

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS**

HSI Directive 21-03: Continued Presence

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Effective Date: February 24, 2021
Superseded: HSI Directive 10075.2, “Continued Presence,” dated October 6, 2016.
Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) personnel when requesting Continued Presence (CP) on behalf of victims of a severe form of human trafficking and who may be potential witnesses in the investigation and/or prosecution of those responsible for such trafficking, as well as those who have filed a civil action. CP is a discretionary law enforcement tool to be utilized on a case-by-case basis as warranted and appropriate. (Note: The Trafficking Victims Protection Act (TVPA) created CP, which is a renewable and revocable temporary immigration designation. The TVPA provides a definition of “victim of a severe form of trafficking” (defined in Section 3.6 below) and uses it as the standard for CP.)

When foreign national victims of a severe form of human trafficking receive CP, they are authorized to remain in the United States for a temporary period. CP recipients also receive access to public benefits and services. Unlike Deferred Action or the Significant Public Benefit Parole (SPBP), CP is intended to help alleviate victims’ concerns regarding removal from the United States and economic support. By alleviating these concerns, CP is intended to assist trafficking victims in reporting the trafficking crime and working with law enforcement throughout the investigation and potential prosecution. CP is further intended to stabilize trafficking victims and render them better able to cooperate with investigators and prosecutors.

2. **Policy.** It is the policy of HSI to request CP for victims of a severe form of human trafficking and who may be potential witnesses as early and expeditiously as practicable, which is consistent with HSI’s victim-centered approach. It is also HSI policy to adjudicate on a timely basis requests for CP from HSI offices or from other federal law enforcement agencies (LEAs) requesting CP on their own behalf or on behalf of state and local LEAs and/or prosecutors in compliance with applicable laws.
3. **Definitions.** The following definitions apply for the purposes of this Directive only:
 - 3.1. **Continued Presence.** A designation provided to individuals identified by law enforcement as victims of a severe form of human trafficking and who may be potential witnesses to such trafficking, as well as individuals who have filed a civil action. CP

allows eligible noncitizens¹ to remain in the United States temporarily to facilitate an investigation or prosecution of the human trafficking-related crimes committed against them or for the duration of their civil case. CP may be granted initially for a period of two years and renewed in increments of up to two years. CP is authorized under provisions of section 107(c)(3) of the TVPA, which is codified at Title 22, United States Code (U.S.C.), Section 7105(c)(3).

- 3.2. Requesting LEA.** Any federal, state, or local LEA that wishes to submit an application for CP.
- 3.3. Sponsoring LEA.** Any federal LEA that agrees to sponsor an application for CP submitted by a state or local LEA.
- 3.4. U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Certification or Certification Letter.** Certification Letter issued by HHS ORR which confirms trafficking victims' eligibility for public benefits to the same extent as refugees. When HSI approves CP, HHS is simultaneously notified in order to generate the HHS Certification Letter. *See* 22 U.S.C. § 7105(b)(1)(E).
- 3.5. Victim-Centered Approach.** Approach which places equal value on the investigation and prosecution of human traffickers and on the identification and stabilization of victims of trafficking. The victim-centered approach includes the consideration of the victim's rights and needs throughout the investigation and prosecution.
- 3.6. Victim of a Severe Form of Trafficking in Persons.** As defined in the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103(13), 22 U.S.C. § 7102(14), a victim of a severe form of trafficking is a person subjected to:
- (a) sex trafficking (the recruitment, harboring, transportation, provision, or obtaining of a person for commercial sex) in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 4. Responsibilities.**
- 4.1. The Executive Associate Director of HSI** is responsible for the oversight of the policy and procedures in this Directive.

¹ 22 U.S.C. § 7105(c) refers to individuals eligible for CP as "aliens." The term "alien" is defined in 8 U.S.C. § 1101(a)(3) as any person not a citizen or national of the United States. For purposes of this Directive, "noncitizen" will use the same definition as 8 U.S.C. § 1101(a)(3).

