HSI Directive 10075.2: Continued Presence

Issue Date: October 6, 2016
Effective Date: 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 3.7 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 received 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. **Absconder.** An alien whose CP authorization has been terminated or has expired and who is no longer authorized to be lawfully present in the United States and is avoiding apprehension.

3.2. **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 aliens 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).


3.4. **Requesting LEA.** Any federal, state, or local LEA that wishes to submit an application for CP.

3.5. **Sponsoring LEA.** Any federal LEA that agrees to sponsor an application for CP submitted by a state or local LEA.

3.6. **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.

3.7. **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 subjecting 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.

4.2. The **Assistant Director, International Operations**, is responsible for ensuring the overall implementation of the provisions of this Directive.
4.3. The Unit Chief, Parole and Law Enforcement Programs Unit (PLEPU), holds the final authority to issue or deny CP and is responsible for the implementation of the provisions of this Directive. More specifically, the Unit Chief of PLEPU is responsible for:

1) Granting, terminating, or denying requests for CP;

2) Maintaining the Parole Case Tracking System (PCTS) database in which all requests for CP are entered and tracked;

3) Entering, updating, and maintaining subject records in the PCTS 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 (SACs) 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 IISI-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 an alien is eligible for CP while 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 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 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 PLEPU for purposes of termination if a CP recipient commits a crime, absconds, departs without Advance Parole, or 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 PLEPU:
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 alien 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 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 an alien 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 an alien and a removal proceeding may be initiated or reinstated at any time.

2) SPBP is an extraordinary measure that permits an otherwise inadmissible alien 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).

(Note: Absent exigent circumstances, Deferred Action or SPBP should not be used in lieu of CP, because CP recipients may be eligible to receive public benefits.)

5.2. Eligibility.

1) Victim/Potential Witness. CP may be authorized for an alien 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 an alien 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 alien 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 alien has failed to exercise due diligence in pursuing such action, HSI may revoke the order permitting the alien to remain in the United States. See 22 U.S.C. § 7105(e)(3)(ii).

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.

1) During a field interview, limited questioning of the victim may be insufficient to determine eligibility. Follow-up interviews should be scheduled as soon as possible.

2) SAs and their supervisors should evaluate the totality of the evidence, information presented, and credibility of the victim’s statement in determining whether requesting CP is appropriate.

3) There is no requirement for charges of any kind to be filed, pending indictment, or a current prosecution to request CP.

4) CP may be granted initially for a period of two years and renewed in increments of up to two years. Extension requests must be submitted 60 days prior to expiration. Human trafficking investigations are often lengthy and may exceed the initial two years granted to a victim. Extensions are required to ensure that victims are authorized to remain in the United States and to work without interruption.
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 it is a controlled document;

   e) Notice of Request for Continued Presence (Attachment B);

   f) For a request based on a civil action, a copy of the civil complaint and proof of filing; and

   g) All required accompanying documents, including results of record 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;

e) Notice of Request for Continued Presence (Attachment B); and

f) All required accompanying documents, including results of record checks and two passport style photographs of each victim.

3) **Advance Parole Requests.** Generally, the Department of Homeland Security (DHS) discourages victims authorized 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 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 Aliens must be queried through classified databases. Copies of all positive results must be sent to PLEPU.

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 alien granted CP is under 21 and the family member is his or her spouse, child, parent, or unmarried sibling (under 18 years of age);

b) If the alien granted CP is 21 or over and the family member is his or her spouse or child; or

c) The parent(s) or sibling(s) of the alien granted CP is in present danger due to the alien's escape from trafficking or cooperation with law enforcement (irrespective of the age of the alien).

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 an alien 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), 8 U.S.C. § 1229b(b)(6)(A); 22 U.S.C. § 7105(c)(3)(B) The general procedures in place for LEAs requesting parole on behalf of an individual should be followed for the victim family members.

5.10. Circulation and Concurrence.

1) PLEPU will review the documentation for completeness and circulate the Notice of Request for Continued Presence (Attachment B) to the designated Headquarters POCs of the principal federal LEA for concurrence.

2) Concurrence or objection to the CP request must be submitted in writing by the deadline specified on the Notice of Request for Continued Presence (Attachment B), not to exceed five working days, unless extended by PLEPU.

3) Circulation for comment does not apply to requests for victims who are under the age of 14. Additionally, this procedure does not apply to victims lawfully present in the United States in the custody of law enforcement officials or to SPBP requests made to HSI for national security reasons.

