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### When Home is a Living Hell: Vulnerable Women and Sexual Harassment in Housing

Sarah Pricer

*Texas A&M University School of Law (Student)*, [spricer@tamu.edu](mailto:spricer@tamu.edu)

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**WHEN HOME IS A LIVING HELL: VULNERABLE WOMEN AND  
SEXUAL HARASSMENT IN HOUSING**

*Sarah C. Pricer*<sup>1</sup>

ABSTRACT

*Low-income women experience a nightmarish victimization when they are sexually harassed by landlords in their homes, homes many are desperate to keep. The staggering lack of data on this issue means laws and courts have been slow to address this phenomenon. Although courts have relied primarily on a Title VII employment-based sexual harassment framework to address this issue, it does not go far enough in protecting women in their homes. The home and the workplace are inherently different and thus require a different legal approach to redress the issue.*

*This comment examines sexual harassment in housing and why Texas women are particularly susceptible to it. This comment further advocates for courts to look to existing housing law and expand application of the Fair Housing Act's disparate impact approach in addressing sexual harassment in housing to low-income women. Low-income women of color are the primary victims of sexual harassment in housing; this permits a gender and race-based disparate impact theory as another framework through which courts may craft a solution, though it too has its shortcomings. Additional measures, such as the expansion of federal law to cover sexual harassment in housing, and state-level policy changes that would penalize deviant landlords and property owners, would serve to empower and strengthen low-income Texas women without leaving entire subsections of the population behind. This comment further argues that holistic community-level action is not only desirable, but necessary to educate communities and provide low-income women increased access to the*

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1. Thank you to Professor Lisa Alexander for her expertise in this area, and to my editor Mark Thorne-Thompson for his support and guidance. I would also like to thank my dear friend and mentor, Dean Luz Herrera, for opening my eyes to community lawyering. Finally, the biggest thanks to my daughters, Emily and Zoë, and my husband Anthony, for their endless support and encouragement, and for reading or listening to every single version of this article.

*courts. Finally, the above suggested measures will do little to change the outlook for low-income women if states fail to address the underlying issue that makes the need for housing so desperate: the affordable housing crisis.*

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## I. INTRODUCTION

“I felt like I didn’t have a choice, so... I did what I had to do.”<sup>2</sup>

Laws preventing sexual harassment in housing should not be a point of controversy or even a political issue. As HUD Secretary Ben Carson states, “No person should have to tolerate unwanted sexual

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2. Kelsey Ramirez, *HUD Joins Initiative to Combat Sexual Harassment in Housing*, HOUS. WIRE (Apr. 12, 2018), <https://www.housingwire.com/articles/43098-hud-joins-initiative-to-combat-sexual-harassment-in-housing>.

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advances in order to keep a roof over his or her head.”<sup>3</sup> Nevertheless, the problem persists and existing federal and state laws have failed—to a staggering extent—to protect vulnerable women.<sup>4</sup> Because low-income women of color in Texas are at risk for being sexually harassed or assaulted by predatory landlords, this comment proposes a holistic approach that involves the expansion of federal protections, state-level policy changes, and community advocacy to fill the gaps left by current legislation. This comment also advocates for community-specific measures to address the affordable housing crisis.

Part I of this comment examines factors contributing to sexual harassment in housing: how and why the affordable housing crisis has contributed to this appalling issue and why low-income women are particularly at risk. Part II explores this issue specific to Texas and the context in which certain groups of Texas women are vulnerable to it. Part III explains the current federal protections available and how they serve some groups but fall woefully short in protecting others. In Part IV, this comment argues for federal and state policy change that would help address the issue, including: approaching sexual harassment in housing under both sex and race-based disparate impact theories, expanding laws that provide protection against immigration consequences for undocumented women who report, and harsher criminal penalties for predatory landlords and others who perpetrate and are responsible for these odious practices. Section IV further advocates for community action, and considers how Texas community groups can work to effectively address local affordable fair housing issues.

#### PART I. SEXUAL HARASSMENT IN HOUSING: AN INVIDIOUS PROBLEM WITH LITTLE INFORMATION

Although courts have treated sexual harassment in housing as largely similar to sexual harassment in the workplace, there is a staggering lack of comprehensive data available on this egregious

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3. *Id.*

4. This problem is not experienced solely by women—in April 2018, HUD reached a settlement after a disabled man was repeatedly sexually harassed and then evicted from housing. See Ben Lane, *HUD Reaches Sexual Harassment Settlements in Three States*, HOUS. WIRE (Apr. 30, 2018), <https://www.housingwire.com/articles/43242-hud-reaches-sexual-harassment-settlements-in-three-states>. But this comment is limited to the issue as it is faced by women in the United States and Texas.

issue in the housing context. This is due to a multitude of factors, including systemic racism and the affordable housing crisis.

#### A. Overview

Sexual harassment in housing is not a new crisis but it receives significantly less attention than does sexual harassment in the workplace. University of Missouri law professor Rigel Oliveri explains in one word why this is such a difficult problem to address: “data.”<sup>5</sup> Or rather, lack thereof. Although there have been extensive studies on sexual harassment and employment, there are no such studies concerning the link between sexual harassment and housing.<sup>6</sup> In 2018, Oliveri conducted a pilot study, interviewing women in low-income housing to explore their experiences.<sup>7</sup> The study exposed horrific truths: “Almost all of the women described being explicitly asked to provide sex in lieu of rent... half of the women also reported experiencing serious (likely criminal) conduct such as home evasion, indecent exposure, and unwanted touching.”<sup>8</sup> The women were mostly young and all were either low income or had no income source.<sup>9</sup> The findings indicated a common thread binding the women who have been plagued by sexual harassment in housing: poverty-fueled vulnerability.<sup>10</sup>

Although scholars have largely claimed that this phenomenon is more likely to occur when women live in public housing or receive vouchers, in the study, the women who reported experiencing sexual harassment in housing were living in private rental housing at the time the harassment occurred, indicating the pervasiveness of this issue.<sup>11</sup> Sexual harassment in housing covers a broad range of behavior, from verbal abuse such as vulgar comments and threats, to unwanted physical contact and even rape.<sup>12</sup> Often without the means to move

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5. Rigel Oliveri, *Sexual Harassment of Low Income Women in Housing: Pilot Study Results*, 83 MO. L. REV. 597, 598 (2018).

6. *Id.*

7. *Id.*

8. *Id.* at 599.

9. *Id.* at 618.

10. See Jessica Lussenhop, *A Woman's Choice – Sexual Favours or Lose Her Home*, BRITISH BROAD. CORP. (Jan. 11, 2018), <https://www.bbc.com/news/world-us-canada-42404270>.

11. Oliveri, *supra* note 4 at 618.

12. Aric K. Short, *Slaves for Rent: Sexual Harassment in Housing as Involuntary Servitude*, 86 NEB. L. REV. 838, 844 (2008).

and simply seek housing elsewhere, low-income women are thus faced with the choice of acquiescing to a landlord's demands or facing potential retaliatory actions, such as eviction.

Oliveri points out that legislatures are unable to adequately regulate the unknown; if they do not have adequate facts or data to educate them on an issue, they will also have great difficulty constructing laws specifically to address the issue.<sup>13</sup> She further points out why the existing framework through which courts approach sexual harassment in housing falls short: "the [current] law, much of which is borrowed from the employment harassment context, remains undeveloped and unresponsive to the unique challenges presented by housing harassment."<sup>14</sup> Additionally, only once an issue is identified as harmful, can a legal remedy then be shaped—consider sexual harassment in the workplace, once a commonly accepted practice-turned-cause of action.<sup>15</sup> Thus, it is important for courts and legislatures to see sexual harassment in housing as a *uniquely* harmful cause of action. It is within this context that legislatures must formulate adequate remedies to appropriately address it. Finally, of equal importance to the lack of comprehensive data is a needed examination of how and why sexual harassment in housing occurs against low-income women of color with such frequency.

