



Testimony of Judge Laura Safer Espinoza
Executive Director, Fair Food Standards Council
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Thank you for this opportunity to address the Congressional Caucus for Women's Issues on behalf of the Fair Food Program. My name is Judge Laura Safer Espinoza, and I am a former Acting Supreme Court Justice of New York State, where I served for 20 years, before my retirement in 2010. I have been the Executive Director of the Fair Food Standards Council, based in Sarasota, Florida, since it was established, in November of 2011.

Although southwest Florida is an idyllic place for many retirees, I soon learned that federal prosecutors also had dubbed it ground zero for modern day slavery. This was due, in large part, to the abuses suffered by the area's agricultural workers – the women and men who grow and harvest the food we eat. These human rights violations, which include forced labor, sexual violence and systemic sexual harassment, have existed since the beginning of commercial agriculture in this country.

An estimated 560,000 women work on U.S. farms, and multiple studies have concluded that the vast majority - up to 80 percent of them - have suffered sexual harassment, and/or sexual violence in the workplace.¹ These ongoing abuses were also covered extensively in the 2013 PBS Frontline documentary entitled "Rape in the Fields"².

Since 2011, this terrible reality is being transformed, through implementation of the Fair Food Program, which has meant the dawning of a New Day for tens of thousands of workers on the Program's participating farms. While headlines in 2009 screamed about indictments for modern day slavery in the fields of Florida, and cases of serial sexual assault of farmworker women were being investigated, by 2014, the NY Times talked about Fair Food Program farms as "the best working environment in American agriculture" – after only three full seasons of Fair Food Program enforcement.³

Now operating in seven states up the east coast (Florida, Georgia, North Carolina, South Carolina, Virginia, Maryland and New Jersey) and three crops (tomatoes, strawberries and peppers), extending its protections to 35,000 workers, the Fair Food Program has brought an end to impunity for sexual violence and other forms of sexual harassment at participating farms, where there have been zero cases of rape or attempted rape since the implementation of Program standards in 2011. Cases of sexual harassment by supervisors with *any type of physical contact* have been virtually eliminated, as have unwanted sexual overtures in exchange for offers of work opportunities. Female farmworkers on participating farms consistently report dramatic improvements in their work environment, including significant reduction in the use of vulgar and offensive language.⁴

That is why, when CNN International's Freedom Project's reporters visited the Fair Food Program in 2016, they met women like Alejandrina Carrera, who had been sexually assaulted and then fired by the offending boss when she first worked in the fields as a young teenager. Alejandrina told CNN that today, on Fair Food Program farms, and I

quote, “You’re not going to be harassed, you’re not going to be insulted, you’re not going to be forced to work (against your will). There’s more respect now.”³

She added that she is proud to tell her children about the company she works for, one of the first farms to join the Fair Food Program.

How did this ‘New Day’ come about?

When the founders of the Fair Food Program – members of a non-profit human rights organization called the Coalition of Immokalee Workers (CIW) – came together in the 1990’s, conditions for agricultural workers had not changed significantly since Edward R. Murrow’s famous documentary on their plight. Some of the saddest scenes of *Harvest of Shame* were filmed in Immokalee, Florida, where violence, including sexual assault, sexual harassment and discrimination against women were all part of farmworkers’ daily experience.

Beyond this, at the far end of a spectrum of degraded conditions, were cases of forced labor – modern day slavery - which often included acts of sexual violence. In response, Coalition members pioneered a worker-centered approach to forced labor investigations and prosecutions, helping to free over 1200 workers across several states. Their efforts, for which they were awarded a Presidential Medal in 2015⁴, were key in kindling the anti-trafficking movement in the U.S. in the 1990s.

CIW’s goal was not to keep going to court, however, because as judges also know, even successful prosecutions mean that there continue to be victims. Rather, they sought to eliminate the conditions that allowed these abuses, including sexual assault and sexual harassment, to take root and flourish. In other words, they imagined a world without victims.

