

**Supplemental Written Submission of Jane Liu
Legal Director, National Asian Pacific American Women’s Forum**

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

July 9, 2019

On May 9, 2019, I testified before the U.S. Commission on Civil Rights regarding the issue of sexual harassment in federal government workplaces. After the hearing, the Commission indicated that it was “still hoping to hear from the public about their experiences of sexual harassment in federal workplaces, including the culture surrounding the reporting of harassment in federal agencies, the reporting process, and new tools that can be used to address the issue.” In response to this request for information, I wish to submit for the Commission’s consideration, in addition to my written statement and oral testimony, the accounts of two current federal employees regarding their experiences of sexual harassment in the workplace.

I. Christine Lee¹, Department of Treasury

The National Asian Pacific American Women’s Forum is currently representing Christine Lee, an Asian American federal employee, in a case involving sexual harassment, sex and race discrimination, and retaliation by her former employer, the U.S. Department of the Treasury. Christine was denied a promotion by her supervisor at the Treasury after declining to pursue a romantic relationship with him. When she expressed her disagreement with the denial of promotion to management and pointed out that no other employee in a similar position had ever been denied a promotion, management failed to address her concerns and approved her supervisor’s decision to deny the promotion.

When Christine reported the harassment and discrimination to the agency’s Equal Opportunity office, she received the promotion but management then retaliated against her by removing her work portfolio and temporarily reassigning her to a different division of the agency at a different location an hour away from her old office. The agency also would not provide Christine any information on where she would work after the temporary assignment. Although Treasury removed Christine from the supervision of the supervisor who had harassed her, they reassigned her to be directly supervised by a manager one level above her former supervisor. This manager was one of the managers who had approved the denial of her promotion, and Christine had identified him in her complaint. The discrimination and subsequent retaliation have severely harmed Christine’s mental and physical health, requiring her to seek medical treatment.

¹ The name of the federal employee has been changed and her location has been omitted to protect her identity and to protect her from further retaliation.

Christine also observed other federal employees being subjected to race and sex discrimination by many of the same managers while at Treasury. Another co-worker, who is a white female, experienced significant harassment by the same managers and decided to transfer to another component of Treasury. Thus, race and sex discrimination are systemic issues in the agency. Christine states: “Many parts of the federal government fall acutely short of standards of diversity, inclusion, and non-discrimination. What I experienced at Treasury was shocking, that in this day and age, the federal government could be blind to the discrimination and harassment that occurs every day, with perpetrators acting with downright impunity. Many of these offenders evade accountability and their actions are even supported by management. We, as Asian American women, often have no one within the system looking out for us, and we are, quite literally, brushed off into a corner. It’s time we start speaking out about these injustices and the systems of ‘Old Boys’ Clubs’ in the federal government.”

II. Jasmine Shah², Transportation Security Administration

In May and June 2019, I spoke with Jasmine Shah, a South Asian woman who has been working for the Transportation Security Administration (TSA) as a Transportation Security Officer (TSO) for the past fifteen years. During her time with TSA, Jasmine has experienced numerous instances of sexual and racial harassment, and other forms of race, sex, and national origin discrimination. She has previously reported incidents of discrimination and sexual harassment to her managers, but TSA has failed to respond or address the discrimination and harassment.

From 2015 through 2016, Jasmine was repeatedly sexually harassed by a co-worker, Ethan, who was also a TSO. When Jasmine was assigned to work with Ethan, he would frequently walk behind her and make comments of a sexual nature, such as “Oh yeah,” “I can follow that ass anywhere,” “Tight ass,” and “I like the view from back here.” At first, Jasmine tried to ignore him. Then, she told him that his comments were offensive. However, he did not stop making the comments.

Ethan’s comments made Jasmine feel uncomfortable. Typically, Ethan only made these comments when he and Jasmine were alone and working together. After Jasmine told him to stop three times, he began making hostile comments to her and about her, in addition to continuing to make sexually harassing comments.

