

HOMELAND SECURITY INVESTIGATIONS

HSI Directive 24-02: Continued Presence

Issue Date: September 11, 2024

Superseded: HSI Directive 21-03, Continued Presence, dated February 26, 2021.

- Purpose/Background.** This Directive establishes policy and procedures for Homeland Security Investigations (HSI) personnel when requesting Continued Presence (CP) on behalf of victims of a severe form of human trafficking who may be potential witnesses in the investigation and/or prosecution of those responsible for such trafficking or have filed a federal civil action under Title 18, United States Code (U.S.C.), Section (§) 1595. CP provides victims with a legal means to temporarily live and work in the United States, thus providing victims stability, a means of support, and protection from removal. It alleviates fears of removal and allows for economic support, which not only stabilizes victims, but also improves victims' ability to seek justice against their trafficker either by cooperating with law enforcement, filing a civil action, or both.

CP is an important tool for federal, state, tribal, territorial, and local law enforcement in their investigation and prosecution of human trafficking-related crimes, leading to more successful prosecutions. The routine use of CP fosters trust with service providers and organizations that may be a greater source of referrals for law enforcement when they know that victims will be protected if they come forward. Ultimately, this increases law enforcement's ability to identify victims and traffickers.
- Policy.** It is HSI's policy that Special Agents (SAs) should expeditiously determine initial CP eligibility and complete the CP application as early as practicable upon encountering a victim. CP is intended to be used as early as possible in an investigation. Accordingly, if SAs meet with alien victims, find them to be credible, and intend to pursue an initial investigation, they should request CP for the victims. Requesting CP as soon as possible is consistent with a victim-centered investigation, puts the victim on a path to greater stability, and safeguards the investigation and prosecution or civil action.

SAs should promote CP to federal, state, local, tribal, and territorial law enforcement that conduct human trafficking investigations and/or prosecutions and submit CP requests on their behalf when requested. This supports additional victims, facilitates good local relationships with other human trafficking investigators and prosecutors, and brings more traffickers to justice.

Furthermore, SAs shall submit CP requests from civil attorneys when based on a federal civil action under 18 U.S.C. § 1595. *See* 22 U.S.C. § 7105(c)(3)(A)(iii). Not every human trafficker can be criminally investigated and prosecuted; civil actions are another way of

holding human traffickers accountable and they can successfully assist victims in recovering damages and taking away the proceeds and related assets from traffickers.

3. Definitions. The following definitions apply for the purposes of this Directive only:

- 3.1. Continued Presence.** CP is a temporary immigration designation provided to aliens identified by law enforcement as victims of a “severe form of trafficking in persons” who may be potential witnesses. CP allows alien human trafficking victims to lawfully remain and work in the United States temporarily during the investigation into the human trafficking-related crimes committed against them and during any civil action under 18 U.S.C. § 1595 filed by them against their traffickers. **(b) (7)(E)**

CP recipients also receive federal benefits and services.

- 3.2. Requesting Law Enforcement Agencies.** In addition to HSI, federal law enforcement agencies (LEAs) who may request CP include the Federal Bureau of Investigation; U.S. Department of State Diplomatic Security Service; U.S. Attorneys’ Offices; U.S. Department of Justice, Civil Rights Division, Criminal Section; U.S. Department of Labor; and the Equal Employment Opportunity Commission. State, local, tribal, and territorial LEAs investigating or prosecuting human trafficking may also request CP but must do so through a federal LEA.

- 3.3. Victim-Centered Investigation.** Requesting CP for all eligible individuals is an example of using a victim-centered approach and conducting a victim-centered investigation. The goal of a victim-centered investigation is to focus the investigation around the victim while minimizing any undue stress, harm, and trauma to the victim. Using this approach prioritizes victims’ rights, safety, and interests. This approach is key to successful investigations. While it requires coordinated access to an array of victim assistance resources to facilitate safety and healing, access to victim assistance is not tied to prosecutorial decisions or outcomes.

- 3.4. Victim of a Severe Form of Trafficking in Persons.** All requesting LEAs and the Center for Countering Human Trafficking (CCHT) must use the following statutory definition at 22 U.S.C. § 7102 (11-12) created under the Trafficking Victims Protection Act of 2000 to determine an individual’s eligibility for CP:

(a) sex trafficking (the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting 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.

