



# Undocumented Workers in the US Garment Sector: An Assessment and Guide for Brands

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# Executive Summary

At the request of a well-known U.S.-based garment brand, Verité conducted desk and field research and interviewed experts and workers to explore employment and social responsibility issues in U.S. garment manufacturing. We focused particularly on the challenges faced by undocumented workers, and the effect of the presence of undocumented workers on manufacturers in the U.S. and the brands that source from them.

The U.S. garment sector presents obvious opportunities to brands and buyers which seek to strengthen U.S. manufacturing, reduce turn-around times for products, exert quality control over production, and generate other positive outcomes. The U.S. economy overall can also benefit from increased manufacturing employment and resulting financial impacts.

The U.S. garment sector presents structural challenges to manufacturers and brands. Garment manufacturing in the U.S. is a 'fissured' industry with a large number of small factories and workshops competing with one another for limited business. These factories are able to generate only narrow profit margins. To cut costs they often reduce wage payments as much as possible, including by hiring undocumented workers who are willing to take these difficult jobs in return for low wages.

Garment manufacturing in the U.S. relies heavily on immigrant workers – much as it has done historically. Many of these workers are undocumented. They are at great risk of wage and hour violations, risks to their health and safety, and harassment and abuse. Because both employers and workers rely on labor brokers, the risk of forced labor resulting from debt is real.

The conditions that allow for the exploitation of undocumented workers– the use of labor brokers and their lack of legal status among others – also create the risk of reputational damage and legal sanctions for companies. Brands must carry out social assessments to determine where these risks are present in their supply chains and to come to grips with the conditions faced by workers in specific supplier factories. But resolving those risks in a situation where workers cannot be employed legally will necessarily be incomplete, and may require brands to embrace humane responses that are not entirely legal.

In order to remedy these risks for the long-term, a range of public policy interventions and legal changes are necessary. Immigration policies and guestworker arrangements must be reformed to facilitate legal employment for the undocumented worker population on whom U.S. garment manufacturing relies. Brands and their suppliers should join civil society groups to understand and advocate for a guestworker visa system that is realistic, transparent and effective for employers and workers. The private sector should find common ground with advocates for other temporary and permanent immigration policies that will provide a consistently available legal workforce for companies. Regardless of what immigration reforms may or may not be enacted in coming months and years, the urgent need for stronger regulation of labor recruiter activities in sending countries and in the US is beyond question. A host of other measures are also critical to implement in the current and any future system of managing guest workers, such as providing whistleblower protections for workers that file grievances.

## U.S. Garment Manufacturing

After a dramatic decline in garment manufacturing in the U.S. due to outsourcing of production, garment manufacturing began to rebound after the turn of the 21<sup>st</sup> century and is likely to continue growing in the coming years. Many retailers source garments from U.S. factories so that they can closely oversee quality control and in order to meet last minute, unexpected spikes in demand for the styles generated by today's ever-changing fashion demands. Additionally, it has recently become relatively cheaper to produce garments in U.S. factories: while wages have risen dramatically in other countries, wages have stagnated in the U.S. due to the economic recession and the widespread employment and underpayment of undocumented workers.

Although garment manufacturing has declined in the U.S. overall since the 1960s, it has begun to rebound

significantly in recent years. In September 2013, *The New York Times* reported on recent growth in U.S. textile and apparel exports, which were valued at \$22.7 billion in 2012, an increase of 37 percent over 2009.

<sup>1</sup> A recent survey by the MIT Forum for Supply Chain Innovation and *Supply Chain Digest* found that about a third of manufacturers were considering reopening facilities in the U.S., and that 15 percent already had.<sup>2</sup>

Today, garment manufacturing is concentrated in California and New York. Until the 1960s, New York served as the national hub for U.S. garment production, accounting for 95 percent of clothing purchased by the U.S. domestic market.<sup>3</sup> Research conducted in New York in 2002 identified 1,600 garment manufacturers and 2,600 contractors registered with the New York Department of Labor, with an additional 2,500 unregistered worksites.<sup>4</sup> Today, Los Angeles has overtaken New York in terms of production output, with \$8 billion in 2012.<sup>5</sup> According to the Bureau of Labor Statistics, there were almost 3,000 registered apparel factories in the Los Angeles area in 2010, and over 1,000 in New York. Texas is the third-largest manufacturer with the significantly lower total of 274 manufacturers.<sup>6</sup>



\*Map taken from the Bureau of Labor Statistics<sup>7</sup>

New York's role in garment supply chains has now shifted to two functions: as a high-end fashion producer with convenient quality control monitoring and as a producer of last resort to meet spikes in demand. There are 846 fashion companies headquartered in New York, more than London, Milan, and Paris put together, and many prefer to oversee production directly so that they can closely monitor quality.<sup>8</sup> New York-based garment factories are also used to meet spikes in consumer demand for specific garments generated by rapidly changing fashion trends. While it can take more than one month for a garment from China to reach a domestic retail shop, the turnaround time is approximately ten days if it is produced in New York. According to Verité expert interviews, though this apparel could be produced overseas, maintaining domestic factories allows companies more flexibility and responsiveness within their supply chains. A pair of jeans produced in Mexico, the Caribbean, or coastal China might take as long as three, five, and eleven weeks to arrive, respectively.<sup>9</sup> When demand for an item spikes or disruptions occur elsewhere in the supply chain, domestically-produced garments can meet consumer demand in the interim.