### B. *Black Women and Sexual Violence*

Oliveri's study showed that a disproportionate number of women who reported being sexually harassed by landlords were likely to identify as black or multiracial.<sup>16</sup> The disheartening lack of data on this issue likely stems in part from institutionalized racism interwoven into our society. In order to understand why there is so little data on the issue, it is important to consider underlying reasons women do not report sexual harassment. It is generally the case that women of color and black women specifically, are less likely to report even the most heinous sexual crimes committed against them.<sup>17</sup> This is due to a

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13. Oliveri, *supra* note 4 at 618.

14. *Id.*

15. Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PENN. L. REV. 1, 28–29 (2017).

16. Oliveri, *supra* note 4 at 617.

17. Katherine Giscombe, *Sexual Harassment and Women of Color*, CATALYST (Feb. 13, 2018), <https://www.catalyst.org/blog/catalyzing/sexual-harassment-and-women-color>.

multitude of factors, all of which are rooted in America's deeply entrenched, systemic racism.<sup>18</sup>

Rutgers University's Deborah Gray White explains this phenomenon as having its genesis in slavery, when women of color, specifically black women, were considered promiscuous by nature, something used to justify their rape and abuse.<sup>19</sup> White explains, "Black women's bodies, from Day One, have been available to all men."<sup>20</sup> Vestiges of the past, these harmful stereotypes persist today. As recently as 2017, a study showed that black girls are more likely to be seen as sexually mature by adults than their white peers.<sup>21</sup> This effectively strips black girls of the "presumption of girlhood, innocence, and sexual virtue," their white counterparts enjoy.<sup>22</sup> This does tremendous damage to black women because they are then viewed as less believable or less credible victims in court, leading to misgivings about the criminal justice system.<sup>23</sup> This is particularly unsettling given that black women are more likely to be raped than are other groups of women.<sup>24</sup>

Deep mistrust of law enforcement likely also contributes to a reluctance to report. Although violence against black women and other women of color rarely receives news coverage, it happens at staggering rates and it is often hidden.<sup>25</sup> Black women particularly are less likely to report sexual crimes against them than are white women due to "the predictability of a non-response... nearly one in five [black

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18. See Errin Haines Whack, *Why few women of color in wave of accusers? 'Stakes higher'*, AP NEWS (Nov. 18, 2017), <https://apnews.com/34a278ca43e24c5587c911lead5fac67c>.

19. Errin Haines Whack, *Why few women of color in wave of accusers? 'Stakes higher'*, AP NEWS (Nov. 18, 2017), <https://apnews.com/34a278ca43e24c5587c911lead5fac67c>.

20. *Id.*

21. Eboni K. Williams, *On the Criminal Justice System and Its Biases Against Black Women and Girls*, ESSENCE (Jan. 18, 2019), <https://www.essence.com/oped/black-women-and-girl-biases-in-court/> (citing the Center on Poverty and Inequity at Georgetown University Law School's study).

22. *Id.*

23. *Id.*

24. Asha DuMonthier, Chandra Childers, & Jessica Milli, *The Status of Black Women in the United States*, INST. FOR WOMEN'S POLICY RESEARCH 142 (June 7, 2017), <https://iwpr.org/wp-content/uploads/2017/06/The-Status-of-Black-Women-6.26.17.pdf>

25. Tuerkheimer, *supra* note 14, at 55–58.

women] did not report because ‘police would not or could not do anything to help.’”<sup>26</sup>

Further, law enforcement officers can be a direct source of violence against women of color. For example, black women make up roughly 13 percent of women in the United States, yet nearly one in four women killed by police in 2015 were black; in many cases the officers responsible did not face consequences for their deaths.<sup>27</sup> In Chicago, one black woman was choked to death by police in an attempt to prevent her from swallowing suspected contraband.<sup>28</sup> Jacqueline Craig of Texas was threatened with a Taser, then wrestled to the ground and arrested when she called the police after a neighbor put his hands on her then-nine-year-old son and forced him to pick up litter.<sup>29</sup> Eight mentally ill black women were killed by police when others called for assistance with them: “The police ‘assisted’ by killing them.”<sup>30</sup> There are numerous such stories and these cases indicate that when women of color call law enforcement for help, they often do so at their own peril.<sup>31</sup>

Significantly, the question of believability or credibility arises in the context of those crimes for which there is often physical evidence, such as rape. If women are hesitant to report when there is physical evidence that a crime has occurred, it is not a stretch to posit that crimes for which there is no physical evidence—such as sexual harassment in housing—are even less likely to be reported by victims.

Overall, vitriolic but persistent stereotypes, combined with a well-earned mistrust of law enforcement and the criminal justice system, are significant contributing factors to the severe underreporting that confounds data issues regarding sexual harassment in housing. Next, this comment explores how the housing crisis across the United States affects poor women particularly and creates a situation that is ripe for predatory landlords to exploit. The general lack of affordable housing

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26. Tuerkheimer, *supra* note 14.

27. Julie Anderson *et al.*, *The Status of Women in the South*, INST. OF WOMEN’S POLICY RESEARCH 198 (Feb. 25, 2016), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/R462%20Status%20of%20Women%20in%20the%20South.pdf>.

28. Tuerkheimer, *supra* note 14, at 58.

29. *Id.* at 60–61.

30. *Id.* at 55.

31. *Id.* at 62.



available to low-income women in the United States leads to a state of desperation in which low-income women, once they obtain housing, are reluctant to do anything that may jeopardize it.

*C. Affordable Housing: A Woman's Crisis*

*"You owe me before I sign this paper."*<sup>32</sup>

Khristen Sellers recalls how, after leaving an abusive relationship, her release from prison, and a stint of homelessness, she was looking for a new start.<sup>33</sup> Quickly approved for a federal housing voucher program, Sellers was offered and accepted a home on the outskirts of her town.<sup>34</sup> The landlord required an inspection before he would make much-needed repairs to the home.<sup>35</sup> Sellers was horrified when the housing agency's inspector made unwanted sexual advances on his first visit to her home, advances that would continue on subsequent visits.<sup>36</sup> The inspector refused to sign the required papers and grew increasingly agitated at Sellers's refusal to acquiesce to his sexual advances.<sup>37</sup> Sellers, a self-described "homeless single mother with a criminal record," worried she would lose her voucher if she complained.<sup>38</sup>

If anything about Sellers's story is unique, it is that she received a voucher so quickly. Although there are various housing programs designed to meet low-income individuals' housing needs, "lack of affordable quality housing remains a blight on America's housing landscape."<sup>39</sup> Affordable housing demand largely outnumbers supply, a disparity that disproportionately affects women.<sup>40</sup> This is because women throughout the United States generally live in poverty at higher rates than men; one report shows that 83 percent of Housing Choice Voucher Program households are female-headed.<sup>41</sup>

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32. Lussenhop, *supra* note 9.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Gail Quets, Aine Duggan, & Gail Cooper, *A Gender Lens on Affordable Housing*, INT'L CTR. FOR RESEARCH ON WOMEN 7 (2016), <https://www.icrw.org/publications/a-gender-lens-on-affordable-housing-2/>.

40. *Id.*

41. *Id.*

Since 1937, the federal government has provided subsidized rental units or public housing to low-income renters.<sup>42</sup> But obtaining federally subsidized housing can be difficult; women are faced with extensive background checks and application processes, and those who are fortunate enough to be approved often sit on waiting lists, which does little to address immediate housing needs.<sup>43</sup> Others are simply denied.<sup>44</sup> Although applicants have the right to appeal housing services denials, many do not have the time, knowledge, or resources to do so.<sup>45</sup> This indicates that the affordable housing crisis stands as a devastating barrier for low-income women seeking safe housing options.

The Housing Choice Voucher (HCV) Program, or Section 8, is— theoretically, at least—an option that provides the voucher recipient considerably more freedom in housing choice. Envisioned as “a ticket out of poverty,” vouchers permit recipients to live anywhere a landlord will accept the voucher, rather than in only restricted locations, as is the case with public housing units.<sup>46</sup> The United States District Court for the District of Columbia recently ruled that HUD must make voucher amount determinations based on zip code, rather than on metropolitan area, permitting people to move to higher opportunity areas.<sup>47</sup> But similar to renting practices, private landlords do not have to accept vouchers, provided that voucher holders are screened for occupancy just as non-voucher holders would be.<sup>48</sup> In 2016, HUD conducted a study focusing on female-headed families, those who arguably have the most to benefit from moving to higher opportunity

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42. *Affordable Rental Housing*, GAO.GOV, [https://www.gao.gov/key\\_issues/affordable\\_rental\\_housing/issue\\_summary](https://www.gao.gov/key_issues/affordable_rental_housing/issue_summary).

