



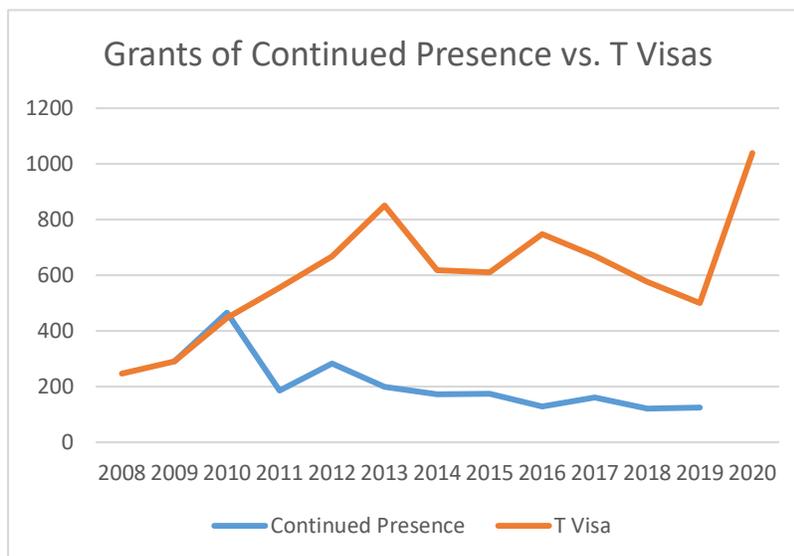
# Freedom Network USA

## Continued Presence Challenges and Recommendations Provided to DHS Center for Countering Human Trafficking February 18, 2021

Freedom Network USA (FNUSA), established in 2001, is a coalition of 81 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. As the largest network of survivors, providers, and advocates working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

In collaboration with our members, FNUSA has identified the following challenges with the implementation of Continued Presence and recommendations for improvement. Some of these are outstanding issues that have persisted for years. Others are new challenges that have recently emerged. We present these recommendations to you in a sincere hope that we can collaborate to develop policies that will more effectively identify and protect survivors, and support robust prosecutions of traffickers.

Continued Presence (CP) is an important, temporary, immigration remedy that ensures victims



of human trafficking are able to access emergency services and support, as well as legal employment, while working to apply for long-term immigration status.<sup>1</sup> Unfortunately, the number of T Visa grants remains significantly higher than the grants of CP, as reported in the annual TIP Report and USCIS data on T Visas to date:

The data indicates that less than 50% of identified trafficking victims who have reported their victimization to law enforcement

are receiving the immediate protection they need. This limits the survivors' access to health and mental health care, education, employment, and housing; resulting in victims who are less likely to participate in the investigation and prosecution of the traffickers.

<sup>1</sup> Authorized at 22 USC 7105(c)(3)

## Challenges

- 1. Law enforcement agencies setting additional requirements, not included in the law or DHS guidance**
  - a. Stating that attempted trafficking is not sufficient for CP
  - b. Refusing to apply for CP until significant evidence is identified
  - c. Law enforcement refusing to apply unless or until the AUSA has agreed to prosecute
  - d. Law enforcement agencies that refuse to file for CP for single-victim cases or family-based cases
- 2. Law enforcement agencies claiming that they can file only a limited number of CP requests**
  - a. Agencies claiming that there is a limit to the total number of CP applications they can file in one year
  - b. Agencies claiming that there is a limit to the number of CP applications they can file in one multi-victim case
- 3. Law enforcement failing to apply for CP for all victims in a multi-victim case**
  - a. Some agencies file CP only for victims that are most injured, have the most evidence, or are the first to be interviewed
  - b. Some claim that they can only file for a limited number per case
  - c. Some refuse to file CP for victims that are related to the traffickers or more hesitant to assist in the investigation at first, causing victims to lose trust with law enforcement and return to trafficking situation
- 4. Law enforcement agencies using CP to explicitly coerce victims**
  - a. Demanding victims turn over their cell phones to be copied before CP will be filed
  - b. Demanding copies of the T Visa application/declaration before CP will be filed
- 5. Law enforcement officials who grant Deferred Action instead of CP**
- 6. Law enforcement officials who are dismissive of labor trafficking cases**
  - a. Claim that they are 'merely' labor exploitation
  - b. Say that does not rise to trafficking because victims knew that the conditions would be exploitive
  - c. Agencies unwilling to either apply for CP or investigate the crime
- 7. Law enforcement unwilling to apply for CP on behalf of survivors with pending civil cases**
  - a. Don't believe that they are eligible
  - b. Believe that they are eligible, but unwilling to file
- 8. Law enforcement stating that they are unable to apply for CP because the agency is unable to comply with the monitoring requirements**
  - a. If victim is no longer in the jurisdiction in which the trafficking occurred, or intends to move out of the jurisdiction
  - b. If victim does not have a stable address or moves often for work or safety
  - c. Agents state that because they will be reassigned soon, they can't file for CP because they will not be at that office for the duration of the CP grant
- 9. Inability to support dependent family members present in the US**
  - a. Agencies do not believe that family members are eligible