Local production also plays a role in risk mitigation. If, for example, consumer demand for a product drops after manufacturing has begun, a manufacturer would rather have fewer pieces to avoid losses. Goods from overseas have to be produced with longer lead-time, decreasing the brands' flexibility in adjusting to changed demand. Local production means brands and suppliers can cut their losses if needed.

Brands in general seek to maintain smaller inventories in order to adjust to market trends more quickly.

The advent of “lean retailing” allows retailers to maintain smaller inventories by ordering smaller quantities more frequently from suppliers. The quick turnaround required by a supplier after an order is made possible by information and communication technologies and automation, among other conditions. Quick turnaround also accelerates the speed at which suppliers must produce clothes to win a contract. This pressure is often passed onto garment workers, who can suffer as a result from unreachable quotas, insecure employment and variable income.

### **Dynamics of U.S. Garment Sector that Increase Worker Vulnerability**

The garment industry has long presented a challenge to those seeking to monitor and improve workplace conditions. U.S. Department of Labor Wage and Hour Division Administrator Dr. David Weil wrote that, as one of the first “fissured industries,” garment manufacturing has long used diverse organizational methods that keep employers from directly employing the personnel manufacturing those products.<sup>10</sup> At the turn of the 20<sup>th</sup> century, early labor regulation grappled with the garment industry’s decentralized production cycle and the large amount of unregulated, invisible “home work.”<sup>11</sup> Today, multiple levels of contracting, intense industry competition, and dysfunctional immigration policies impede efforts to establish and sustain a legal, safe, and fair working environment.

Modern garment production remains a “fissured” industry today. As described by Dr. Weil (and well-known within the sector), “A ‘jobber’ may sell a design to a retailer, and then contract with a manufacturer for delivery of the product. The manufacturer may purchase and cut the product, but then contract the sewing to one or more companies (which may further contract out sub-assembly).”<sup>12</sup> Each time a piece of the process is subcontracted, the profit margin diminishes and competition between firms intensifies. Any number of small, informal sewing contractors can easily enter the market to compete for a limited number of contracts, resulting in downward pressure on prices. Since labor costs comprise the bulk of input costs, many sewing contractors’ only way to profit is to pay sub-minimum wages.<sup>13</sup>

Garment factories in New York and Los Angeles typically contract between five and 50 workers, principally female migrants,<sup>14</sup> and many factories employ fewer than 20 workers.<sup>15</sup> Factory size is often intentionally limited to a small workforce that can be laid off more easily during slow periods.<sup>16</sup> Many small factories close due to an inability to turn a profit. When this occurs, informal contractors can easily shut down and reopen shop in other locations, under different names to avoid legal liability or payment of employee back wages. Consequently, the average life of a garment sewing shop is 13 months.<sup>17</sup> In addition, the relatively short training period for workers allows sewing contractors the ability to hire or fire personnel easily, as “entry-level sewers can reach the standard rate for sewing in a matter of months.”<sup>18</sup> Garment workers contend not only with employers motivated to pay low wages, but also with competing laborers who could easily replace them.



## Employment in apparel manufacturing and component industries, 1990–2011<sup>25</sup>

Year	Apparel manufacturing (total)	Cut and sew apparel contractors	Men's and boys' cut and sew apparel	Women's/all other cut and sew apparel	All other apparel manufacturing
1990	902,800	268,600	234,400	246,700	153,200
1995	791,100	233,300	207,100	202,400	148,200
2000	483,500	146,600	111,600	122,000	103,300
2005	250,500	79,500	48,700	65,200	57,100
2010	156,600	46,200	29,000	48,700	32,600
2011	151,800	45,300	29,500	48,700	28,300

The U.S. garment industry's workforce has historically been comprised of recent immigrants. The Partnership for the New American Economy points to immigration as a key reason that manufacturing companies are still able to produce in the U.S.<sup>26</sup> In a recent report, the Partnership argued that about 15 percent of domestic manufacturing employment (1.8 million positions) has remained in the U.S. as a result of immigrant workforce participation.<sup>27</sup> Over the past 40 years, the counties that have experienced the most growth within the manufacturing industry are also counties with large net migration inflows over the same period. In four of the top five counties that experienced manufacturing growth, the sector's increase can be attributed to a consistent immigrant workforce.<sup>28</sup>

Immigrant labor makes up about 64 percent of garment and other factory workers in New York City, according to 2013 reports.<sup>29</sup> In 2005, the Department of Labor estimated that over 75 percent of the apparel industry workforce was comprised of immigrants. The report explains, "Traditionally, the most recently arrived immigrant groups see the apparel industry as the first stepping-stone to employment in their new home... The industry also provides an opportunity for advancement for immigrant entrepreneurs, who own a significant number of the factories in New York City."<sup>30</sup> Data from the early 2000s showed that in New York about half of the city's 65,000 garment workers were of Latino origin, while the other half were of Asian origin.<sup>31</sup>