- 4.2. The **Director of the Center for Countering Human Trafficking (CCHT)** is responsible for the CP program, including oversight of processing requests for CP; data collection, reporting and storage; training; and overall implementation of the provisions of this Directive.
- 4.3. The **Unit Chief of Programs at CCHT** is responsible for:
- 1) Granting, terminating, or denying requests for CP;
 - 2) Maintaining the database in which all requests for CP are entered and tracked;
 - 3) Entering, updating, and maintaining subject records in the database;
 - 4) Circulating the CP applicant's name and personal identifiers to other federal LEAs for purposes of vetting and deconfliction;
 - 5) Safeguarding information provided by the requesting or sponsoring LEA(s);
 - 6) Specifying any conditions he or she deems appropriate when approving a request for CP;
 - 7) Ensuring that all LEAs requesting or sponsoring CP comply with the procedures in the "Continued Presence Protocol for Requesting and Sponsoring Law Enforcement Agencies"; and
 - 8) Overseeing all training and development of materials and policy regarding CP.
- 4.4. **Special Agents in Charge** are responsible for:
- 1) Implementing the provisions of this Directive within their respective areas of responsibilities (AORs);
 - 2) Designating points of contact (POCs) to liaise with state and local LEAs requesting CP. These POCs should be either the Victim Assistance Coordinator (VAC) or any other law enforcement officer who has received training and can provide guidance; and
 - 3) Ensuring the monitoring of HSI-sponsored CP recipients who reside in their AOR.
- 4.5. **Special Agents (SAs)** who conduct human trafficking investigations are responsible for:
- 1) Making an expeditious initial determination as to whether a noncitizen is eligible for CP while also safeguarding national security and public safety and preventing fraud. In determining eligibility for CP, SAs and their supervisors must at least:

- a) Establish the alleged victim's identity, immigration status, and citizenship;
 - b) Determine if a crime may have been committed;
 - c) Identify any threats to public safety and/or national security posed by the alleged victim(s) by conducting all relevant law enforcement queries; and
 - d) Determine if the alleged crimes violate U.S. laws.
- 2) Working with state and local LEAs in completing determinations for CP requests and assisting with those requests as needed.
 - 3) Once a case has been accepted for federal prosecution, informing the United States Attorney's Office that CP is being requested or has been granted for a potential witness and/or victim in a federal case.
 - 4) Completing ICE Form 73-031, Request for Continued Presence, along with the accompanying documentation as early as practicable upon encountering a victim;
 - 5) Submitting the CP requests to their Group Supervisor for approval;
 - 6) Filing extensions for CP 60 days before its expiration;
 - 7) Monitoring CP recipients. (Note: When the CP recipient resides outside of the AOR, the requesting SA must coordinate monitoring – through a collateral request – with the HSI office responsible for the area in which the CP recipient resides.)
 - 8) Notifying CCHT for purposes of termination if a CP recipient commits a crime, absconds, departs without Advance Parole, receives an immigration benefit, or if the SA determines that the individual is not a trafficking victim;
 - 9) Maintaining copies of CP requests in the case file; and
 - 10) Consulting with the Office of the Principal Legal Advisor for advice on any legal questions regarding CP.

4.6. Victim Assistance Specialists (VASs) are responsible for:

- 1) Assisting SAs or VACs with CP requests, as needed;
- 2) Serving as POCs for any victim who is eligible for CP based on the filing of a civil action;
- 3) Assisting state and local LEAs to help facilitate CP requests;

- 4) In close coordination with CCHT:
- a) Developing and/or obtaining materials to assist state and local LEAs in working with federal law enforcement to obtain CP for victims in cases investigated or prosecuted at the state or local level;
 - b) Providing guidance and awareness training regarding CP to state and local LEAs, as resources and funding are available; and
 - c) Distributing materials to state and local LEAs as required by law. *See* 22 U.S.C. § 7105(c)(3).

(Note: It is not the responsibility of the VAS to complete CP requests in support of criminal cases.)

5. Procedures/Requirements.

5.1. Mechanisms Prior to Determining Eligibility for Continued Presence: CP should be requested once the noncitizen has been identified as a victim and may be a potential witness to an investigation or prosecution. However, several statutory and administrative mechanisms can be utilized to assist potential victims while determining if a victim qualifies for CP and for other witnesses deemed not to be victims of a severe form of human trafficking. The most commonly used mechanisms available for this purpose are Deferred Action and SPBP.