43. Aaron Schrank, *It's a Long Wait for Section 8 Housing in U.S. Cities*, MARKETPLACE (Jan. 3, 2018), <https://www.marketplace.org/2018/01/03/wealth-poverty/its-long-wait-section-8-housing-us-cities>.

44. MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY*, 302 (2017).

45. *Id.*

46. Meg Anderson, Laura Sullivan, *Section 8 Vouchers Help the Poor – But Only if Housing is Available*, NAT'L PUB. RADIO (May 10, 2017), <https://www.npr.org/2017/05/10/527660512/section-8-vouchers-help-the-poor-but-only-if-housing-is-available>.

47. Christina Rosales, *Families with Vouchers Will Have Access Opportunity Areas Thanks to Federal Judge*, TEXAS HOUSERS (Jan. 3, 2018), <https://texashousers.net/2018/01/03/families-with-housing-vouchers-will-have-access-to-opportunity-areas-thanks-to-ruling-by-federal-judge/>.

48. U.S. DEP'T OF HOUS. AND URBAN DEV., <https://www.hud.gov/groups/landlords> (last visited Mar. 2, 2019).

areas, and found that less than 13 percent of these women were able to use vouchers to obtain housing.<sup>49</sup> Quite simply, the demand for housing is high and waiting lists are long.<sup>50</sup> As author Matthew Desmond points out, most of America's poor do not—indeed, cannot—rely on public or subsidized housing, as three in four families who apply for housing assistance do not receive it.<sup>51</sup>

Low-income women seeking housing in the private sector do not fare much better. Private housing markets are increasingly competitive, specifically in expensive urban centers where development in the form of gentrification causes soaring rent costs.<sup>52</sup> But it is usually urban areas that have much-needed access to public transportation—often a necessity—that may not be available outside of city centers, thus greatly restricting where a low-income woman may move.<sup>53</sup> This, along with the inherent discretion in private landlords' rental authority, serves as a real barrier to low-income women seeking housing.

Further confounding the access to housing issue, President Trump's 2018 budget recommended slashing over \$6 billion from HUD; this means cuts to desperately-needed federal housing benefits, a move that will both increase the backlog of those desperately waiting for housing and also make the private market even more competitive.<sup>54</sup> Additionally, HUD has recently backed away from its previous commitment to help cities affirmatively further fair housing.<sup>55</sup>

Under the 2015 Affirmative Fair Housing rule, HUD planned to provide funding and tools to localities in an effort to identify racial bias in housing patterns.<sup>56</sup> The rule mandated that cities and

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49. Anderson & Sullivan, *supra* note 44.

50. Schrank, *supra* note 41.

51. Desmond, *supra* note 42, at 58.

52. See e.g., Lynn E. Cunningham, *Islands of Affordability in a Sea of Gentrification: Lessons Learned from the D.C. Housing Authority's Hope VI Projects*, 10 J. AFFORDABLE HOUS. & CMTY. DEV. L. 353, 358 (2001).

53. Tracy Jeanne Rosenthal, *Transit-Oriented Development? More Like Transit Rider Displacement*, L.A. TIMES (Feb. 20, 2018), <http://www.latimes.com/opinion/op-ed/la-oe-roenthal-transit-gentrification-metro-ridership-20180220-story.html>.

54. Schrank, *supra* note 41.

55. *HUD Withdraws Fair Housing Assessment Tool*, HUD.GOV (May 18, 2018), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_18\\_044](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_044).

56. Ben Lane, *Civil rights groups sue HUD, Ben Carson for Delaying Obama Fair Housing Effort*, HOUS. WIRE (May 8, 2018), <https://www.housingwire.com/articles/43314-civil-rights-groups-sue-hud-ben->

communities assess their unique fair housing needs by a specific deadline.<sup>57</sup> In January 2018, without providing notice or the opportunity to comment, HUD delayed the deadline for localities to submit their required evaluations by a year, an action widely reviled by fair housing advocates.<sup>58</sup> Then in May 2018, HUD withdrew its computer assessment tool entirely, explaining that it was “confusing, difficult to use, and [that it] frequently produced unacceptable assessments,” effectively suspending the rule.<sup>59</sup> Although the assessment tool itself was not without flaws, with this decision, the federal government effectively abandoned its role in requiring communities to affirmatively further fair housing.<sup>60</sup>

Together, these factors create the dire reality across the United States that, if a low-income woman is actually able to obtain housing, whether public or private, she is likely desperate to keep it, for fear of not being able to secure future housing. Failure then to comply with deviant landlords’ sexual demands may well mean an eviction and homelessness for women and children. Next, this comment explores this phenomenon particular to Texas.

## PART II. THE LONE STAR STATE: DEMAND, NIMBY, AND CITIZENSHIP STATUS

Given the affordable housing crisis in Texas, the significant “Not in My Backyard” (NIMBY) culture in higher opportunity areas, and the number of Texas women who do not have legal citizenship status, Texas women are particularly susceptible to falling victim to predatory landlords.

### *A. Public and Private Housing in Texas*

In recent years, high demand for Texas housing due to both state-level economic success and also sustained population growth, has

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carson-for-delaying-obama-fair-housing-effort.

57. *HUD Withdraws Fair Housing Assessment Tool*, HUD.GOV (May 18, 2018), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_18\\_044](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_044).

58. Ben Lane, *Trump administration delays Obama fair housing rule, Castro says move “guts” rule*, HOUS. WIRE (Jan. 4, 2018), <https://www.housingwire.com/articles/42212-trump-administration-delays-obama-fair-housing-rule-castro-says-move-guts-rule>.

59. *See also* Lane, *supra* note 54.

60. *See Id.*

contributed to higher housing costs in urban areas across the state.<sup>61</sup> In 2017, more than 2 million urban households in Texas were termed “financially burdened” for spending more than 30 percent of their income on housing; more than 950,000 households spent over 50 percent of their income on housing.<sup>62</sup> These groups are largely comprised of urban renters, people for whom buying a home is simply not an option.<sup>63</sup>

Low-income Texas women seeking federal public housing and participation in voucher programs do not fare well. For example, in the large metropolitan Dallas-Fort Worth area, public housing waiting lists are “open indefinitely,” but the Dallas housing authority’s website states that applicants are placed on a waiting list prioritized on the application date, or will be selected by random lottery.<sup>64</sup> Neither selection method takes into consideration those women who are on the brink of homelessness. Further, Texas is a state in which housing demand severely outnumbers supply. For example, within a seven-day span in 2016, over 65,000 people applied for the Houston Housing Authority’s Housing Choice Voucher Program wait list; only 30,000 families were actually added to it.<sup>65</sup> In addition to raising the question of what becomes of the other over-35,000 families seeking housing, it is worth noting that those chosen were selected merely to be placed on a wait list—not actually given vouchers.<sup>66</sup> Moreover, Texas law currently protects landlords who choose not to accept Section 8 vouchers, effectively permitting income-based discrimination.<sup>67</sup> Such

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61. Brandon Formby, *Despite “Texas Miracle,” Affordable Housing Difficult for Many Urban Dwellers*, TEXAS TRIBUNE (June 16, 2017), <https://www.texastribune.org/2017/06/16/search-affordable-home-urban-texas-getting-more-difficult/>.

62. *Id.*

63. *Id.*

64. *Low Income Housing Guide for Renters*, AFFORDABLE HOUS. ONLINE (2018), <https://affordablehousingonline.com/guide/public-housing/what-happens-when-i-apply>.

65. *HCPV Wait List Status*, HOUSTON HOUS. AUTH., <http://www.housingforhouston.com/voucher-program/hcyp-wait-list-status.aspx> (last visited Jan. 28, 2019).