Another co-worker, Anthony, noticed how uncomfortable Jasmine was. Jasmine told Anthony that she did not like working with Ethan. Anthony took Jasmine’s concerns seriously and talked to the Lead of their department. The Lead is the person who determines the schedules of the TSOs and assigns them to work at specific times with other TSOs. Anthony asked the Lead not to assign Jasmine to work with Ethan anymore because Ethan was harassing her.

² The names of the federal employees involved have been changed and their location has been omitted to protect the identity of the federal employee who has suffered discrimination and to protect her from retaliation.

One day, Jasmine came in late for work and found out that the Lead had assigned her to work with Ethan again. Jasmine had never before asked to be switched from working with any co-worker, but on that day, she had a migraine and did not want the stress of dealing with Ethan's comments. She asked the Lead if she could be switched from working with Ethan. The Lead, pretending not to know about the harassment problem, asked Jasmine why she wanted to switch. Jasmine told her about Ethan's harassing behavior and the Lead reported it to her supervisor.

The supervisor called Jasmine to her office and immediately said to her, "You can't go making accusations like that." Because she did not want to upset her supervisor further, Jasmine told her supervisor that her issue with Ethan was not a problem and assured her supervisor that she would work with Ethan to stop his behavior.

However, Ethan continued to make comments to Jasmine after that. Moreover, the Lead continued to assign her to work with Ethan, so Jasmine had to continue to work alone with him on many occasions. Neither the Lead nor the supervisor did anything further regarding her complaint. Eventually, Ethan left the department for reasons unrelated to the harassment.

In addition to sexual harassment, Jasmine has experienced other types of discrimination while working at TSA. During the fifteen years that she has worked for TSA, she has never received a promotion, even though she has applied for promotions many times and has seen other co-workers get selected for promotions. Jasmine believes she has been denied promotions because of anti-Muslim sentiment within TSA. While Jasmine is not Muslim, her co-workers and supervisors have made comments on a number of occasions indicating that they believe that she is Muslim based on her physical appearance.

On one occasion, in response to the death of a co-worker's family member, the Lead in Jasmine's department made a comment about how they should pray for the co-worker, stating "I don't care what religion you are." When the Lead made this comment, she made direct eye contact with Jasmine. In another instance, a co-worker asked her while they were working, "You're Hindu, not Muslim, right?" Jasmine responded, "Yes." The co-worker then walked over to another co-worker and said, "I told you." Based on his statement, Jasmine knew that her co-workers had been talking about her and her religion.

On another occasion, on the day before the 2016 Presidential election, a co-worker made the following offensive comment to her: "Oh well, when Trump gets elected tomorrow, you're going to have to go back home to [country of origin]." Jasmine reported the co-worker's comment to her supervisor, but the supervisor did nothing in response.

Another co-worker, Ted, repeatedly brought up the subject of Jasmine's divorce and asked her intrusive and offensive questions, such as "Well, what did you do [to cause the divorce]? You must have done something [to cause the divorce]." She did not answer his questions. When he asked her these same questions another time, she asked him to stop. She also told her supervisor about his behavior. The supervisor told Jasmine that she had spoken with Ted about it, but Ted

continued to ask Jasmine the same offensive questions. She reported his conduct again to her supervisor. However, Ted asked her the same questions again on one more occasion. Shortly afterward, Jasmine was transferred out of that department and never worked with Ted again.

In addition to TSA's complete failure to respond to her reports of harassment and discrimination, Jasmine has also witnessed TSA's failure to address workplace discrimination issues involving other employees. For example, last year, Jasmine's co-worker, who is also South Asian, had a relationship with the co-worker's supervisor. The supervisor's wife learned about the relationship and complained to TSA. The supervisor denied the relationship, but Jasmine's co-worker admitted to it and showed management text messages proving the existence of the relationship. The supervisor ultimately got demoted and eventually resigned, while Jasmine's co-worker got promoted. This is the only time that Jasmine has witnessed another South Asian employee receive a promotion during her time at the TSA. Jasmine explained that this situation demonstrates how management typically deals with workplace discrimination. Namely, management tries to keep the issue a secret and tries to make the problem go away rather than actually addressing it.

