Language barriers may also make AAPI's reluctant to report a complaint, as they may be concerned that they will not be able to articulate facts about the harassment that they have experienced in English.

For instance, in the case of Meili Ng discussed above, the EEOC in its decision questioned the Administrative Judge's conclusion that Ms. Ng's answers during her deposition were vague, noting that "[d]uring her deposition, the complainant stated that she did not know English and that her English was not too good" and that "[n]o interpreter was provided for complainant."⁴⁴

VI. The Harmful Effects of Sexual Harassment

a. Physical and Mental Health Effects

Research has shown that sexual harassment has negative mental health effects, leading to depression and causing trauma.⁴⁵ For AAPI women and other women of color, the effects can be compounded by the negative psychological effects of racial harassment and racialized sexual harassment, which has been found to lead to "psychological distress and maladaptive coping responses that further exacerbate harassment's psychological harm."⁴⁶

For AAPI women, the health risks are severe, as AAPI young adult women have higher rates of Major Depressive Disorder than their peers and Asian American women report significantly more suicidal ideation.⁴⁷ Southeast Asian women with refugee backgrounds are also at particular risk, because many already suffer from Post-Traumatic Stress Disorder from trauma experienced before, during and after immigration.⁴⁸ Moreover, "Asian Americans are three times less likely than their white counterparts to seek and utilize mental health services."⁴⁹

The stress and mental health effects caused by harassment also impair physical health. For women of color, these physical health effects are compounded by the health effects that women of color already suffer from experiencing racism and discrimination, which include higher rates of hypertension and infant mortality for Black women who have experienced racism, and higher rates of cardiovascular stress for Latinas due to anticipating prejudice.⁵⁰

In a recent study of people of color employed in professional occupations, the majority of the respondents across all racial and ethnic minority groups reported paying an "emotional tax" of

⁴⁴ *Ng v. U.S. Postal Service*, *supra* note 25.

⁴⁵ ELYSE SHAW, ARIANE HEGEWISCH, & CYNTHIA HESS, INST. FOR WOMEN'S POLICY RESEARCH, SEXUAL HARASSMENT AND ASSAULT AT WORK: UNDERSTANDING THE COSTS 4 (Oct. 2018).

⁴⁶ Buchanan et al, *supra* note 39, at 14.

⁴⁷ *Id.* at 4-5.

⁴⁸ NAT'L DIABETES EDUC. PROGRAM, U.S. DEP'T OF HEALTH & HUMAN SERVS., SILENT TRAUMA: DIABETES, HEALTH STATUS, AND THE REFUGEE: SOUTHEAST ASIANS IN THE UNITED STATES (2006).

⁴⁹ Connor Maxwell & Lisa Kwon, 4 Ways to Improve Access to Mental Health Services in Asian American Communities, Ctr. for Am. Progress (Oct. 10, 2018, 10:00 AM), <https://www.americanprogress.org/issues/race/news/2018/10/10/459200/4-ways-improve-access-mental-health-services-asian-american-communities/>.

⁵⁰ Ruqaiyah Yearby, *The Impact of Structural Racism in Employment and Wages on Minority Women's Health*, 43 HUMAN RIGHTS, at 21, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/minority-womens-health/.

feeling “highly on guard,” due to anticipating racial bias, gender bias, and other biases in the workplace.⁵¹ Respondents with higher levels of being “on guard” were also more likely to consider leaving their jobs and have sleep problems.⁵²

b. Career Effects

Studies confirm that women workers who experience sexual harassment suffer significant consequences to their careers and professional trajectories.⁵³ Women who experience sexual harassment are much more likely to change jobs than women who have not, and often to jobs that are lower-paying.⁵⁴ As a result, job change due to sexual harassment has been found to cause significant financial stress. Industry change and reduced work hours are also common among women who experience sexual harassment.⁵⁵

Sexual harassment also reduces access to opportunities for professional development and learning opportunities. A 2018 National Science Foundation study of women in the academic sciences, engineering, and medicine found that harassment hampered career advancement by causing women to “give up tenure opportunities, drop out of major research projects, or step down from leadership opportunities to avoid the perpetrator.”⁵⁶ For women who suffer sexual harassment early in their careers, these effects can knock them off their career paths at a critical time in their professional careers, having negative long-term career effects.

The economic and career consequences of harassment can be even more severe for women of color because they face greater wage gaps than white, non-Hispanic women. Asian women are paid 87 cents for every dollar paid to a white, non-Hispanic man, but the wage gap is much larger for some ethnic subgroups. For instance, Burmese, Samoan, and Hmong women are paid less than 60 cents for every dollar paid to a white, non-Hispanic man.⁵⁷

VII. The Need for an Intersectional Approach in Addressing Sexual Harassment

As the discussion above shows, sexual harassment in the federal workforce continues to be a significant issue, and AAPI women and other women of color are particularly at risk of being targeted for sexual harassment. Given this reality, it is crucial that the federal government examines and considers the experiences of AAPI women and women of color as it explores ways to address the problem of sexual harassment in its workspaces. Furthermore, because the issue of sexual harassment for women of color is intersectional in nature, federal agencies must approach this issue with an intersectional framework, implementing reforms in ways that reflect an understanding of the lived experiences of women of color workers and the intersectional discrimination they face.