- 1) Deferred Action is a discretionary measure frequently utilized to defer initiation of removal proceedings or the removal of a noncitizen from the United States. Deferred Action is based exclusively on the exercise of prosecutorial discretion. Deferred Action does not confer any legal immigration status upon a noncitizen and a removal proceeding may be initiated or reinstated at any time.
- 2) SPBP is an extraordinary measure that permits an otherwise inadmissible noncitizen to temporarily enter the United States. SPBP cannot be used to circumvent applicable immigration or visa processes and timelines. SPBP may be sought on a case-by-case basis for urgent humanitarian reasons and/or significant public benefit. *See* Immigration and Nationality Act (INA), Section 212(d)(5)(A), 8 U.S.C. § 1182(d)(5). SPBP does not constitute an admission to the United States and confers only temporary authorization to be considered lawfully present in the United States without having been admitted. *See* INA § 101(a)(13)(B), 8 U.S.C. § 1101(a)(13)(B).

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5.2. Eligibility.

- 1) Victim/Potential Witness. CP may be authorized for a noncitizen who is a victim of a severe form of trafficking and may be a potential witness to such trafficking. *See* 22 U.S.C. § 7105(c)(3). The following considerations apply:
 - a) SAs should request CP for every eligible victim who may be a potential witness in a case so that he or she is available, if necessary, for the investigation.
 - b) CP is applicable to victims of labor trafficking as well as sex trafficking.
- 2) Civil Action. CP shall be authorized for a noncitizen identified as a victim of a severe form of trafficking who may be a potential witness to such crime and who has filed a civil action under 18 U.S.C. § 1595, and the noncitizen shall be permitted to remain in the United States until the action is concluded.
 - a) A victim or a victim's legal representative may contact the nearest VAS and ask that CP be requested based on a civil action. The VAS must receive a copy of the filed complaint before initiating a request.
 - b) The victim or the victim's legal representative must provide an update on the case status to the VAS on a quarterly basis.
 - c) A victim granted CP based on a civil action shall be permitted to remain in the United States until the action is concluded. If HSI determines, in consultation with the U.S. Attorney's Office, that the victim has failed to exercise due diligence in pursuing such action, HSI may revoke CP. *See* 22 U.S.C. § 7105(c)(3)(iii).

- 5.3. Requesting Continued Presence.** CP should be requested as soon as practicable after the individual is determined to be a victim of a severe form of human trafficking and may be a potential witness.

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5.4. Sponsoring State and Local Law Enforcement Continued Presence Requests.

See the “Continued Presence Protocol for Requesting and Sponsoring Law Enforcement Agencies” for guidance on responding to state or local requesting LEAs.

5.5. Documentation Requirements for Continued Presence Requests.

1) Initial requests for CP require submission of the following:

- a) ICE Form 73-031, Request for Continued Presence;
- b) Certification for Continued Presence by Requesting Law Enforcement Agency (Attachment A);
- c) A completed U.S. Citizenship and Immigration Services (USCIS) Form I-765, Application for Employment Authorization, if appropriate;
- d) USCIS Form I-102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document. (Note: U.S. Customs and Border Protection (CBP) Form I-94, Arrival/Departure Record, and USCIS Form I-766, Employment Authorization Document, are controlled documents.) Both USCIS Forms I-765 and I-102 can be accessed on the USCIS website and must contain original signatures of the applicant (the victim). For mailing purposes, the forms should contain the address of the local HSI office rather than the victim’s address both to ensure the victim’s safety and also because they are controlled documents;
- e) For a request based on a civil action, a copy of the civil complaint and proof of filing; and
- f) All required accompanying documents, including results of records checks and two passport style photographs of each victim.