66. *Id.*

67. Edgar Walters, *Section 8 Vouchers are supposed to help the poor reach better neighborhoods, Texas law gets in the way*, THE TEXAS TRIBUNE (Nov. 19, 2018), <https://www.texastribune.org/2018/11/19/texas-affordable-housing-vouchers-assistance-blocked/>. See also *Inclusive Communities Project, Inc. v. Abbot*, 2018 WL 2415034, at \*8 (N.D. Tex., May 28, 2018).

systems do not provide a workable solution for women who have immediate housing needs.

### B. NIMBY

*“[M]iddle class people... simply shouldn’t have to live near folks in low-income housing.”*<sup>68</sup>

Even those women who are fortunate enough to receive vouchers often find their efforts frustrated. MaryAnn Russ, former CEO of the Dallas Housing Authority, reports that in Dallas, approximately 60 percent of the people who received vouchers were unable to use them.<sup>69</sup> And vouchers do not always offset rising rent costs.<sup>70</sup> Houston-area resident Chandra Simmons recalls looking for a suburban rental for herself and her children and realizing that there were few rental units her \$1,350 voucher would cover.<sup>71</sup> Moreover, landlords are often disinclined to accept vouchers.<sup>72</sup> This, combined with the voucher’s 90-day expiration date, means there is not always enough time for the recipient to secure housing.<sup>73</sup>

Additionally, if issues surrounding mere access to housing were not enough of a barrier, there largely remains adherence to the irrational notion that race has the propensity to depreciate neighborhoods and property value, a significant determining factor in the way people seek and buy homes.<sup>74</sup> One Texas legislature hopeful ran her campaign in part on keeping low-income housing out of affluent neighborhoods: “If poor people are provided with a federally subsidized place to live in a nice neighborhood... ‘where’s the incentive for them to work hard and save?’”<sup>75</sup> She is not alone in her sentiments.<sup>76</sup> It is thus not surprising that low-income women—often

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68. Gayle Reaves, *The House Always Wins*, TEXAS OBSERVER (Feb. 1, 2016), <https://www.texasobserver.org/affordable-housing-house-wins/>.

69. Anderson & Sullivan, *supra* note 44.

70. *Id.*

71. Reaves, *supra* note 66.

72. Anderson & Sullivan, *supra* note 44.

73. *Id.*

74. Margalynne Armstrong, *Race and Property Values in Entrenched Segregation*, 52 U. MIAMI L. REV. 1051, 1052–53 (1998).

75. Reaves, *supra* note 66.

76. See Karisa King and Ryan Murphy, *Programs for Low-Income Housing Compels Building in Poor Neighborhoods*, N.Y. TIMES (Apr. 21, 2012), <https://www.nytimes.com/2012/04/22/us/low-income-housing-program-compels-building-in-poor-texas-areas.html>.

women of color—seeking housing in higher opportunity areas meet resistance from an additional source: potential future neighbors.<sup>77</sup> This is particularly prevalent in Texas suburbs.<sup>78</sup>

Residents were enraged when plans were announced to build low-income apartments for seniors in San Antonio’s affluent Stone Oak neighborhood.<sup>79</sup> The head of one of the area homeowner associations stated that the project “didn’t fit with us... these are single family homes. Anything that takes away from that takes away from why we bought into it.”<sup>80</sup> Similarly, when North Texas developer Terri Anderson proposed an apartment complex in an upscale Dallas suburb with thirteen units specified for voucher holders, the pushback from residents was immense.<sup>81</sup> One resident who lives near the proposed development plainly explained her reasons for opposing the project: “Most of us are stay-at-home moms with young kids. The lifestyle that goes with Section 8 is usually working, single moms... it’s just not people who are the same class as us.”<sup>82</sup>

Residents showed up in droves to oppose the North Texas development.<sup>83</sup> As Mandara Meyers points out, suburbanites are largely unwilling to welcome new neighbors of lower socioeconomic means, taking far-reaching measures to prevent new development that would allow “others” to move in.<sup>84</sup> This inevitably leads to significant residential racial segregation.<sup>85</sup> In the Dallas area alone, 94 percent of voucher applicants are non-white.<sup>86</sup> 86 percent are black.<sup>87</sup> Given the

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77. Anderson & Sullivan, *supra* note 44.

78. See Anderson & Sullivan, *supra* note 44.

79. King & Murphy, *supra* note 74.

80. *Id.*

81. Anderson & Sullivan, *supra* note 44.

82. *Id.*

83. *Id.*

84. Mandara Meyers, *(Un)Equal Protection for the Poor: Exclusionary Zoning and the Need for Stricter Scrutiny*, 6 U. PA. J. CONST. L. 349, 350–51 (2003). See also Chrishelle Palay, *It’s Time to Retire this Scapegoat for Segregation*, NEXT CITY (May 31, 2017), <https://nextcity.org/daily/entry/houston-affordable-housing-scapegoat-segregation-nimby> (when the Houston Housing Authority proposed a mixed income development in its upscale Galleria neighborhood, over 500 angry, mostly white local residents organized a community meeting to protest the project. Such large scale “organized opposition” is a common response to proposed low income housing developments in affluent areas).

85. Meyers, *supra* note 81.

86. *Inclusive Communities Project, Inc. v. Abbot*, 2018 WL 2415034, at \*2 (N.D. Tex., May 28, 2018).

87. *Id.*

incontrovertible relationship between race and socioeconomic status,<sup>88</sup> it follows that residential race discrimination serves as an additional barrier for low-income women of color seeking housing.

### C. *Undocumented Women in Texas*

In discussing vulnerable populations in Texas, it would be remiss to ignore what may be one of the higher at-risk Texas groups for predatory landlords: undocumented women. Although exact numbers are difficult to ascertain, an estimated 746,000 undocumented women reside in Texas, a significant number of whom reside below the poverty level.<sup>89</sup> These women have almost no bargaining power when it comes to housing; as one attorney explains, “It’s so easy to take advantage of [undocumented immigrants]. You have to be able to fight for your rights, and people who aren’t documented often don’t have that ability.”<sup>90</sup> Although abuses of undocumented women in labor environments is relatively well known,<sup>91</sup> documentation in the housing context is—unsurprisingly—virtually nonexistent.

Recent changes to Texas law have also created an increasingly hostile environment for undocumented women. In 2017, the Texas Senate passed Senate Bill 4, banning what are known as sanctuary cities and permitting local law enforcement officers to inquire as to individuals’ immigration status.<sup>92</sup> Though currently the subject of litigation, a three-judge panel of the Fifth Circuit held that most of the law would stay in effect while the litigation proceeds.<sup>93</sup> Since the law

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88. See *Ethnic and Racial Minorities & Socioeconomic Status*, AM. PSYCHOLOGICAL ASS’N, <https://www.apa.org/pi/ses/resources/publications/minorities> (last visited Mar. 2, 2019).

89. Profile of the Undocumented Population: Texas, MIGRATION POLICY INST., <https://www.migrationpolicy.org/data/undocumented-immigrant-population/state/TX> (last visited Mar. 2, 2019).

90. Lomi Kriel & Ronque Planas, *Residents say landlords take advantage of their undocumented status*, HOUS. CHRONICLE (Oct. 27, 2017), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Residents-say-they-landlords-take-advantage-of-12310246.php> (explaining that landlords took advantage of undocumented people in the aftermath of Hurricane Harvey).

91. See Mary Bauer & Mónica Ramírez, *Injustice On Our Plates*, S. POVERTY LAW CTR. (Nov. 7, 2010), <https://www.splcenter.org/20101107/injustice-our-plates>.

92. Julián Aguilar, *Federal Appeals Court’s Ruling Upholds Most of Texas’ “Sanctuary Cities” Law*, TEXAS TRIBUNE (Mar. 13, 2018), <https://www.texastribune.org/2018/03/13/texas-immigration-sanctuary-cities-law-court/>.