Note that any CP request must include a description of how the individual meets this definition and not the elements of a criminal statute. The requesting law enforcement

officer should include a concise statement regarding the indicators of force, fraud, and coercion OR that the individual is a minor engaged in a commercial sex act. CP requests in support of sex trafficking investigations should include indicators that the sex act was committed in exchange for something of value.

4. Responsibilities.

4.1. The **Executive Associate Director of HSI** is responsible for the oversight of the policy and procedures in this Directive.

4.2. The **Director of the CCHT** (HSI Assistant Director) is responsible for the CP program, including oversight of CP processing, data collection, reporting and storage, nationwide training and awareness, technical assistance to requesting LEAs, and overall implementation of the provisions of this Directive.

4.3. The **CCHT Programs Unit Chief** is responsible for:

- 1) Granting, denying, and revoking CP requests as expeditiously as possible to serve victims and justice nationwide;
- 2) Maintaining the Continued Presence Portal (CP Portal);
- 3) Safeguarding 8 U.S.C. § 1367 protected information appropriately;
- 4) Directing all requesting LEAs to comply with the procedures and best practices in the Continued Presence Resource Guide for Submitting Law Enforcement Agencies and Civil Attorney (CP Resource Guide), dated September 2023, or as updated; and
- 5) Developing and disseminating materials and training to encourage and assist requesting LEAs to use CP. *See* 22 U.S.C. § 7105(c)(3).

4.4. **Special Agents in Charge (SACs)** are responsible for:

- 1) Implementing the provisions of this Directive and the CP Resource Guide within their respective AOR; and
- 2) Delegating to SAC designees the authority to approve CP requests and sending the list of designees, as well as updates, to ContinuedPresence@CCHT.dhs.gov.

4.5. **Special Agents (SAs)** who conduct human trafficking investigations are responsible for:

- 1) Expeditiously determining initial CP eligibility and completing the application as early as practicable upon encountering a victim;
- 2) Submitting CP requests on behalf of state-, local-, tribal-, and territorial-requesting LEAs conducting human trafficking investigations and/or prosecutions;

- 3) Submitting CP requests from civil attorneys when based on a federal civil action under 18 U.S.C. § 1595;
- 4) Obtaining A-numbers, when needed, from the appropriate point of contact (POC) in the field on behalf of any requesting LEA;
- 5) Promoting CP to federal, state, local, tribal, and territorial law enforcement that conduct human trafficking investigations and/or prosecutions;
- 6) Adhering to all procedures in this Directive, the CP Resource Guide, and as instructed in the CP Portal; and
- 7) Coordinating with the appropriate Office of the Principal Legal Advisor Field Location T visa/U visa/Violence Against Women Act of 2000 (T/U/VAWA) POC if CP recipients are in removal proceedings. (Note: T Visa and U Visa are the common names referencing T Nonimmigrant Status and U Nonimmigrant Status.)

4.6. Victim Assistance Program Specialists (VAPSs) are responsible for:

- 1) Assisting SAs with CP;
- 2) Serving as the POC for civil attorneys for requests based on civil actions;
- 3) Notifying the requesting SA after an approval based on a civil action should any civil attorney not submit a quarterly litigation update;
- 4) Providing information on CP to requesting LEAs; and
- 5) Referring alien trafficking victims, including those with pending and approved CP requests, to an immigration attorney experienced with T visas.

5. Procedures/Requirements.

5.1. Continued Presence Portal. SAs submit all HSI CP requests – initial, extension, or revocation – via the CP Portal.

5.2. Eligibility. To be eligible for CP, an individual must be identified by law enforcement as an alien victim of a severe form of trafficking in persons who may be a potential witness in a human trafficking investigation/prosecution OR who has filed a civil action under 18 U.S.C. § 1595. *See* 22 U.S.C. § 7105(c)(3).

- 1) Identified as a Victim of a Severe Form of Trafficking in Persons. This eligibility requirement is met if an SA believes that the individual credibly appears to be a victim based on the individual's own statement. No corroboration is needed.