2) Extension requests require submission of the following:

- a) ICE Form 73-032, Request for Extension of Continued Presence;
- b) Certification for Continued Presence by Requesting Law Enforcement Agency (Attachment A);
- c) A completed USCIS Form I-765, Application for Employment Authorization, if appropriate;

- d) USCIS Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document. (Note: CBP Form I-94, Arrival/Departure Record, and USCIS Form I-766, Employment Authorization Document, are controlled documents.). Both USCIS Forms I-765 and I-102 can be accessed on the USCIS website and must contain original signatures of the applicant (the victim). For mailing purposes, the forms should contain the address of the local HSI office rather than the victim's address both to ensure the victim's safety and also because it is a controlled document; and
 - e) All required accompanying documents, including results of records checks and two passport style photographs of each victim.
- 3) Advance Parole Requests. Generally, the Department of Homeland Security (DHS) discourages victims authorized with CP from departing the United States; however, DHS recognizes that there may be emergency situations requiring their departure. Advance parole is required in these instances. If a CP recipient must depart the United States for exigent reasons, the requestor must submit to the Parole and Law Enforcement Programs Unit (PLEPU) an SPBP application and a USCIS Form I-131, Application for Travel Document, along with a statement concerning the basis of the travel.
- a) Prior to the victim's departure, the sponsoring LEA case agent must collect any U.S. Government-issued documents (e.g., CBP Form I-94, Arrival/Departure Record, and USCIS Form I-766, Employment Authorization Document). Upon the victim's return to the United States, these documents are returned to the victim.
 - b) Without advance parole, a victim's departure will result in the termination of the previously authorized CP. If HSI has a continued interest in the individual's continued presence in the United States, the requestor may apply to PLEPU for SPBP to facilitate the victim's return to the United States. A new request for CP must be submitted upon the victim's return.
- 5.6. Records Checks.** To safeguard national security and public safety and prevent fraud, LEAs must perform queries in all relevant law enforcement databases for each victim, including information from foreign LEAs. Special Interest Undocumented Noncitizens must be queried through classified databases. Copies of all positive results must be sent to CCHT.
- 5.7. Fingerprints.** SAs requesting CP are required to fingerprint CP applicants. Fingerprint cards (10-print) should remain in the case file.
- 5.8. Fees.** In general, all fees for applications submitted in conjunction with a request or extension of CP will be waived.

5.9. Significant Public Benefit Parole for Family Members.

- 1) Pursuant to INA §§ 212(d)(5)(A) and 240A(b)(6), 8 U.S.C. §§ 1182(d)(5) and 1229b(b)(6), a request for an SPBP on behalf of a victim's family member(s) may be authorized if, at the time of the application:
 - a) The noncitizen granted CP is under 21 and the family member is a spouse, child, parent, or unmarried sibling (under 18 years of age);
 - b) If the victim granted CP is 21 or over and the family member is a spouse or child; or
 - c) The parent(s) or sibling(s) of the victim granted CP is in present danger due to the victim's escape from trafficking or cooperation with law enforcement (irrespective of the age of the victim).
- 2) A relative may not be granted parole under INA § 240A(b)(6), 8 U.S.C. § 1229b(b)(6) if DHS has reason to believe that the relative was knowingly complicit in the trafficking of the victim, or if the relative is a noncitizen described in INA §§ 212(a)(2) or (3), 237(a)(2) or (4), 8 U.S.C. §§ 1182(a)(2) or (3), or 1227(a)(2) or (4).
- 3) The LEA requesting or sponsoring CP may submit an SPBP request for the family member(s) to PLEPU. *See* INA § 240A(b)(6)(A), INA § 212(d)(5)(A), 8 U.S.C. § 1229b(b)(6)(A); 22 U.S.C. § 7105(c)(3)(B). The general procedures in place for LEAs requesting SPBP on behalf of an individual should be followed for the victim's family members.

5.10. Approval. CCHT will review the application and, if all criteria are met, may grant an initial request for CP for a period of two years. The amount of time required for CCHT to adjudicate a specific CP request will vary depending upon the unique facts of the case. However, CCHT will make an effort to process the sponsoring LEA's request within 30 days from the date it receives the application.

Extensions of CP may be approved in increments of up to two years. Requests for extensions must be submitted to CCHT at least 60 days prior to the expiration date of CP. The amount of time required for CCHT to adjudicate an extension request for CP will vary depending upon the unique facts of the case. However, CCHT will make an effort to process the extension request within 30 days from the date it receives the application.