93. *Id.*



went into effect, the Houston police department has experienced a 16 percent decrease in domestic violence reports from the Latina community.<sup>94</sup> This is not because there are fewer instances of family violence but rather, is believed to be the result of fear from S.B. 4's new, harsher immigration policies.<sup>95</sup> As an additional consequence, one community service provider points out that current Texas immigration policy also leads to a decrease in victims' willingness to aid law enforcement in investigating crimes.<sup>96</sup> This provides a wider blanket of protection for predatory landlords; not only is the victim unlikely to report sexual harassment in housing, it serves as a disincentive to others who may have reported the harasser on the victim's behalf. Finally, there are fewer protections available to undocumented women, as many are not eligible for certain federal housing benefits.<sup>97</sup> This means there is not even the same semblance of protection available for undocumented women who experience sexual harassment in housing.

In sum, the affordable fair housing crisis in Texas, strong statewide NIMBY sentiments, and Texas laws that engender fear among undocumented immigrants, all serve as disheartening barriers to low-income Texas women who are vulnerable to predatory landlords. The next section explores the legal framework through which sexual harassment in housing has been addressed, additional protections available to women, and where existing legislation falls short.

### PART III. FEDERAL LAW AND LITIGATION APPROACHES

Generally, two main "crossover" theories have been the legal framework through which sexual harassment in housing was addressed, quid pro quo and hostile environment.<sup>98</sup> This section

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94. Cora Engelbrecht & Isabel Castro, *The Texas Law Silencing Undocumented Women*, N.Y. TIMES, <https://www.nytimes.com/video/us/100000005756490/how-texas-immigration-policies-silence-domestic-violence-survivors.html> (last visited Mar. 2, 2019).

95. Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, N.Y. TIMES, (June 3, 2018), <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>.

96. *Id.*

97. See MASSLEGALHELP, <https://www.masslegalhelp.org/housing/eligibility> (last visited Mar. 2, 2019).

98. "Crossover" here denotes the use of employment discrimination laws as

explores how employment-based sexual harassment laws have been applied in the housing context and why this application falls short. This section also examines the availability of gender and race-based disparate impact approach under the Fair Housing Act to protect women.

#### A. *The Fair Housing Act and Title VII*

The Fair Housing Act (FHA) makes it illegal to discriminate against a person based on certain protected classes: race, color, religion, national origin, sex, handicap, familial status, or national origin.<sup>99</sup> Although the FHA does not expressly mention sexual harassment, it is also recognized as illegal discrimination.<sup>100</sup> Since the mid-1980s, courts have addressed sexual harassment in housing claims through a Title VII-informed view—under the FHA, both hostile environment and quid pro quo sexual harassment claims have been successful.<sup>101</sup>

#### B. *Quid Pro Quo and Hostile Environment*

The Equal Opportunity Employment Commission (EEOC) outlines sexual harassment as sex discrimination under Title VII of the Civil Rights Act of 1964, prohibiting practices such as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment.”<sup>102</sup> Such behaviors amount to quid pro quo sexual harassment when an employee’s acquiescence to or rejection of sexual advances impacts her employment status.<sup>103</sup> Sexual harassment can also be considered under a hostile environment theory; historically, these are sexual advances that foster a hostile or intimidating work environment for the employee.<sup>104</sup>

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applicable to housing discrimination.

99. 42 U.S.C. § 3604 (2012).

100. Alyssa George, *The Blind Spots of Law & Culture: How the Workplace Paradigm of Sexual Harassment Marginalizes Sexual Harassment in the Home*, 17 *GEO. J. GENDER & L.* 645, 650 (2016).

101. *Id.*

102. *Sex-Based Discrimination*, EEOC.GOV, <https://www.eeoc.gov/laws/types/sex.cfm> (last visited Mar. 2, 2019).

103. George, *supra* note 97, at 648.

104. George, *supra* note 97, at 649.

### 1. Quid Pro Quo

Although Title VII deals with workplace sexual harassment, Professor Aric Short considers the quid pro quo approach in the context of sexual harassment in housing.<sup>105</sup> The framework provides a helpful construction for courts to apply in housing cases.<sup>106</sup> Similar to quid pro quo harassment in the workplace, sexual harassment in housing involves an abuser exploiting his or her position of power over a person in a position of lesser power.<sup>107</sup> The housing provider or authority demands sexual favors or engages in other demeaning treatment in exchange for continued housing or housing services.<sup>108</sup> Courts have considered several actions that constitute quid pro quo sexual harassment, including threatened evictions, conditioning a deposit return on sexual favors, or failing to make reasonable repairs promised in a lease if a woman does not acquiesce to the landlord's sexual demands.<sup>109</sup>

To establish a prima facie case of *quid pro quo* sexual harassment in housing, a woman must demonstrate the following: (1) she is a member of a protected class, (2) she was subjected to an unwanted sexual demand or request; (3) the unwelcome sexual demand or request was gender-based; (4) due to her response to the unwelcome demand, she was denied housing or housing benefits; and (5) if the harassment was perpetrated by an agent or employee of the owner, the owner knew or should have known and failed to act.<sup>110</sup> Importantly, these claims require only one incident of unwelcome or unwanted sexual harassment.<sup>111</sup> The significant hurdle in the above elements is proving that the landlord or property manager knew or should have known such behavior was occurring.<sup>112</sup>

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105. Short, *supra* note 11.

106. *Id.*

107. *Id.*

108. Tarryn Mento, *Potential Fair Housing Violations You May Not Know About*, KPBS (Apr. 11, 2018) <https://www.kpbs.org/news/2018/apr/11/potential-fair-housing-violations-you-may-not-know/>.

109. George, *supra* note 97, at 651.

110. Shirley Darby Howell, *Making Women Homeless & Keeping Them Homeless: Flawed Interpretations of 42 U.S.C. § 1437D(L)(6), Sexual Harassment in Public Housing, & Municipal Violations of the Eighth Amendment*, 65 GUILD PRAC. 77, 83 (2008).

111. *Id.*

112. *Id.*

## 2. Hostile Environment

Hostile Environment sexual harassment in housing cases are those in which a housing provider creates—as its name suggests—a hostile environment for the tenant by engaging in sexual behavior. The sexual behavior “alters the terms or conditions of tenancy and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable.”<sup>113</sup> Such behaviors include staring, making comments, or entering a tenant’s unit without her permission.<sup>114</sup>

Although the courts have heavily relied on precedent involving workplace sexual harassment to address sexual harassment in housing, the scheme of the harassment in housing is inherently different. Sexual harassment in housing cases generally involve a “straightforward commercial transaction,” or a trade: sex for housing.<sup>115</sup> Conversely, workplace sexual harassment generally involves humiliating comments, hostility, and innuendo, sometimes with the purpose of preventing subordinate women from jobs or positions in a male-dominated realm.<sup>116</sup> There is no such male-dominated realm in the context of housing; moreover, as Oliveri points out, there is a “structural vulnerability” present when it comes to housing that is generally unique to low-income women.<sup>117</sup>

Perhaps most importantly, unwanted sexual remarks and conduct may take on a different, considerably more sinister quality when it happens in a woman’s home.<sup>118</sup> The home is given significant protections in other areas of law and is inherently different than the workplace, but courts have largely failed to distinguish between the two in the sexual harassment context.<sup>119</sup> This analysis has had a deleterious effect on women raising sexual harassment in housing claims. Given fundamental differences in the home and the workplace, traditional workplace sexual harassment claims are thus insufficient to address sexual harassment in housing. Next, this comment explores a

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113. *Sexual Harassment and Fair Housing Toolkit*, EQUAL RIGHTS CENTER 5 (May 25, 2013), [https://equalrightscenter.org/wp-content/uploads/sexual\\_harassment\\_and\\_fair\\_housing\\_toolkit.pdf](https://equalrightscenter.org/wp-content/uploads/sexual_harassment_and_fair_housing_toolkit.pdf).

114. Mento, *supra* note 105.

115. Oliveri, *supra* note 4, at 623.

116. *Id.*

117. *Id.*

118. *Id.*

119. George, *supra* note 97, at 647.

housing-specific federal approach: how sexual harassment in housing may be a cognizable, though limited claim under a gender or race-based disparate impact theory under the FHA.