Excluded from many legislative protections afforded to other workers, agricultural workers had limited success seeking protection through traditional forms of advocacy. Eventually, Coalition members realized that a different model to create transformative change would be necessary, and that the top of the food supply chain – large retail purchasers of produce like fast food chains, food service companies and supermarkets – had the market power to effect change at the level of the farms that were their suppliers. As a result, in 2001, through what became known as the Campaign for Fair Food, farmworkers living at the edge of the Florida Everglades reached out to consumers of conscience across this country.

It was that alliance between workers and consumers that eventually harnessed enough market power to launch the Fair Food Program in Florida’s tomato industry in 2011. As a result of their efforts, 14 major buyers of produce, ranging from McDonalds and Subway to Whole Foods and Walmart, have signed legally binding agreements with the Coalition of Immokalee Workers. Under those Fair Food Program agreements, Participating Buyers commit to purchase only from growers who implement a human rights-based Code of Conduct (Code) with zero tolerance provisions for forced labor, child labor, sexual assault and other forms of violence, as well as a range of protections for other human rights, including the right to work free of sexual harassment. For their part, Participating Growers commit to implement the Code, and to cooperate with, and respect the findings of, the organization designated by the Coalition to monitor grower compliance. Once these buyers represented a significant share of the market, growers representing over 90 percent of the Florida tomato industry joined the program at the end of 2010.

This market-driven model has – in a few short years of operation - reached the level of prevention of sexual assault and sexual harassment, by using the power of the purchasing order to motivate conduct. Participating Growers, faced with a choice between retaining a supervisor who commits sexual harassment and thereby losing their ability to sell their product to some of the world’s largest food retailers, or firing that supervisor and retaining their right to sell to those buyers, have always made the right decision. *In the Fair Food Program, the right moral choice is also the right business choice.* After a few years of enforcement, supervisors came to understand that the tremendous imbalance of power that had always allowed them to commit abuses with no consequences, had been corrected. They learned that to continue the old patterns of behavior would mean loss of employment on all Fair Food Program farms.

What are the essential elements of Fair Food Program implementation?

1. The Program’s Code of Conduct that growers agree to implement is not generic, but rather specific to the industry and informed by workers themselves.

Workers are the experts in how, when, and by whom their rights are normally violated. Therefore, the Code was not created by putative outside experts, but rather in constant collaboration with workers and as a reflection of their priorities. For example, the zero-tolerance provision for sexual harassment requires termination for anyone found to have committed harassment with physical contact of any kind, and the banning of such individuals from all Fair Food Farms. Workers believed that this was necessary to send the strongest message possible that an extremely prevalent practice had to end, and that women would be empowered to end it. The right to make complaints, free of retaliation, is also vigilantly protected by the Code’s sanctions against supervisors who retaliate in any way.

2. Effective education that is as deep and widespread as possible.

Workers at participating farms receive education on their rights under the Program at the point of hire, with materials – a booklet and a video - created by farmworkers themselves. CIW’s staff also carries out in-person worker to worker education at all Fair Food farms every season. Over 200,000 workers have received this education on their rights, including the right to work free of sexual harassment and discrimination. Supervisors are also educated on their responsibilities for fulfilling the Code and the serious disciplinary consequences for failure to do so.

3. Monitoring that provides a continuous flow of credible information.

Worker education has created thousands of “worker-monitors” who actively enforce their own rights in the workplace through their interactions with supervisors and co-workers, as well as through their interactions with the Fair Food Standards Council. The Council, established as a separate non-profit organization, is a monitoring and enforcement organization that is unique in U.S. agriculture and solely dedicated to this program. The Council’s investigators carry out comprehensive audits that far exceed typical corporate social responsibility program metrics. All levels of supervisors are interviewed, as are at least 50 percent of workers at any given location. Additionally, investigators have unprecedented access to the employer’s records. Critical to monitoring success, however, is that these audits are supplemented by a 24/7 complaint line, which is always answered live by the same Fair Food Standards Council auditors who are familiar with, and understand the situations that give raise to workers’ concerns. We have resolved well over 2000 complaints, over 50 percent within two weeks, and 80 percent within a month.⁷

4. **An enforcement mechanism that is prompt, and powerful and certain.**
Most importantly, behind the Program's Code and monitoring results stand the prompt and certain market consequences of the program's Participating Buyers. Those consequences are what enable all the other mechanisms to operate effectively. If Participating Growers fail to comply with the Code, including taking steps to eliminate sexual harassment and terminating any supervisors who have committed sexual harassment with physical contact, they simply cannot sell to the Program's Participating Buyers.