- 2) Who May Be a Potential Witness in a Human Trafficking Investigation/Prosecution. This eligibility requirement is met if, after an initial interview, an SA finds the victim credible and the SA will be further investigating any allegations of human trafficking. SAs should have some indication that this individual has information that could be helpful to the investigation or prosecution of the trafficker. This maintains the ability of the victim-witness to be lawfully present in the United States for the duration of the investigation and prosecution. If an individual is too traumatized to assist immediately but may be helpful later, CP is appropriate. There is no requirement for an arrest, indictment, prosecution, concurrence of a prosecutor, or selection as a testifying victim-witness.
- 3) Filed a Civil Action. SAs shall submit CP requests on behalf of victims who have filed a federal civil action under 18 U.S.C. § 1595. *See* 22 U.S.C. § 7105(c)(3)(A)(iii). Although SAs have no investigative responsibility in this situation, local HSI assistance is required to obtain fingerprints, run records checks, verify the individual's identity in person, collect photographs, obtain signatures, assign an A-number, and provide the individual with documents, if approved. There is no need for a criminal investigation or interview. The CP Resource Guide, available on the CCHT's HSI Net page, instructs civil attorneys and/or victims who have filed such a civil action to contact the nearest HSI VAPS to initiate the process.

5.3.

(b) (7) (E)

5.4. Requirements for CP Portal Request.

- 1) A-Number. Each request requires an A-number. If the individual has no A-number, SAs should obtain one from the designated POC in the field office for any HSI CP requests (based on criminal investigations and civil actions) or those on behalf of a requesting LEA. SAs should not issue a Notice to Appear (NTA) to a victim or request deferred action in order to obtain an A-number.
- 2) CP Requests, Initial and Extension. SAs should prepare and collect the following items in advance of entering a CP request in the CP Portal:
 - a) Two U.S. Citizenship and Immigration Services (USCIS) forms available online to ensure use of the most recent version which should be uploaded to the CP Portal:
 - i) USCIS Form I-765, Application for Employment Authorization, signed by the victim in black ink and with two passport photographs; and

ii) USCIS Form I-102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document, signed by the victim in black ink.

- b) Criminal records checks, both positive and negative results, conducted within 30 days of the CP request (fingerprints remain with the field office); and
- c) For civil actions only, an uploaded copy of the time and date-stamped civil complaint, a one-page description of the litigation, and a one-page description of how the civil litigant meets the definition of a “victim of a severe form of trafficking.”

5.5. Instances Where the Victim Resides in Another HSI AOR. If the victim resides in another AOR, the requesting LEA must obtain assistance from an HSI SA in the victim’s AOR to obtain fingerprints, run records checks, verify the individual’s identity in person, collect photographs, obtain signatures, and provide the individual with documents, if approved.

5.6. Fees. There are no fees associated with CP requests.

5.7. Avoid Issuing Notices to Appear (NTA) to Victims. There is no need to issue an NTA in conjunction with CP or to obtain an A-number; in fact, doing so can be damaging to a victim’s willingness to assist and to the victim’s trust in the SA. SAs should avoid issuing an NTA for a trafficking victim absent compelling circumstances, such as a serious criminal background unrelated to any criminal acts the victim may have been forced to perform as part of the trafficking scheme. Issuing an NTA inhibits the trust that victims may place in HSI, affects their willingness to cooperate in the overall investigation, and undermines the purpose of CP.

5.8. Significant Public Benefit Parole (SPBP) for Family Members. SAs may request SPBP via (b) (7)(E) on behalf of a victim’s family member(s) if, at the time of the application, the CP recipient:

- a) Is under 21 and the family member is a spouse, child, parent, or unmarried sibling (under 18 years of age);
- b) Is 21 or over and the family member is a spouse or a child; or
- c) Has a parent(s) or sibling(s) in present danger due to the victim’s escape from trafficking or cooperation with law enforcement (irrespective of the age of the victim). *See* Immigration and Nationality Act §§ 212(d)(5)(A) and 240A(b)(6), 8 U.S.C. §§ 1182(d)(5) and 1229b(b)(6).

5.9. Advance Parole. If a CP recipient must depart the United States for exigent reasons, the SA must request Advance Parole via (b) (7)(E) for CP to resume upon the CP recipient’s return to the United States. The SA must collect Form I-94, Arrival/Departure Record, and the Employment Authorization Document from the victim before departure and return it to the victim upon reentry.