*C. The FHA & Disparate Impact—Another Avenue*

Additional causes of action under the FHA may occur under two theories, disparate treatment and disparate impact. Disparate treatment claims are centered on questions of discriminatory motive, or intent, a high bar that is often difficult to prove.<sup>120</sup> Conversely, disparate impact claims focus on the effects of facially neutral policies—the central question in a disparate impact case is whether a seemingly neutral policy discriminates against a protected class in its effect. HUD has found that sexual harassment constitutes sex discrimination under the FHA’s tenets.<sup>121</sup>

Codified in the Civil Rights Act of 1991, disparate impact claims do not require a showing of discriminatory intent or motive.<sup>122</sup> Rather, plaintiffs bringing disparate impact claims must demonstrate that discriminatory practices are not legitimately justified and have a disproportionate, discriminatory effect on a protected class.<sup>123</sup> Past cases outside of the housing context instructed that antidiscrimination laws must be interpreted to include disparate impact claims “when their text refers to the consequences of actions and not just to the mindset of actors.”<sup>124</sup> The disparate impact theory has been used to challenge a number of housing practices, including zoning and land use restrictions, actions diminishing minority housing opportunities, and screening devices to limit housing access based on income, citizenship, or other criteria designed to reduce minority access to housing.<sup>125</sup>

In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Supreme Court considered

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120. *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009).

121. *Sexual Harassment and Fair Housing Toolkit*, EQUAL RIGHTS CENTER 3 (May 25, 2013), [https://equalrightscenter.org/wp-content/uploads/sexual\\_harassment\\_and\\_fair\\_housing\\_toolkit.pdf](https://equalrightscenter.org/wp-content/uploads/sexual_harassment_and_fair_housing_toolkit.pdf).

122. *Ricci*, 557 U.S. at 577.

123. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 135 S. Ct. 2507, 2513 (2015).

124. *Id.* at 2518.

125. Robert G. Schwemm, *Fair Housing Litigation After Inclusive Communities: What’s New and What’s Not*, 115 COLUM. L. REV. 106, 107 (2015).

whether disparate impact claims were within the purview of the Fair Housing Act.<sup>126</sup> Defendant Texas Department of Housing and Community Affairs (“the Department”) was accused of bolstering race-based segregation in its administration of the Low-income Housing Tax Credit (LIHTC) Program.<sup>127</sup> The Department was granting LIHTC projects mainly in predominantly black Dallas neighborhoods and few in the mostly-white Dallas suburbs.<sup>128</sup> Alleging both intentional and impact discrimination, the Inclusive Communities Project (ICP) challenged the state’s practices as violating the FHA by reinforcing race-based segregated housing patterns, relying on a disparate impact theory of race discrimination.<sup>129</sup> Looking to both the statute’s history and purpose, and also comparable antidiscrimination statutes, the Supreme Court held that disparate impact claims were cognizable under the FHA.<sup>130</sup> This decision thus allowed for “results, rather than intent... [to] be used to prove discrimination in housing.”<sup>131</sup>

Under this construction of the FHA, both gender and race-based disparate impact claims may be viable legal alternatives for women experiencing sexual harassment in housing, at least in theory. The FHA outlines that it is unlawful “to discriminate against any person in *terms, conditions, or privileges* of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,” because of a protected class. because of race, color, religion, sex, familial status, or national origin [emphasis added].<sup>132</sup> If landlords are making acquiescence with sexual demands a “term” of continued housing, and it can be shown that these are terms that occur primarily against women, not men, a sex-based disparate impact analysis permits a finding of discriminatory effect.

And again, the pilot study discussed above found that in addition to the shocking number of women who have experienced sexual harassment in housing, the women are “disproportionately likely to be racial minorities: Nine of the ten women [who gave positive responses

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126. Tex. Dep’t of Hous. & Cmty Affairs, 135 S. Ct. at 2514.

127. *Id.*

128. *Id.*

129. Schwemm, *supra* note 122.

130. Tex. Dep’t of Hous. and Cmty. Affairs, 135 S. Ct. at 2521.

131. Reaves, *supra* note 66.

132. 42 U.S.C.A § 3604(b) (2012).

in the sexual harassment survey] identified as black or multiracial.”<sup>133</sup> If these results can be duplicated, black or multiracial women may also have cognizable race-based disparate impact claims under the FHA. Unfortunately, this is yet another facet of why the lack of data on sexual harassment in housing frustrates the issue.

But even with data, this avenue also has shortcomings. As the *Inclusive Communities* Court pointed out, “A disparate-impact claim that relies on statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity: ‘[r]acial imbalance... does not, without more, establish a prima facie case of disparate impact.’”<sup>134</sup> Thus, even with data that demonstrates women of color are treated differently, without demonstrating a “robust” causal connection between the protected class and the practice—sexual harassment—the woman will not win a disparate impact case.<sup>135</sup> This causal requirement between the statistical disparity and the landlord’s facially neutral practices is now causing lower courts to examine causation more closely.<sup>136</sup> Moreover, although these claims are generally easier to prove than disparate treatment claims, there remains a low chance that a woman in any case will succeed arguing disparate impact; plaintiffs in these cases simply do not fare well.<sup>137</sup>

Although FHA disparate impact claims originated in the housing context and provide a potential means through which women experiencing sexual harassment in housing may seek recourse, it is limited in its ability to be an effective solution. The missing data, combined with the robust causal connection necessary to prove disparate impact, stands as a higher barrier for women seeking to bring this claim. It is also potentially expensive, difficult, and time consuming litigation, and chances of success are limited. Finally, although such a claim would likely encourage a national conversation about sexual harassment in housing, it would do little to provide

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133. Oliveri, *supra* note 4, at 617.

134. Tex. Dep’t of Hous. and Cmty. Affairs, 135 S. Ct. at 2523.

135. Joseph D. Rich, *The Robust Causality Requirement in Disparate Impact Claims Under the Fair Housing Act*, NAT’L FAIR HOUS. (Winter 2018), [https://nationalfairhousing.org/wp-content/uploads/2018/07/Robust-Causality-Requirement.Jan\\_.2018.pdf](https://nationalfairhousing.org/wp-content/uploads/2018/07/Robust-Causality-Requirement.Jan_.2018.pdf).

136. *Id.*

137. Rigel C. Oliveri, *Disparate Impact and Integration: With TDHCA v. Inclusive Communities the Supreme Court Retains an Uneasy Status*, 24 J. OF AFFORDABLE HOUS. & CMTY. DEV. L. 267, 284 (2015).

immediate housing relief for women; like other federal litigation alternatives, the disparate impact approach remains an imperfect avenue of redress. Next, this comment explores solutions involving expanding federal protections and state-level community advocacy to fill the gaps left by existing legislation.

#### PART IV: EXPANDING FEDERAL AND STATE-LEVEL PROTECTIONS FOR TEXAS WOMEN

This section discusses expanding federal and state laws to encourage reporting, and hold exploitative landlords responsible for their actions. It also calls for community advocacy to educate and empower women, and explores community groups as an impactful way to address local affordable fair housing issues.

##### A. *Other Federal Protections—HUD and Immigration Law*

In October 2017, the Department of Justice introduced an initiative to combat sexual harassment in housing.<sup>138</sup> Pilot programs in the District of Columbia and Virginia examined methods of connecting sexual harassment in housing victims with services including law enforcement, legal and housing assistance, and sexual assault services providers.<sup>139</sup> HUD joined the initiative, and based on the results of the pilot program, the departments devised three different components to combat sexual harassment in housing: (1) a task force designed to share data, develop training, evaluate public housing complaints, coordinate outreach, and review federal policies; (2) toolkits designed to bolster enforcement resources and aid sexual harassment victims in connecting with the departments; and (3) a large public awareness campaign involving social media and public service announcements.<sup>140</sup>

The program has significant potential. In 2018 alone, HUD reached three settlements in sexual harassment in housing cases, a vast

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138. Ben Lane, *Department of Justice Launches Initiative to Fight Sexual Harassment in Housing*, HOUS. WIRE (Oct. 3, 2017), <https://www.housingwire.com/articles/41477-department-of-justice-launches-initiative-to-fight-sexual-harassment-in-housing>.