At the national level, approximately 11.7 million undocumented immigrants resided in the U.S. in 2013.<sup>32</sup> About two million immigrants were living in New York.<sup>33</sup> A recent USC study estimated that seven percent of California residents (over 2.6 million) were undocumented, including about one in ten people in Los Angeles County.<sup>34</sup> In 1993, one local union officer estimated that most of the 100,000 garment workers in the Los Angeles area were undocumented immigrants. In 1996, the Department of Labor reported that it believed that up to 50 percent of the workers in California sweatshops were undocumented immigrants.<sup>35</sup>

The majority of factories employ a mixture of documented and undocumented workers. Department of Justice investigations in 1996 revealed that undocumented workers often took employment in sweatshops after first arriving in the U.S. and thus made up a large proportion of garment workers.<sup>36</sup> Many undocumented workers stay long enough to secure contracts or documentation in order to obtain higher-paying employment and then leave the industry.<sup>37</sup> Estimates on the number of undocumented personnel vary widely. According to a 2005 Pew Research Center report, 26 percent of apparel workers and 18 percent of sewing machine operators were believed to be undocumented.<sup>38</sup>

There are several reasons an employer might hire undocumented workers. One of the main reasons is a shortage of citizens willing to work in certain sectors, such as agriculture and garment manufacturing, as well as the absence of a functional, affordable guestworker system to meet employer demand for workers. Undocumented workers are also more likely to accept substandard working conditions, potentially reducing costs for employers. Undocumented workers not only have limited employment opportunities, but also work and live under the constant threat of deportation and thus fear being denounced to authorities. Undocumented immigrants have reported employers threatening to turn them in to immigration officials for reporting labor violations.<sup>39</sup> This action is illegal in California under the 2013 Senate Bill 666, but according to experts interviewed by Verité, the risk persists.

Broadly speaking, undocumented immigrants are unquestionably more vulnerable to labor exploitation than other workers. A 2008 survey of low-wage work indicates that undocumented workers were particularly vulnerable to minimum wage and overtime violations. Minimum wage violations were reported among 38

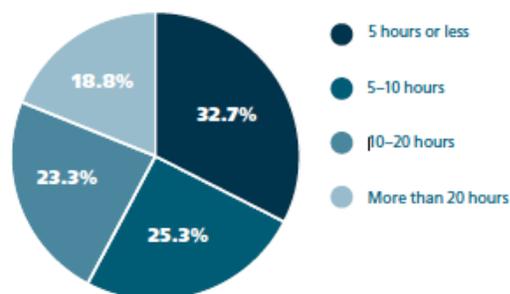
percent of undocumented workers and 47 percent of undocumented women workers, compared to 26 percent of documented immigrant workers. Overtime violations, reported by 85 percent of undocumented workers, compared to 67 percent of documented immigrant workers.<sup>40</sup>

### Wage and Hour Violations in the Garment Sector

Wage and hour violations are “endemic” in the garment sector, according to a labor expert interviewed by Verité. The National Employment Law Project (NELP) states generally that workplace violations are more likely to occur in sites where employees are not paid an hourly rate and in companies employing less than a hundred staff members.<sup>41</sup> This description fits most garment production sites: worksites often employ fewer than fifty people, primarily female workers who are generally paid a piece rate.<sup>42</sup>

Numerous sources show that working hour and overtime violations are common in the garment sector. Reports by the Polaris Project indicate that employees in the garment industry work up to 12 hours per day, six to seven days per week, with few or no breaks.<sup>43</sup> A 2002 report indicated that migrant workers in the garment sector were expected to work about 12 hours per day, six or seven days per week.<sup>44</sup> A 2008 NELP survey of 4,387 low-wage workers in Chicago, Los Angeles, and New York City likewise indicated that 71 percent of apparel and textile factory workers reported overtime violations.<sup>45</sup> NELP further found that the apparel and textile sector registered the highest rate of meal break violations out of any industry covered by the survey in New York City, at 88 percent.<sup>46</sup>

**Figure 3.2: Number of Hours Worked Overtime (Beyond 40 Hours) for Workers with an Overtime Violation, New York City**

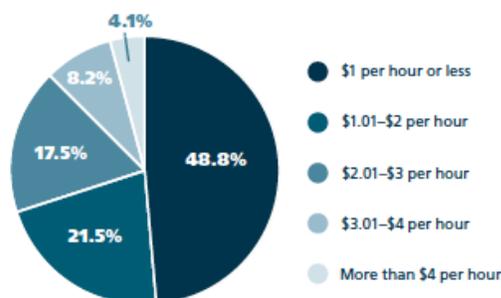


Source: Authors' analysis of 2008 Unregulated Work Survey.

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In addition to overtime violations, the garment sector is particularly prone to minimum wage violations. The 2008 NELP survey found that nationally, apparel and textile factories posted the highest rate of minimum wage violations of surveyed industries employing low-wage workers, at a rate of 42.6 percent.<sup>48</sup> In New York City specifically, NELP reported that 23.6 percent of workers in apparel and textile factories registered minimum wage violations. These violations are associated with the piece rates commonly used in the garment industry. Piece-rate workers reported more than double the rate of minimum wage violations as workers receiving an hourly wage.<sup>49</sup> This is particularly concerning given that in New York, 40 percent of garment sector workers were paid by the piece.