This structure has resulted in a win-win-win situation.

Participating growers have become employers of choice, reducing turnover, preventing risks, improving management systems, and obtaining verification of ethical labor practices, thereby giving them a competitive edge with buyers.

Buyers have benefited from transparency and elimination of supply chain risks at a time when consumers – with access to instant information – are increasingly demanding to know the conditions under which the goods they bring into their homes are produced.

For workers, the changes are comprehensive and dramatic. After generations of abuse, the worst practices and the worst actors have been eliminated, in just a few short years. Workers are free to enforce their rights, and women are no longer required to check their dignity at the farm gate, in order to feed their families.

The Fair Food Program is poised for expansion to more states and crops in U.S. agriculture. Based on the proven results of this model, workers in other sectors as diverse as dairy workers in Vermont, janitorial workers in California, poultry workers in Arkansas, and even models in the fashion and entertainment industries have adapted, or are seeking to adapt, the Fair Food Program model and mechanisms to their circumstances.

At the same time, our hotline continues to receive calls from workers who are suffering the worst kinds of abuses outside the Program. Demand for Fair Food product, which is growing among consumers, will drive expansion. It is our hope that government procurement policies will, in the not distant future, be an important part of that demand, and help to ensure that all farmworkers wake up as safe, secure and respected as Alejandrina Carrera.

How Can Government Procurement Policy Expand the Fair Food Program?

The Fair Food Program has eliminated forced labor and sexual harassment on FFP farms exactly because it no longer pays to engage in such activity. The cost of getting caught, i.e., getting fired or being unable to sell one's crop to the Participating Buyers, overwhelms whatever economic advantage is gained from the reduced cost of labor.

This same model can be applied to U.S. government procurement, thereby breathing life into the zero tolerance for human trafficking standard articulated in EO 13627. For purposes of testing the efficacy of this approach, no change in current law is required. 41 U.S.C. §1124 (a) already grants the Administrator of the Office of Federal Procurement Policy authority to “develop innovative procurement methods and procedures to be tested by selected executive agencies.” And of course, Congress can instruct that such a demonstration project be undertaken. If it is demonstrated that the Fair Food model

works within the government procurement context, only modest changes to current government procurement processes would then be required to implement a similar program on a broader scale.

The U.S. government could participate in the Fair Food Program under existing procurement rules. Purchasing produce that is verifiably certified to be free of forced (and child) labor and sexual harassment is clearly within the public interest, as articulated in EO 13627. As such, the Department of Defense and USDA could both buy Fair Food Program produce under a sole source contract pursuant to Federal Acquisition Regulation 6.302-7. In addition, because it would be testing the functionality of the FFP model within the federal procurement context, sole source contracting would also fall within the exception to competitive bidding found in FAR 6.302-1.

Finally, USDA already and quite appropriately sets standards for the food that Americans eat. According to the USDA website, these Quality Standards “are based on measurable attributes that describe the value and utility of the product.” By simply deciding that food produced free of sexual harassment and human trafficking is an intrinsic value of the product, USDA could immediately begin to differentiate American, Fair Food tomatoes from their foreign competition. The main competition for American tomatoes comes from Mexico, where the tomato industry, far from making progress, is increasingly beset with gross human rights abuses, driven in no small part by the influence of drug-related violence. By valuing respect for human rights in its purchasing decisions, the U.S. government would not only be setting an example for the world to see, it would be supporting the incredible progress that has been achieved by the producers of American tomatoes. This would indeed be the ultimate win-win situation.

Please consider visiting the Fair Food Program to witness the mechanisms I have described in action, and do not hesitate to contact us with any questions you or your colleagues may have. I can be reached at hon.s.espinoza@fairfoodstandards.org.

Once again, thank you very much for your time and consideration.

For more information on the Fair Food Program, please visit:

www.fairfoodprogram.org
www.fairfoodstandards.org
www.ciw-online.org

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