⁵¹ DNIKA J. TRAVIS & JENNIFER THORPE-MOSCON, CATALYST, DAY-TO-DAY EXPERIENCES OF EMOTIONAL TAX AMONG WOMEN AND MEN OF COLOR IN THE WORKPLACE (2018).

⁵² *Id.* at 14-15.

⁵³ See, e.g., Heather McLaughlin, Christopher Uggen, & Amy Blackstone, *The Economic and Career Effects of Sexual Harassment on Working Women*, 3 GENDER & SOC’Y 333 (2017).

⁵⁴ SHAW, HEGEWISCH, & HESS, *supra* note 46, at 5.

⁵⁵ McLaughlin, Uggen, & Blackstone, *supra* note 54, at 346.

⁵⁶ NAT’L ACAD. OF SCIS., SEXUAL HARASSMENT OF WOMEN: CLIMATE, CULTURE, AND CONSEQUENCES IN ACADEMIC SCIENCES, ENGINEERING, AND MEDICINE (2018).

⁵⁷ MORGAN HARWOOD, NAT’L WOMEN’S L. CTR., EQUAL PAY FOR ASIAN AND PACIFIC ISLANDER WOMEN (Mar. 2019).

a. The Need for Research and Data on Women of Color Federal Workers

An intersectional approach must begin with efforts by the federal government to better understand the issue of sexual harassment for women of color employees through data gathering. Research and data on the prevalence, nature and impact of sexual harassment for women of color federal workers is currently lacking. While the U.S. Merit Systems Protection Board's 2016 Merit Principles Survey of federal employees includes questions regarding sexual harassment, the responses from that survey are not disaggregated based on demographic information regarding the respondents such as race and gender. Furthermore, while the EEOC publishes data regarding the number of formal complaints of sexual harassment that are filed by federal sector employees each year on its website, demographic information regarding the complainants is not published.⁵⁸ Moreover, the EEOC Form 462, the form that federal agencies must file with the EEOC to report complaints of employment discrimination, does not require individual agencies to report demographic information, such as race and gender, of complainants, which suggests that the EEOC does not have this information. While individual agencies are required to report and publish certain information on the number of sexual harassment and other discrimination complaints made by employees, pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), this information does not include information regarding the race and gender of complainants.

In addition to collecting more detailed information on federal employees who file pre-complaints and complaints, the federal government should consider engaging in efforts to gather qualitative data on women of color workers and their experiences of sexual harassment through interviews and open-ended surveys and allow for responses to be submitted anonymously.

b. The Need for an Organizational Culture Committed to Rooting out Harassment and Pursuing Equity

Given the prevalence of retaliation and the vast underreporting of sexual harassment, it is clear that the current federal sector complaint process and legal enforcement are not sufficient to address the issue of sexual harassment in the federal workforce. As the 2016 Report of the EEOC Select Task Force on the Study of Harassment in the Workplace found, an organization's workplace culture, created by leadership from the top and accountability at all levels, has the greatest impact in preventing sexual harassment.⁵⁹ The report further stated:

To achieve a workplace without harassment, the values of the organization must put a premium on diversity and inclusion, must include a belief that all employees in a workplace deserve to be respected, regardless of their race, religion, national origin, sex (including pregnancy, sexual orientation, or gender identity), age, disability, or genetic information, and must make clear that part of respect means not harassing an individual on any of those bases. In short, an organization's commitment to a harassment-free workplace must not be based on a compliance mindset, and instead must be part of an overall diversity and inclusion strategy.⁶⁰

⁵⁸ On April 25, 2019, an attorney with NAPAWF contacted the EEOC by telephone to request information regarding the race/gender of complainants and was told that the EEOC did not collect such information, as the information regarding complaints made by federal sector employees is collected by individual federal agencies.

⁵⁹ FELDBLUM ET AL, *supra* note 28.

⁶⁰ *Id.*

Thus, to reduce sexual harassment in its workplaces, the federal government must take affirmative steps to creating, shaping and reinforcing a workplace culture deeply committed to rooting out harassment across all agencies. These affirmative steps must include efforts to address sexual harassment impacting AAPI women and other women of color, including (1) education and training of workers and employers regarding racialized sexual harassment and intersectional stereotypes, (2) making education and training materials for workers available in primary languages spoken by immigrant workers, and (3) providing a variety of reporting mechanisms other than the complaint process, including mechanisms with greater levels of anonymity for complainants, to improve reporting and accountability.

Moreover, this culture-shifting work must go beyond a commitment to diversity and inclusion. As discussed above, the risk of sexual harassment is greater in environments with stark power imbalances and broader institutional inequities. For AAPI women and other women of color, sexual harassment is often racialized and experienced in combination with racial harassment and discrimination, national origin discrimination, xenophobia, accent discrimination, and other biases. Thus, a culture committed to rooting out sexual harassment must be committed to institutional equity and addressing power imbalances, including a reconsideration of institutional systems and power structures that lead to racial, gender and other inequities in the federal government and the implementation of policies and systems that seek to achieve greater equity and justice for all federal employees.