**Figure 3.1: Amount Paid Below the Hourly Minimum Wage for Workers with a Minimum Wage Violation, New York City**



Source: Authors' analysis of 2008 Unregulated Work Survey.

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According to the U.S. Department of Labor, garment workers are typically paid per each garment they sew or cut, resulting in payments of as little as \$6 per hour, well under the federal minimum wage of \$7.25.<sup>51</sup> The U.S. Department of Labor's 2000 survey of garment workshop conditions indicated that more than half of the country's 22,000 sewing shops violated minimum wage and overtime laws and 75 percent of U.S. garment shops violated health and safety laws. The Department of Labor found that 60 percent of factories in Los Angeles violated overtime laws and 54 percent violated minimum wage laws, while 61 percent of factories in New York violated overtime laws and 31 percent violated minimum wage laws.<sup>52</sup> This pattern continues, as shown by Department of Labor officials, who conducted more than 1,500 inspections of Southern California garment industry employers between 2007 and 2012. Ninety-three percent of inspections detected violations, including more than \$11 million in back wages owed to approximately 11,000 workers.<sup>53</sup>

Due to the large number of unregistered factories and labor brokers in the garment sector, as well as undocumented workers' reluctance to file complaints, the Department of Labor's recorded rates of labor violations likely do not fully capture the true extent of violations. According to the Migration Policy Institute, in New York State, 96 percent of labor standards investigations were complaint-driven.<sup>54</sup> According to experts interviewed by Verité, due to their legal status and vulnerability to dismissal and deportation, undocumented garment workers are unlikely to report abuses, as they may be threatened with dismissal and deportation if they complain.

Moreover, when fines are levied, they may have no impact: factories may simply reopen in a different location or under a different name, or may consider such fines a cost or risk of doing business.<sup>55</sup> Such was the case in a Queens, New York factory in which authorities found that \$5.5 million in wages had been withheld from employees, who were primarily Chinese immigrants that worked 12-hour days for six or seven days per week.<sup>56</sup> To avoid penalties, the factory changed its name multiple times while manufacturing for multiple well-known clothing brands.<sup>57</sup>

Wage and hour violations have also been prevalent in California. A 2013 report indicated that 60 percent of Los Angeles garment workers were paid less than the minimum wage and 90 percent did not receive overtime pay, even when working in excess of 40 hours per week.<sup>58</sup> A 2010 UCLA industrial employment study evaluated these violations in the garment industry and found that foreign-born women between the ages of 18 and 25 or over 40 were most susceptible to minimum wage violations. The UCLA study concluded that \$26.2 million per week was withheld or stolen from garment workers in Los Angeles alone. According to this study, garment manufacturing was the leading industry in terms of minimum wage violations in California. Manufacturers failed to pay workers the minimum wage and overtime pay. The 2010 UCLA study found that 80.5 percent of garment workers were working in excess of overtime limits; many earned less than the minimum wage despite working as many as 13 hours a day and taking work home because they were paid by the piece. The UCLA study also uncovered many break violations in the garment industry, including instances in which workers were denied breaks altogether.<sup>59</sup> Law firms in California have reported seeing an increased number of cases of manufacturers failing to provide workers with wage statements, which makes it very difficult for them to file legal complaints.<sup>60</sup>

There is evidence to suggest that businesses employing foreign nationals, especially undocumented workers, are more likely to commit labor violations. The 2008 NELP survey revealed that 31.1 percent of immigrant workers reported minimum-wage violations (compared to 15.6 percent of U.S.-born workers). The rate was even higher among immigrant women, reaching 37.4 percent.<sup>61</sup> NELP further found that 77 percent of undocumented garment workers surveyed in 2008 did not receive documentation detailing their wages and deductions, compared to 12 percent of documented garment workers.<sup>62</sup> Other studies likewise suggest that industries employing a large number of undocumented workers are prone to labor violations more broadly. According to the Migration Policy Institute, “Lack of immigration status was identified as a ‘constant’ factor in a study that found extensive minimum-wage, overtime, OSHA, and workers’ compensation violations in the 13 industry clusters in New York City.”<sup>63</sup> As illustrated by the case study below, undocumented workers, especially women, are extremely vulnerable to other forms of exploitation, such as illegal deductions for recruitment fees, sexual harassment, and a lack of adequate grievance mechanisms due to language barriers and the fear of deportation. Migrant workers, whether undocumented or guestworkers, are also increasingly vulnerable to human trafficking for forced labor, due in large part to exploitative recruitment and hiring mechanisms.

### **Case Study: “Margarita,” A Long Island Garment Worker**

Verité interviewed Margarita, a Central American woman who had worked at a garment factory on Long Island. When Verité spoke with her, she had recently left her position. Margarita found a job in a factory through a man who claimed to be a supervisor. However, in reality, he was another low-level employee who had positioned himself as an ad-hoc labor broker because he speaks both English and Spanish. He initially demanded \$20 per week as compensation for finding her the job, but later raised the amount to \$40. She learned he was giving kickbacks to a manager under the table. They continued to collect money from workers no longer employed at the factory until the factory owner discovered this scheme and fired them.