If CP is authorized or extended, CCHT will take the following actions within 10 business days:

- 1) Notify the Headquarters POC and the requesting LEA's case agent and/or VAS;

- 2) Contact HHS ORR for issuance of a Certification Letter to the victim in order for him or her to receive certain benefits and social services similar to those granted to refugees;
- 3) Forward the pre-adjudicated USCIS Forms I-765 and I-102 to the USCIS Vermont Service Center for production of USCIS Form I-766, Employment Authorization Document, and CBP Form I-94, Arrival/Departure Record; and
- 4) If the victim is outside the United States, provide assistance, if needed, in coordinating the issuance of USCIS Form I-512, Authorization for Parole of an Alien into the United States, or other boarding documents.

5.11. Denial. CCHT will notify the requesting LEA with a brief written statement when a CP request is denied.

5.12. Termination of Continued Presence. CCHT may terminate CP at any time. CCHT will notify the requesting HSI office of its decision prior to terminating CP.

SAs must notify CCHT to terminate CP in the event that a CP recipient:

- 1) departs the United States without advance parole;
- 2) commits a crime or engages in unlawful activity;
- 3) fails to comply with the reporting conditions;
- 4) absconds;
- 5) is no longer identified as a trafficking victim;
- 6) receives an immigration benefit or otherwise adjusts status; or
- 7) if granted based on a civil action, has failed to exercise due diligence in pursuing the civil action or becomes inadmissible under one of the enumerated grounds of inadmissibility, has reached the conclusion of the civil proceedings, and/or the civil case has been dismissed. *See* 22 U.S.C. § 7105(c)(3)(A)(iii-iv).

(Note: If CCHT terminates CP, SAs will make every effort to locate the CP recipient, collect issued documents, and issue a DHS Form I-862, Notice to Appear, unless the individual is authorized to remain in the United States lawfully.)

5.13. Termination of Benefits. Unlike CP, benefits and services provided by HHS must be terminated at the conclusion of an investigation and/or prosecution. SAs shall notify CCHT upon determination that a CP recipient is no longer needed to support an

investigation and/or court proceedings. Upon this notification, CCHT will contact HHS for the termination of the CP recipient's benefits.

(Note: CP recipients may continue on CP at the conclusion of an investigation and/or prosecution; however, CCHT must notify HHS of the conclusion of the criminal investigation, prosecution, or the civil case.)

6. **Recordkeeping.** CP records will be stored in an IT system maintained by CCHT and relevant CP records will be maintained in the A-file. CP data will be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with the DHS Handbook for Safeguarding Sensitive Personally Identifiable Information, dated March 2012, or as updated. All relevant documentary materials produced or provided in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule (GRS) or a NARA-approved agency-specific records control schedule; unscheduled records are treated as permanent and may not be destroyed, deleted, loaned, or transferred. In the event that the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.
7. **Authorities/References.**
 - 7.1. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 103, 107(c)(3); 22 U.S.C. §§ 7102, 7105 and all subsequent reauthorizations.
 - 7.2. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 402, 421.
 - 7.3. INA § 101(a)(13)(B), 8 U.S.C. § 1101(a)(13)(B) (someone who has been paroled under INA §212(d)(5) is not considered to have been admitted).
 - 7.4. INA § 212(a)(2-4, 9), 8 U.S.C. § 1182(a)(2-4, 9) General Classes of Aliens Inadmissible.
 - 7.5. INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) (authority for the Attorney General to grant parole).
 - 7.6. INA § 237(a)(2-4), 8 U.S.C. §§ 1227(a)(2-4) General Classes of Deportable Aliens.
 - 7.7. INA § 240A(b)(6), 8 U.S.C. § 1229b(b)(6) (possible eligibility for CP for relatives of those who have already been granted CP).
 - 7.8. Title 28, Code of Federal Regulations, Section 1100.35(b), Authority to permit continued presence in the United States for victims of trafficking in persons.
 - 7.9. DHS Handbook for Safeguarding Sensitive Personally Identifiable Information, dated March 2012, or as updated.

8. Attachments.

8.1. Attachment A. Certification for Continued Presence by Requesting Law Enforcement Agency.

9. No Private Right. This Directive provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful or litigative prerogatives of ICE.

**DAVID C
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Patrick J. Lechleitner
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**CERTIFICATION FOR CONTINUED PRESENCE
BY REQUESTING LAW ENFORCEMENT AGENCY**

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