5.10. Approval.**(b) (7)(E)**

5.11. System Updates. A CP approval generates ENFORCE Alien Removal Module and PLANet updates to reflect the approval and to avoid inadvertent enforcement actions against the victim.

5.12. Victim Documents. SAs receive the victim's I-94 and Employment Authorization Document by mail and must provide these controlled documents directly to the victim and provide advisements according to the CP Resource Guide. Separately, the VAPS receives the victim's certification letter that demonstrates eligibility for federal benefits and services and provides it directly to the victim.

5.13. Monthly Contact (b) (7)(E)

(b) (7)(E)

5.14. Denial. The CCHT will inform the requesting LEA of a denial with a brief written statement.

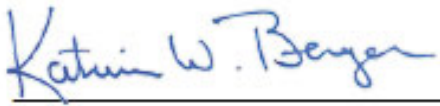
5.15. Extension. SAs should submit extension requests via the CP Portal 60 days prior to the CP's expiration so that the victim's CP, benefits, and work authorization do not lapse. USCIS will mail documents to the SA to provide to the victim. Additionally, SAs should strive to ensure that no gap in protection exists between CP and the grant of a T visa in order to maintain full protection and stabilization for the victim. SAs should therefore request an extension duration that will capture the needs of the investigation and the likely T visa approval date.

5.16. Revocation. The CCHT may revoke the approval of CP when certain factors and circumstances arise. As such, SAs should submit revocation requests via the CP Portal if the victim:

- 1) Is granted a longer-term immigration benefit or otherwise adjusts status;
- 2) Departed the country without Advance Parole;
- 3) Absconded;

- 4) Committed a crime or engaged in unlawful activity;
 - 5) Concluded the civil action;
 - 6) 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. 22 U.S.C. § 7105(c)(3)(A)(iii)-(iv); or
 - 7) Is no longer identified as a trafficking victim.
- 5.17. U.S.C. § 1367 Protections.** SAs are prohibited from disclosing any information, with limited exceptions, regarding applicants for, and beneficiaries of, CP, T visas, U visas, and VAWA relief. In all cases, SAs should consult and confirm current policy prior to disclosing any information. *See* U.S. Immigration and Customs Enforcement (ICE) Directive 10036.2, Implementation of Section 1367 Protections for Noncitizen Victims of Crime, dated March 16, 2022, or as updated.
- 5.18. Training.** The CCHT conducts online training webinars for law enforcement nationwide and makes available a suite of materials on its HSI Net page, including the CP Resource Guide, brochure, and recorded videos. HSI offices may contact (b) (7)(E) @CCHT.dhs.gov to schedule training for their AOR.
- 6. Recordkeeping.** CP records are stored by the CCHT within the CP Portal. CP data will be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with the Department of Homeland Security (DHS) Handbook for Safeguarding Sensitive Personally Identifiable Information, dated December 4, 2017, 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 or a NARA-approved agency-specific records control schedule; unscheduled records are treated as permanent and may not be destroyed, deleted, loaned, or transferred. If 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.** 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.
 - 7.4.** DHS Handbook for Safeguarding Sensitive Personally Identifiable Information, dated December 4, 2017, or as updated.

- 7.5. DHS Center for Countering Human Trafficking, Continued Presence Resource Guide for Submitting Law Enforcement Agencies and Civil Attorneys (2023).
- 7.6. ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims, dated December 2, 2021, or as updated.
- 7.7. ICE Policy Number 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, dated June 17, 2011, or as updated.
- 7.8. ICE Directive 10036.2, Implementation of Section 1367 Protections for Noncitizen Victims of Crime, dated March 16, 2022, or as updated.
- 7.9. HSI Directive 21-05, Federal Victim Assistance Mandates and Responsibilities, dated October 19, 2021, or as updated.
- 7.10. HSI Handbook 22-04, Human Trafficking Investigations Handbook, dated May 18, 2022, or as updated.
- 7.11. HSI Handbook 18-01, T Nonimmigrant Status (T Visa) Handbook, dated January 31, 2018, or as updated.
- 7.12. Continued Presence Resource Guide for Submitting Law Enforcement Agencies and Civil Attorneys, dated September 2023, or as updated.
- 8. **Attachments.** N/A.
- 9. **No Private Right.** This Directive provides only internal HSI 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 HSI.



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09/30/2024

Date