Margarita described her workplace as a tightly controlled environment: employees worked for 12-16 hours per day, five to six days per week. Although they were paid on an hourly basis, they were reprimanded for not reaching daily garment quotas, which had to be filled even if an employee was sick or injured. Employees were only allowed three minutes to use the restroom, and they were watched in the hallways. If she refused to work overtime, she said, the supervisor would deny her opportunities to work overtime in the future. Her supervisors were all white, and the worst treatment was reserved for Latinos and African Americans. Workers could be fired if they complained or were found to lack legal immigration status.

In addition to long hours, the factor that made her employment most intolerable was the high degree of sexual harassment she experienced. If women gave supervisors sexual favors, they could be promoted; if not, their hours could be cut or they could be fired. Her manager pressured her to sleep with him. She attempted to submit a formal complaint, but none of the office employees spoke Spanish. The relative of another manager harassed her as well, sending her obscene text messages and explicit pictures. He even threatened to kill her over the phone, at which point she called the police. The factory finally registered a formal complaint, but they translated her statement very poorly, clearly misunderstanding the dynamics at play due to language barriers.

Margarita concluded by saying, “How could I advance myself if I had to work 12 to 16 hours a day? I had no time to study. You become a slave to your work.”

### **Recruitment and Hiring of Migrant Workers: The Risk of Human Trafficking**

As indicated above, the trend to subcontract production at each step in the production process is common in the garment industry. In much the same way, garment factories increasingly tend to outsource hiring, usually through third-party labor brokers or private employment agencies. Demand for labor contributes to this use of labor brokers in the recruitment and hiring of undocumented workers. As noted above, U.S. manufacturing firms have expanded their domestic operations.<sup>64</sup> Labor, however, is difficult to find, as few U.S. citizens would consider working in the industry.<sup>65</sup> Manufacturers look to immigrants to help fill the labor demand, but legal

immigrant labor can be difficult to secure. Many employers consequently turn to undocumented workers who are difficult to recruit directly, so employers turn to labor brokers. Workers interviewed by Verité reported that bilingual factory workers or managers charged workers up-front or weekly fees in order to secure them employment at factories, acting as de facto labor brokers.

Verité research indicates that U.S. citizens or permanent residents simply do not want many jobs in the agricultural and manufacturing sectors because they can find better-paying or easier jobs. Some employers have turned to the guestworker system.<sup>66</sup> The Migration Policy Institute's survey indicates that some states have created guestworker programs to target industries such as garment manufacturing.<sup>67</sup> However, it is very cumbersome, restrictive, and expensive for employers, leading them to circumvent rules or hire undocumented workers. Interviews conducted by Verité indicate that guestworkers make up a very small portion of garment workers. Employers in the garment sector generally turn to undocumented workers.

Because undocumented workers are forced to live in the shadows due to their legal status, and increasingly stringent immigration laws and enforcement measures, many employers can only find and hire these workers through labor brokers.<sup>68</sup> Likewise, many undocumented immigrants use labor agencies and contractors as a means to find employment, since their lack of legal status prevents them from accessing standard legal avenues of job seeking.

In March 2014, *The Los Angeles Times* reported on the growth of Chinese employment agencies that operate nationally to place Chinese and a handful of other immigrants in positions across the U.S. These agencies take no responsibility for labor conditions after employment is secured.<sup>69</sup> An August 2014 *Al Jazeera* article exposed "labor sharks" that charge undocumented immigrants up-front fees in order to obtain them jobs. In some cases, the jobs are only short-term and workers make very little money after paying the fees. In other cases, the jobs do not exist and workers are scammed out of their money. Despite a New York law that requires that workers be reimbursed any recruitment fees that do not result in job placement, a 2012 study found that 81 percent of immigrants in New York who paid recruitment fees were not actually placed in a job and their recruitment fees were not refunded. These immigrants were charged an average of \$121 in recruitment fees. New York law does not allow workers to take private action against labor brokers that defraud them and only allows them to file complaints with the Department of Labor, which is overburdened and may set a maximum penalty of \$500 for failing to reimburse recruitment fees. Therefore, labor brokers face high rewards and low risks for engaging in fraudulent recruitment practices.<sup>70</sup>

Verité research has determined that hiring through labor brokers drastically increases the risk of worker exploitation, as well as legal risks to factories and brands. Labor brokers charge workers recruitment fees, deceive them about their conditions of employment, make deductions from workers' wages, and fail to comply with legal standards.<sup>71</sup> According to interviews, labor brokers in the garment sector often pay workers weekly by cash, many times less than the minimum wage. Cash payments make it difficult for factories and brands to determine the actual amount of payments and deductions. Thus brokers profit at the expense of factories, brands, and workers. While factories may pay brokers at least the minimum wage per hired worker they supply, in many cases these payments are not passed on to workers themselves, opening factories and brands to the risk of reputational damage and legal sanctions for minimum wage violations, or even in some cases, human trafficking.

Verité has reported on cases in which labor brokers have trafficked guestworkers and undocumented workers to the United States for forced labor. In many cases, guestworkers are charged exorbitant up-front fees and are deceived about their conditions and/or place of work prior to departure. When they arrive in the United States, they are subjected to deductions, poor working conditions, isolation, and threats, along with a visa system that ties them to a single employer, even if that employer is violating their labor rights or the terms of their original contracts. In some cases, labor brokers may front undocumented migrants' smuggling fees and force them to work those fees off in the United States, sometimes under the threat of violence or deportation.<sup>72</sup> These scenarios have been reported by both Latin American and Asian migrants.