139. Kelsey Ramírez, *supra* note 1.

140. *Justice Department Announces Nationwide Initiative to Combat Sexual Harassment in Housing*, DOJ.GOV (Apr. 12, 2017), <https://www.justice.gov/opa/pr/justice-department-announces-nationwide-initiative-combat-sexual-harassment-housing>.



improvement to the utter lack of attention this issue has seen in past years.<sup>141</sup> Accordingly, HUD should expand its program by requiring municipalities to assess sexual harassment in housing in their respective communities. Not only would this bring awareness to the issue, it would also help mitigate the detrimental data gap. But even applied expansively, the program still fails to address the underlying cause of why women fall victim to predatory landlords in the first place—lack of access to housing. Moreover, it is yet again under-inclusive as it does little to address the needs of *all* vulnerable or housing-insecure women, particularly undocumented women. Next, this comment argues for an expansion of law that would serve to assuage reporting fear in undocumented communities.

### B. *Bridging the Gap by Expanding U Visas*

As discussed above, laws that blur the line between federal immigration enforcement tactics and local community policing<sup>142</sup> serve to make undocumented women even more hesitant to seek necessary public services, thus endangering vulnerable women.<sup>143</sup> One effective way to address both the issue itself and also the lack of information surrounding the issue is to offer protection to those undocumented women willing to report predatory landlords. This can be accomplished by expanding U visa eligibility for undocumented women to include sexual harassment in housing.

The U nonimmigrant status (U visa) was created under the Victims of Trafficking and Violence Protection Act in 2000.<sup>144</sup> U visas are visas designed to help undocumented individuals who are victims of one or more of a specified list of crimes and who have helped police or prosecution, remain in the United States.<sup>145</sup> Currently, sexual

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141. Lane, *supra* note 135.

142. Julián Aguilar, *Federal Appeals Court's Ruling Upholds Most of Texas' "Sanctuary Cities" Law*, TEXAS TRIBUNE (Mar. 13, 2018), <https://www.texastribune.org/2018/03/13/texas-immigration-sanctuary-cities-law-court/>.

143. See Samuel Garcia, *The Reality of Being Undocumented in Texas*, FORBES (July 5, 2018), <https://www.forbes.com/sites/samueltgarcia/2018/07/05/the-reality-of-being-undocumented-in-texas/#7bdc0d5b324a>.

144. *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last visited Mar. 1, 2019).

145. *Id.*

crimes allowed for under the U visa include sexual assault, abusive sexual contact, and sexual exploitation.<sup>146</sup> Sexual harassment, in housing or otherwise, is currently not a crime that qualifies for U visa protection.

A woman is not able to apply for a U visa, even if she reports a crime, if the crime is not one of the ones covered under the U visa guidelines.<sup>147</sup> If a woman's landlord has sexually assaulted her, she may be eligible to apply for a U visa.<sup>148</sup> But if a woman's landlord has been sexually harassing her, even entering her apartment uninvited to make unwanted advances, but has not actually sexually assaulted the woman, the woman's only recourse is to report the landlord to police knowing that she runs the risk of being deported. Thus, the woman reports at her own risk. As discussed above, fear of deportation likely serves as a deterrent to reporting, the effect of which insulates and emboldens predatory landlords to continue taking advantage of a vulnerable population.

Even if U visas did expressly cover sexual harassment in housing, they are currently capped at only 10,000 visas issued per year.<sup>149</sup> This creates a situation not unlike the current affordable housing crisis, in which demand far outweighs supply. To address the gap between women who qualify for federal housing benefits and protections and those who do not qualify for such assistance due to citizenship status, U visa protections should be expanded to cover sexual harassment in housing. This can be accomplished by including sexual harassment in housing itself as a crime for which victims are eligible for protection; legislators can look to existing labor protections as a model to apply in housing situations.

U visas have been used to protect individuals in the work force who experience abuse.<sup>150</sup> In explaining the crimes under which an individual may apply for U visa protection, the National Employment Law Project (NELP) explains that involuntary servitude, peonage, and labor trafficking includes both "threats of physical [and]

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146. *Id.*

147. *Id.*

148. *Id.*

149. Engelbrecht, *supra* 92.

150. Eunice Hyunhye Cho, *U Visas for Victims of Crime in the Workplace*, NAT'L EMP'T LAW PROJECT 3 (May 2014), <https://www.nelp.org/wp-content/uploads/2015/03/U-Visas-for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf>.

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psychological... harm by an employer that compels an individual to continue work,” and also “threats to contact local law enforcement or immigration authorities by employer in order to compel continued work.”<sup>151</sup> Much like *quid pro quo* and hostile environment protections discussed above were initially used in workplace sexual harassment cases and then applied to sexual harassment in housing, it is not unfeasible to also expand U visa protections to sexual harassment in housing.

For example, sexual harassment often involves a threat of physical harm and can cause psychological harm; just as threats of physical harm may be made to compel work, so too may they be made as a requirement for a woman to be able to maintain her housing. Similarly, threats to contact law enforcement reporting immigration status if a woman does not comply with demands or asks a landlord to stop harassing behavior in her home should also compel the protection of a U visa. Although other workplace-designed remedies have not provided full coverage to victims in the housing context, expanding U visas can be contrasted: rather than applying a workplace framework to the housing context as is, this constitutes an express expansion of the law to include sexual harassment as its own category.

Additionally, the government should reevaluate and reassess the crisis to come up with a workable number of U visas granted each year. The current U visa cap at 10,000 per fiscal year creates a long waiting list and thus, a situation in which many victims remain on “deferred action” status.<sup>152</sup> Recent data shows the United States Citizens and Immigration Service (USCIS) did not consider U visa applications that were filed in August 2014, until three and a half years later, in January 2018.<sup>153</sup> Along with the implications of living in limbo with one’s case unresolved, the excessive waiting period fails to create a much-needed safety net needed for undocumented women to feel safe in reporting crimes against them.

Given the numbers of undocumented women in Texas, expanding the U visa or other such programs to include crimes of sexual harassment in housing has the potential to greatly impact

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151. *Id.*

152. *U Visa for Crime Victims*, WOMEN’S LAW (Jan. 30, 2018), <https://www.womenslaw.org/laws/federal/immigration/u-visa-crime-victims/basic-info-and-definitions/how-long-does-it-take-get-u>.

153. *Id.*

undocumented women's ability to fight for themselves and also for the safety of their homes. Having a "safe avenue" to report would also serve to address the data gap: if women know they can report these crimes without immigration consequences—indeed, it may provide a path to legal status—then they will be more likely to report, allowing for more accurate numbers of harassment occurrences and increased knowledge about the housing hurdles low-income women are facing.

HUD's initiative is a step toward protecting vulnerable women and expanding federal immigration protections would be an effective approach to provide undocumented women at least a potential safe avenue to report. But the fact remains that if federal law is the only vehicle through which this issue is addressed, many women will still fall through the cracks. Because this is an issue that happens at home in the most intimate of spaces, there must also be state and significant community-level actions taken to protect vulnerable women.

### *C. State-Level Protections: Harsher Penalties for Deviant Landlords*

The Texas Fair Housing Act proscribes housing discrimination based on race, color, sex, national origin, disability or familial status.<sup>154</sup> The statutory language mirrors the language of the FHA, prohibiting discrimination in the "terms, conditions, or privileges,"<sup>155</sup> of housing and theoretically allows for state-level protection against policies comparable to the available federal protections. Although it is possible that states will run into the previously-discussed issues as the federal law, state-level laws may be more protective of vulnerable women, as there is more latitude for courts to interpret state statutes broadly.<sup>156</sup> Moreover, federal law only bars housing discrimination based on certain protected classes.<sup>157</sup> Localities may add additional protected classes, such as "citizenship status," though such ordinances will be subject to a state's prohibitions.<sup>158</sup> Nevertheless, is also

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154. *Housing: Protections and Options for Survivors, Information for Advocates*, TEX. COUNCIL ON FAMILY VIOLENCE, <http://tcfv.org/pdf/TCFV-Housing-Brochure-for-Advocates.pdf> (last visited Mar. 2, 2019).

155. Tex. Prop. Code Ann. § 301.021(b) (West 1995).

156. Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 30.2 (July 2018).