5.11. Approval. PLEPU 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 PLEPU to adjudicate a specific CP request will vary depending upon the unique facts of the case. However, PLEPU 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 PLEPU at least 60 days prior to the expiration date of CP. The amount of time required for PLEPU to adjudicate an extension request for CP will vary depending upon the unique facts of the case. However, PLEPU 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, PLEPU will take the following actions within 10 business days:

1) Notify the Headquarters POC and the requesting LEA’s case agent;

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.

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

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

SAs must notify PLEPU 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 PLEPU 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.)

5.14. 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
PLEPU upon determination that a CP recipient is no longer needed to support an
investigation and/or court proceedings. Upon this notification, PLEPU will contact IIIIS
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, IIIIS must notify IIIIS of the conclusion of the criminal
investigation, prosecution, or the civil case.)

6. Recordkeeping. CP records will be stored in the PCTS database maintained by PLEPU
at IIIIS Headquarters. 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.

7. Authorities/References.

103, 107(c)(3); 22 U.S.C. §§ 7102, 7105 and all subsequent reauthorizations.


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).


7.5. INA § 212(b)(5), 8 U.S.C. § 1182(d)(5) (authority for the Attorney General to grant
parole).


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. 28 C.F.R. § 1100.35(b), Authority to permit continued presence in the United States for
victims of trafficking in persons.

8. Attachments.


9. No Private Right. 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.

(b)(6) (b)(7)(C)

Executive Associate Director
Homeland Security Investigations
CERTIFICATION FOR CONTINUED PRESENCE
BY REQUESTING LAW ENFORCEMENT AGENCY

TO: 
Unit Chief
Parole and Law Enforcement Programs Unit
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

FROM: [Name of Authorizing Official]
[Name of Requesting Law Enforcement Agency]

RE: Request for Continued Presence for:

1. __, __ of the ___ (Agency), concur in this request and certify, in accordance with the Department of Homeland Security (DHS)'s procedures for Continued Presence, that:

1. The justification and information concerning the request for Continued Presence are accurate and complete.

2. Documentation is attached certifying that the alien is a victim of a severe form of trafficking and may be a potential witness to that trafficking.

3. Name checks have been completed in the principal law enforcement databases on the person named in the request (National Crime Information Center and any other databases available) and, as appropriate, information from foreign law enforcement agencies. Criminal history check results based on fingerprints have been received and any identification issues resolved. [For the FBI: Coordination has also been effected with appropriate member agencies of the Intelligence Community.]

4. Copies of all database screens on the person named above, including negative responses, have been identified and forwarded to U.S. Immigration and Customs Enforcement, Homeland Security Investigations, Parole and Law Enforcement Programs Unit.

5. No promises have been made to the Victim that he or she will remain in the United States beyond the authorized period of Continued Presence.

6. An active investigation is underway by a law enforcement agency that requires the assistance of this subject.

Signature [of Authorizing Official] ____________________________ Date _____________

Printed Name [of Authorizing Official] ____________________________

Title [of Authorizing Official] ____________________________
NOTICE OF REQUEST
FOR CONTINUED PRESENCE

TO: □ICE  □FBI  □DEA  □USMS

FROM: Unit Chief, Parole and Law Enforcement Programs Unit
       Homeland Security Investigations
       U.S. Immigration and Customs Enforcement

RE: Request for Continued Presence
(Case #: IAO ____________)

The U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Parole and
Law Enforcement Programs Unit (PLEPU) has received the attached request for Continued Presence as
defined by Title 28, Code of Federal Regulations, Section 1100.35 for the following individual(s):

<table>
<thead>
<tr>
<th>Name</th>
<th>A-Number</th>
<th>FCO</th>
<th>DOB</th>
<th>POB</th>
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Your review is required and you must return this form indicating your concurrence or objection by the
following date: _______________________

Please indicate the law enforcement databases reviewed: __________________________________________

There were no hits: ______ or description of all hits is attached: ________________________________

If you have an objection, you must also put it in writing and fax a copy of your objection to the Unit Chief,
ICE HSI PLEPU:

____ I have no objections to the parole request, based on the review of our databases and other
information known to me.

____ I have submitted my objections to the ICE HSI PLEPU.

Signature of Designated Headquarters Official ___________________________ Date ________________

ICE
FBI
DEA
USMS

Notice of Request for Continued Presence
FOR OFFICIAL USE ONLY / LAW ENFORCEMENT SENSITIVE