Cases of trafficking and forced labor in the garment sector began to come to light in the 1990s. Experts interviewed by Verité reported that new immigrants' families received threats of violence from coyotes or smugglers in their countries of origin for failing to pay back smuggling debts. Smugglers may hold deeds to family

land as security until migrants are able to pay back any fees owed. Experts also reported that some migrants were sent to factories to work until they paid off their smuggling fees.

Many undocumented migrants must incur significant debt in order to migrate to the United States. Verité research indicates that smuggling fees from Guatemala average around \$7,500, and fees from Mexico to the United States can range from \$ 1,000 to \$ 3,500. Migrants from China, many of whom are smuggled by “snakeheads,” may pay as much as \$ 20,000 to reach the United States.<sup>73</sup> In most cases, workers pay some or all of the fees up front to their smugglers, some or all of which they must borrow from family members or informal money lenders. However, in some cases, human smugglers or “snakeheads” front some or all of the smuggling fees, which migrants must pay back once they reach the United States. While in most cases, migrants choose their place of employment and repay fees in installments, according to experts interviewed, smugglers can force migrants to work at specific sites, including garment factories, until fees are paid off. As detailed in the 2009, book *The Snakehead*, Chinese street gangs have been involved in human smuggling and used the threat of violence to force migrants to work off smuggling fees in New York City.<sup>74</sup>

Due to the “fissured” garment industry’s complex contracting networks, lack of facility registration, double-bookkeeping, and potential for tax evasion and labor exploitation, garment shops have been known to develop connections with organized crime. In 1996, Department of Labor inspections uncovered connections between New York garment district firms and La Cosa Nostra, Asian criminal networks, and human traffickers.<sup>75</sup> Ilse Metcheck, head of the California Fashion Association, believes an unregistered underground economy still exists in the fashion world but goes unnoticed due to attention on international labor abuses.<sup>76</sup> Indeed, in September 2014, federal agents conducted a sting on Los Angeles garment shops.<sup>77</sup> In total, they recovered approximately \$90 million in cash that was being laundered for Mexican drug cartels, including a ransom payment to the Sinaloa cartel.<sup>78</sup>

### **Risks for Garment Brands and Buyers**

If garment brands fail to carry out in-depth assessments of their supply chains, they open themselves up to the risk of severe reputational damage and legal sanctions related to wage and hour violations, as well as supporting organized crime, corruption, and human trafficking. By hiring workers recruited by labor brokers who smuggle workers to the United States, companies may be indirectly funding transnational organized criminal groups with whom companies are prohibited from doing business, including the Zetas, the Sinaloa Cartel, and Mara Salvatrucha. These groups are intrinsically connected with human smuggling and trafficking, as well as the corruption of Mexican and U.S. officials. Under the U.S. Treasury Department’s Specially Designated Person’s List and Kingpin Act, companies and their executives can face severe financial and criminal penalties for doing business with any entity or individual on the list. As detailed in another Verité White Paper, *Corruption & Labor Trafficking in Global Supply Chains*, there is a concrete link between the global recruitment and movement of workers, human trafficking, and corruption. Verité has found that “trafficking-related activities in global supply chains include corruption, bribery, and other conduct that could result in liability for companies subject to Foreign Corrupt Practices Act (FCPA) jurisdiction.” Additionally, the recent passage of the California Transparency in Supply Chains Act and the Executive Order Strengthening Protections against Trafficking creates the risk of significant sanctions for companies that fail to take measures to prevent trafficking throughout their supply chains, even if the trafficking is carried out by their suppliers’ labor brokers. The following case study details how a responsible organic farmer faced significant sanctions for actions carried out by a labor broker.

#### **Case Study: Contracting, Undocumented Workers, and Forced Labor**

In 2009, Verité investigated the case of an organic farmer in Colorado, Andy Grant, who unknowingly became complicit in forced labor. The owner of Grant Family Farms tried to use the H-2A guestworker program in 2007 to obtain migrant workers, since he couldn’t find any local workers willing to do farm work. After discovering that he was unable to turn a profit while abiding by the rules of the H2A program, he stopped using the program and turned to undocumented workers. He paid these workers slightly higher than the minimum wage, secured necessary medical services for them, and received a perfect score on his 2005 labor inspection.

However, immigration legislation became more restrictive in Colorado and when police began to crack down on undocumented immigrants, the immigrants went underground. Andy could no longer directly recruit them and felt compelled to contract a labor broker, Moises Rodriguez, to help him find laborers for the harvest, as crops in Colorado had begun to rot on the vine due to an inability to find workers. Unbeknownst to Andy, however, Rodriguez had paid *coyotes* to smuggle workers in from Mexico, then forced them to work in Colorado until they paid off their smuggling debt. According to workers and Andy himself, Rodriguez treated the workers “like peons,” carried a gun, and watched over them as they worked.

Rodriguez deducted up to \$320 from each paycheck, which he had not specified before migrants crossed the border. After these deductions, workers made as little as \$2.90 per hour and could not leave until they repaid smuggling debts as large as \$2,000. Although workers had initially been told they could earn between \$1,000 and \$2,000 per month, in reality, they only earned about \$600 per month.