157. *Id.*

158. See *Inclusive Communities Project, Inc. v. Abbot*, 2018 WL 2415034, at \*2 (N.D. Tex., May 28, 2018) (explaining that when the City of Dallas adopted an ordinance expressly prohibiting income-based housing discrimination, it was still

important for states to enact legislation that specifically addresses sexual harassment.

In the 2017 legislative session, Texas Representatives Dale, Capriglione, and Burkett introduced House Bill 2974, a “sexual coercion” bill making certain sexual offenses criminal acts.<sup>159</sup> Under H.B. 2974, a person commits an offense if the person “intentionally threatens, *including by coercion or extortion*, to commit [a sexual] offense to obtain... an act involving sexual conduct causing arousal or gratification. [emphasis added].”<sup>160</sup> The proposed bill made such offenses state jail felonies, thus increasing potential punishment for certain sexual offenses. Although the bill was killed before it made it to a House vote,<sup>161</sup> such a bill is not only advisable, but necessary to protect Texas women.

Some scholars point out that laws penalizing landlords serve as a disincentive for landlords to rent to low-income women, compounding what already stands as a significant barrier to women: the severe affordable housing crisis.<sup>162</sup> Although this is a valid concern, it is important to note that penalizing perpetrators is but one component in what must be a holistic solution. Predatory landlords should be held accountable for their actions. Expressly including sexual harassment in housing in state legislation and imposing higher penalties on perpetrators would thus likely serve as powerful deterrents for such behavior provided it is part of a multifaceted approach to eradicate the issue. Next, this comment explores community approaches to educate and empower women on their housing rights.

#### D. *Community Efforts*

Texas is a large, sweeping state, home to millions of underserved individuals facing varying challenges and needs; according to the 2017 census, Texas had the 5th highest poverty rate in the United

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subject to the state mandate, which permitted voucher-holder discrimination).

159. Tex. H.B. 2974, 85th Leg., R.S. (2017).

160. *Id.*

161. See Patrick Svitek, *House GOP Tensions Come to a Head with ‘Mother’s Day Massacre’*, TEXAS TRIBUNE (May 12, 2017), <https://www.texastribune.org/2017/05/12/house-gop-tensions-come-head-mothers-day-massacre/> (H.B. 2974, along with more than 100 other proposed bills, was killed in the infamous Mother’s Day Massacre).

162. Oliveri, *supra* note 4, at 632.

States.<sup>163</sup> Moreover, although only 29 percent of Texas households are female-headed, they represent 54 percent of households in poverty.<sup>164</sup> Because sexual harassment in housing is an issue that largely remains in the shadows, community advocacy provides another avenue to educate women on their rights and options when faced with this issue. This comment calls for a collaborative effort involving community organizers, lawyers, courts, and law enforcement to work together to address the issue.

Historically, community organizers like Le Union del Pueblo Entero (LUPE) and others have played a central role in educating communities on their rights.<sup>165</sup> These organizations are incredibly successful in their efforts, not only because they are passionate and persistent, but because they invest in community development efforts and respond specifically to community needs, both social and economic, of low-income people.<sup>166</sup> For example, LUPE provides social services and English classes to people in its community, and puts tremendous effort into mobilizing residents to fight for basic quality of life issues, such as streetlights in colonias and drainage systems.<sup>167</sup> They are well known and importantly, trusted in the communities they serve. Such organizations across the state would thus be an effective vehicle to distribute “know your rights” materials centered on sexual harassment in housing to help vulnerable women fight back against predatory landlords.

Additionally, the legal community should be proactive in addressing sexual harassment in housing, particularly for undocumented women. This necessarily involves legal professionals going out into communities, meeting with people, building relationships, and working to bridge the gap between economically vulnerable women and the legal system. In one study examining immigration enforcement’s impact on immigrant crime victims, judges reported that people were generally fearful of the courts, law enforcement, and the justice system as a whole.<sup>168</sup> Accordingly, both

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163. TEX. ORG. PROJECT, <http://organizetexas.org/contact-us/about-top/mission/> (last visited Mar. 2, 2019).

164. TEX. WOMEN’S FED’N, <https://www.txwf.org> (last visited Mar. 2, 2019).

165. LUPE, <http://lupenet.org/about-us/> (last visited Mar. 2, 2019).

166. *Id.*

167. *Id.*

168. Rafaela Rodrigues et al., *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration*

legal services providers and the private bar should partner with community organizers to host conduct pro bono legal clinics and community education events to educate women as to their rights in housing. Lawyers play an important role in helping people access what is an inherently inaccessible justice system, particularly for low-income women of color.

Unfortunately, while community advocacy efforts are both desirable and effective, they will likely be the equivalent to a mere band-aid on a fatal disease—the root of this issue for low-income women remains the affordable housing crisis, particularly in states like Texas. Until communities take action to care for its most vulnerable residents and their housing needs, low-income women of color and undocumented women who have few real housing choices remain easy prey for predatory landlords. States and localities must foster and encourage organizations that are taking steps to address affordable housing concerns.

One Texas non-profit organization has made incredible strides in addressing the affordable housing crisis in its community. The Community Development Corporation of Brownsville (CDCB) provides affordable housing to low-income individuals in Texas's Rio Grande Valley by creating rental communities and assisting individuals with the home ownership process.<sup>169</sup> One of CDCB's goals is to empower low-income individuals and families, often giving them what is missing in other programs designed to address housing issues: choice. Their mission holds that, "every person will be valued, *provided options...* and assured a high quality of life through excellence in education and responsible decision making [emphasis added]."<sup>170</sup> CDCB's range of services also protects and advances low-income individuals' housing and economic interests through partnerships with trusted local organizations to provide a range of services, including financial counseling, and even youth programs.<sup>171</sup>

Central to success for organizations like CDCB is familiarity with and understanding of the communities the organization serves. For

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*Enforcement: Initial Report from a 2017 National Survey*, NIWAP (May 2018), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

169. CMTY. DEV. CORP. OF BROWNSVILLE, <http://www.cdcbrownsville.org/about-us.html> (last visited Mar. 2, 2019).

170. *Id.*

171. *Id.*

example, in farming communities, people work and are paid seasonally and may have difficulty making regularly monthly rent payments.<sup>172</sup> Organizations like CDCB give latitude to low-income renters; rather than filing automatic eviction notices for late rent payments, they consider the source of the family's income and work with them on when rent will be due.<sup>173</sup> Housing organizations must also understand regional factors such as location—whether a housing project is centrally located such that it is close to the available public transportation, good schools, and employment opportunities. Also of significance is CDCB's community-based emphasis in its housing projects. CDCB's La Hacienda Casitas housing project is a prime example—there are front porches and every unit faces either the green space or walking trails to intentionally cultivate community.<sup>174</sup>

CDCB's thoughtful and holistic approach to ameliorate low-income housing issues effectively creates housing security for low-income individuals and should thus serve as a model for other organizations across Texas seeking to address the affordable housing crisis. Failure to adequately do so will far lessen the effectiveness of any other initiative working toward eradicating sexual harassment in housing.

#### V. CONCLUSION

Although the effects of sexual harassment in the workplace have been widely documented and significant legal protections exist, the law staggeringly fails to protect women from sexual harassment in the most sacred of spaces: her home. Without data, education, and accountability for perpetrators, this issue and its victims will remain in society's poverty-riddled shadows and predatory landlords will continue to terrorize women at home. This is particularly true in states like Texas, where there is vast income disparity, a significant shortage of affordable housing, and high numbers of undocumented women and families. Although there is no "one size fits all" solution, expanding both federal and local law to fill the gaps left by current legislation, harsher penalties to hold predatory landlords and housing authorities

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172. Nick Mitchell-Bennett, Exec. Director, Cmty. Dev. Corp. of Brownsville, Address at La Hacienda Casitas Tour (Feb. 23, 2019).

173. *Id.*

174. *Id.*



accountable, and local community outreach and education, are proactive ways to begin to address the issue. Perhaps most importantly, states and localities must be proactive in crafting initiatives and supporting organizations that are working to mitigate the affordable housing crisis. Only then will states be able to protect vulnerable women from this invidious problem.