Sexual Harassment and Power Imbalances in Federal Agencies

As I stated in my testimony before the Commission, the risk of sexual harassment is greater in work environments with significant power imbalances and inequities. Christine and Jasmine's experiences demonstrate this reality and reveal that federal workplaces continue to struggle with power imbalances and systemic inequities, including systemic race and sex discrimination, that fuel harassment. Strategies to address sexual harassment in federal workplaces must be part of a broader effort to address these power imbalances and systemic inequities.

A deep and sustained commitment to increasing the diversity of employees in supervisory, management, and leadership positions throughout all levels of federal agencies is integral to creating a more equitable workplace. However, addressing power imbalances requires much more – federal agencies must implement systemic changes to promote equity, including reexamining existing managerial and supervisory structures that allow for systemic discrimination and institutional inequities to persist. Both Christine and Jasmine were denied promotions pursuant to agency practices and policies that allow for discrimination to occur with impunity and that fail to hold management accountable for their personnel decisions. Federal agencies must reform their managerial structures and promotion practices to eliminate “Old Boys’ Clubs,” foster inclusive working environments, and ensure accountability and fairness. For instance, as in Christine's case, a system whereby one supervisor is given wide discretion to decide whether a promotion should be granted should be reformed to allow for real and meaningful oversight and accountability by managers above the supervisor.

Systemic Barriers to Reporting Harassment in Federal Agencies

Christine and Jasmine's experiences also speak to systemic issues with the reporting process in federal agencies. First, managers are failing to address informal complaints of discrimination and harassment. During the time she has worked for the TSA, Jasmine has reported discrimination and sexual harassment several times to her managers, and they have consistently failed to address these issues. Her managers have never followed up with her on her complaints. Moreover, her complaints have not been documented. Essentially, her complaints have been ignored. Managers should be trained to take all complaints of discrimination and harassment seriously and to take prompt action to address them. Moreover, they should be required to document each and every complaint, regardless of the severity of the behavior at issue, and should be required to document the steps that the manager took to address the issue. Federal agencies should collect such data regularly to determine systemic issues and to identify repeat offenders and determine a course of action to investigate and address these problems.

In general, federal agencies must do a better job of documenting and monitoring informal complaints. Where the majority of victims of sexual harassment do not file formal complaints, it is critical that federal agencies track and monitor informal complaints and use this information to identify and address discrimination and harassment.

Second, federal agencies are failing to foster a work culture where employees feel safe, respected, and protected in reporting sexual harassment. When Jasmine reported sexual harassment, her manager's immediate response was to question Jasmine's credibility and dismiss her complaint by stating "You can't go making accusations like that." Management not only failed to do anything to address the harassment, but also required Jasmine to work with the co-worker who had sexually harassed her even after Jasmine reported the harassment.

Fear of retaliation by the federal government is also a huge barrier to reporting. Both Jasmine and Christine expressed these fears to me. In Christine's case, her fears became a reality when Treasury retaliated against her by removing her work portfolio and placing her on a temporary assignment in a different part of the agency that doubled her daily commuting time. This retaliation occurred even though Christine was communicating with an EEO counselor at the time and had reported the retaliation to the counselor.

To foster a work culture in which employees feel safe, respected, and protected in reporting harassment, federal agencies must train managers and supervisors, as well as human resources and EEO officers and counselors, to respond appropriately and promptly to employee complaints and in ways that communicate the importance of the safety and health of the employee who has experienced harassment. Because the risk of retaliation is significant, federal agencies should also implement informal reporting mechanisms that guarantee anonymity for complainants.

As I stated in my testimony before the Commission, employees who experience sexual harassment face numerous hurdles in coming forward. AAPI women and other women of color

face additional barriers that may make it even more difficult to come forward. When an employee comes forward, their employer should have a system in place that assures the safety, health, and dignity of the complainant, as well as a prompt and effective investigation of the complaint in which harassers are held accountable. As an employer, the federal government should be leading other employers in having such a system in place to root out sexual harassment and discrimination. Federal employees deserve to work in safe workplaces where they can thrive, and when employees like Christine and Jasmine courageously come forward, they deserve to be heard.