Workers were housed in a fenced compound and spent at least twelve hours per day on a farm, often after an hour-long commute. Workers dared not leave for fear of reprisals against themselves and their families. This fear was well-founded since Rodriguez reportedly tracked an escaped worker to North Carolina and pistol-whipped him. Finally, five workers submitted a formal complaint against Rodriguez, resulting in criminal charges against him.

Andy was shocked to learn that workers employed on his farm had been subjected to this severe form of exploitation and that he had been named in a civil suit. He said there was no way to ensure that workers employed by brokers were not exploited, and that he now knows to conduct extensive background checks on labor brokers and to inspect housing conditions. He had not realized that outsourcing to labor brokers did not exempt him from liability. The workers were awarded \$ 7.8 million, due to the fact that the case against Andy was brought under RICO (organized crime) provisions, which tripled the damages, resulting in the “largest judgment of its kind in the country.” In total, each worker won \$1.5 million in compensation from Rodriguez, who had been deported to Mexico. Andy settled the case for \$2,000 per worker for a total of \$10,000 and nearly lost his two largest buyers in the process. Now he counsels other employers against hiring through labor brokers since the use of labor brokers increases employees’ risk of exploitation and forced labor, as well as exposing employers to reputational damage and civil action.<sup>79</sup>

### **A Call to Action**

For companies that source in the domestic U.S. apparel sector, it is likely that some of their production is made by undocumented workers. The conditions that allow for the exploitation of undocumented workers in the U.S. – the reliance on labor brokers, lack of transparency, and double-bookkeeping–also create the risk of reputational damage and legal sanctions for buyers and brands.

Yet, to help workers and reduce these risks, brands face a conundrum. In order to support workers’ welfare and legitimate aspirations for gainful employment, the workers have to be employed within the factory from which a brand sources. But employment of undocumented workers is illegal. For undocumented workers who have been living in American communities and working in U.S. factories for years if not decades, termination at the behest of a brand’s pursuit for ‘social compliance’ would be a cruel irony.

Brands that assess working conditions in their U.S. production, be it through social audits or other mechanisms, will likely face this dilemma. Some brands have reacted by dismissing undocumented workers or turning a blind eye to labor abuses. Neither will solve the problem or protect workers. **Instead, companies must ensure that undocumented workers’ rights are respected and press for legal reforms to ensure a dependable stream of workers whose rights are protected.**

## Case Study: New York Garment Manufacturer

In January 2013, Verité conducted a factory audit for a well-known garment brand that sourced some of its production to a New York-based factory. The supplier factory had produced for this label for 17 years and employed nine workers in total, all of whom spoke Spanish or Cantonese as their first languages. Verité audits found that the factory employed undocumented Mexican workers, some for as many as eight years. Because of their immigration status, these workers' hours of work and earnings were omitted from the factory's payroll documents, meaning workers were unable to pay income taxes or contribute to social security. However, worker interviews indicated that their conditions of work were decent: employees worked an average of eight hours per day, five days per week, with an hour-long break each day. Workers interviewed indicated that they were paid slightly over the minimum wage, received legal overtime rates, and were content with work in the factory.

After the Verité audit, the clothing brand requested that all workers employed in the factory be placed on payroll, in accordance with advice from legal counsel. The brand believed that severing its relationship with the factory or insisting that the undocumented workers be dismissed would result in a worst-case scenario for the workers -- the loss of their jobs. While these workers might find employment in another factory, future managers might take advantage of their undocumented status to mistreat or underpay them, as commonly occurs. Since the brand feared that undocumented workers might be dismissed, the brand sought to provide them with severance benefits and attempted to connect them with outside support services. Neither was feasible, so in the end, the factory placed all of the undocumented workers on payroll: they continue to work at the factory and now pay taxes and social security contributions.

The clothing brand struggled to find a satisfactory solution. Under current immigration policy and market conditions, the brand is incentivized to ignore undocumented workers in its domestic supply chain. Employers face potential repercussions, but such repercussions are minimal enough that manufacturers have consistently overlooked them. Yet the industry's reliance on undocumented labor is undeniably problematic. It creates risks around worker safety and treatment, legal compliance, corporate transparency, and brand reputation. As a result, undocumented employees' future employment is precarious and will remain so until appropriate immigration policies are instated.

### Recommendations

It is of the utmost importance that brands carry out in-depth assessments throughout their supply chains to identify labor risks that workers may be facing, as well as legal and reputational risks that the brand itself may face. If undocumented workers are discovered in this process, Verité advocates that rather than dismissing these workers or severing the relationship with the supplier, brands should work with the supplier in order to ensure that these workers' rights are respected and provide undocumented workers with resources so that they can obtain immigration and labor rights assistance.

For the specific risks related to trafficking of undocumented workers, Verité's [Fair Hiring Toolkit](#) provides detailed guidance for brands, suppliers, governments, and advocates on:

1. Improving Codes of Conduct and Company Policies
2. Raising Awareness and Building Capacity
3. Strengthening Assessments & Social Audits
4. Taking Corrective Action & Developing Systems Improvement Plans
5. Reporting & Transparency
6. Multi-Stakeholder & Multi-Brand Engagement
7. Public Policy Advocacy

It can be difficult to monitor the working conditions of undocumented workers, since many factories do not use workers' real names on payroll records and many undocumented workers are afraid of being discovered and are thus reluctant to speak openly with auditors. Therefore, there is a need for brands not just to take remedial actions, but also to advocate for reforms of laws that are detrimental not only to migrant workers, but also to

companies. Verité recommends that brands that depend on undocumented workers in the U.S. garment, agricultural, and other sectors unite to advocate for legal reforms. Only comprehensive immigration reform and increased protections will ensure a stable labor force and protect companies from legal and reputational risk.

- **Comprehensive immigration reform**

As long as undocumented workers are barred from obtaining legal status, companies will face a conflict of interest between workforce retention and legal compliance. This conflict of interest has led to a common challenge where employers are neither in compliance with the law nor in a position to protect their hard-working employees.

Businesses including Coca-Cola, McDonalds, Loews Hotels, Tyson Foods, Cargill, and other companies have demanded comprehensive immigration reform, including the creation of a temporary visa for low-skilled employees that ensures that their labor rights are protected.<sup>80</sup> Verité calls for a path to citizenship to be created for undocumented workers currently residing in the U.S. that includes increased protections for immigrants' rights, as laid out in the "Border Security, Economic Opportunity, and Immigration Modernization Act" (S. 744). While imperfect, these policy solutions will help shape a more humane immigration regime and workforce culture.

Alongside a path to citizenship for undocumented workers already in the U.S., Verité advocates for the streamlining and expansion of the guestworker visa program for low-skilled workers that is easier and cheaper for employers to use, allows for visa portability among employers, and includes increased protections for workers. The H-2B temporary visa program is designed to address employer demand for labor in non-agricultural industries. The House of Representatives has heard employer complaints in testimony concerning the H-2B visa program: "It is a constant struggle to make the program work. Instead of focusing on growing my small business, I spent an inordinate amount of time on H-2B issues."<sup>81</sup> To encourage increased use of temporary visa programs, quotas must be expanded and the programs must work to ensure that employers' business needs are met in a timely manner.

The H-2B visa program must also be reformed to prevent worker abuse and protect brands from legal and reputational risk caused by exploitative labor brokers. Verité has carried out extensive in-depth research on the ways in which exploitative labor brokers have subjected guestworkers to forced labor in the U.S. agricultural sector.<sup>82</sup> The Pennsylvania State School of Law and the National Guestworker Alliance document how brokers have exploited guest workers on H-2B visas, using workers' conditional immigration status as leverage in a similar manner to undocumented workers.<sup>83</sup> A 2010 Government Accountability Office report found H-2B worksite violations regarding minimum wage or overtime pay violations in 60 percent of cases, and the use of fraudulent documents in 80 percent of cases.<sup>84</sup> A reformed visa program must allow workers to transfer between worksites so they may be free to leave abusive situations. It must also prohibit labor brokers and employers from charging workers fees, provide for regular monitoring of worksites and housing, and provide for confidential, effective grievance mechanisms.

- **Worker protections against retaliation**

We ask businesses to support a nation-wide bill to strengthen labor protections for whistle-blowers, especially undocumented workers. Employers may threaten to notify immigration authorities if undocumented workers complain about their conditions of work.<sup>85</sup> This practice is a common occurrence, and protections must be broadened to encourage undocumented workers to come forward. In October 2013, California passed three bills designed to protect whistle-blowers and their families from retaliation by their employers or related persons: AB 263 – "Employment: retaliation: immigration-related practices," AB 524 "Immigrants: extortion," and SB 666- "Employment: retaliation." Such protections are vital to secure worksite compliance with U.S. labor regulations, but they must be extended across the U.S. to be fully effective.

- **Increased regulation of recruitment**

We ask businesses to support a bill similar to the previous H.R. 3344 - “Fraudulent Overseas Recruitment and Trafficking Elimination Act,” which requires third-party foreign labor brokers to “disclose in English and in the primary language of the worker being recruited specified information, including the identity of the employer and the recruiter, worker protections, and a signed copy of the work contract.”<sup>86</sup> Many cases of trafficking originate with deception regarding the place of work, wages, and other crucial information, as well as high recruitment fees that force migrant workers into debt bondage. H.R. 3344 would penalize third-party labor recruiters who fail to present accurate information. Verité also supports New York’s draft Justice for Jobseekers bill, which would prohibit labor brokers from charging workers advanced recruitment fees and would increase sanctions for fraudulent recruitment practices.<sup>87</sup>

### **Who is Verité?**

Verité is an international not-for-profit training, consulting and research NGO that has been a leader in supply chain social responsibility and sustainability since 1995. For its work, Verité was the winner of the Schwab Social Entrepreneur of the Year Award in 2011 and the Skoll Award for Social Entrepreneurship in 2007.

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### **Resources**

Verité, [Fair Hiring Toolkit](http://www.verite.org/helpwanted/toolkit) (www.verite.org/helpwanted/toolkit)

Verité, [An Ethical Framework for Cross-Border Labor Recruitment](#), 2012

Verité, [Forced Labor Commodities Atlas](http://www.verite.org/Commodities) (www.verite.org/Commodities)

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