- b. Agencies know that family members are eligible, but unwilling to apply
- 10. Multi-agency, multi-jurisdictional hot potato**
  - a. Federal agency says state agency should apply, and vice versa
  - b. Federal agencies point to each other as proper agency to apply
- 11. Agencies unwilling to apply for CP, fearing impact on prosecution**
  - a. Fearing it will be construed as impeachable benefit
  - b. Fearing contradictions in multiple statements/records regarding the case
- 12. Unwillingness to continue CP sufficiently**
  - a. Due to increased processing times for T Visa applications (currently about 2 years), CP grants are expiring before T Visa applications are adjudicated, leaving survivors with a gap in lawful status (and thus unable to legally work).
  - b. Some prosecutors continue to demand that the T Visa not be filed until after the criminal trial, making the timeline for T Visa approval even longer

## Recommendations

As a general matter, FNUSA strongly urges DHS to shift the responsibility for addressing these barriers to Federal Law Enforcement Agencies, who hold all of the power to file or not file for CP. Currently it seems that agencies are waiting for advocates to bring individual problems forward to HQ for resolution on an individual basis. This does not address the systemic problems, but instead threatens to damage the relationship between the advocate and the law enforcement agency that holds power locally. We recommend the following efforts to address the systemic problems reflected in 20 years of data.

1. Proactively identify and address problem districts using available data.  
DHS should analyze the difference in the number of T Visa and CP grants by region or ICE Field Office. Those with the greatest disparity should be provided with immediate and intensive training and technical assistance.
2. Provide detailed instructions and definitions to law enforcement agents.  
We highly recommend providing additional clarification and technical support, especially addressing concerns regarding:
  - ✓ The elements required to qualify for CP, including attempted trafficking
  - ✓ Emphasize that little to no proof is required at the time of filing CP, in fact the very purpose of this extraordinary immigration remedy is to allow time for an investigation
  - ✓ Emphasize that CP applications should be filed *within 24 hours* of identifying a *potential* trafficking case, without waiting for an investigation or prosecution or evidence
  - ✓ There is no limit to the 'acceptable' number of CP applications, either in one case or per office or agency
  - ✓ Emphasize the importance of CP in building trust with traumatized survivors and allowing survivors to access critical services and support
  - ✓ Explain that using CP as a threat undermines trust and leaves survivors vulnerable to ongoing abuse and exploitation to meet basic needs
  - ✓ The elements of labor trafficking, urging law enforcement to investigate all possible cases of labor trafficking which may *initially* present as labor abuse, and that no one can consent to labor trafficking
  - ✓ The proper use of CP (not Deferred Action) for cases of potential trafficking

- ✓ Clarify the 'monitoring' requirements and how to address multi-jurisdiction and multi-agency issues
  - ✓ The eligibility for CP of survivors with pending civil legal cases, and the role of law enforcement in applying for these survivors regardless of whether their agency is investigating the case, in accordance with 22 USC 7105(c)(3)(A)(iii)
  - ✓ How prosecutors can ensure a successful case even if CP and a T Visa are granted to survivors before or during the prosecution
  - ✓ Renewing CP during the pendency of the T Visa to ensure survivors' continued access to legal employment and supportive services
3. Publicly release guidance on monitoring requirements.  
Ensure that there is a clear understanding of what a law enforcement agency is required to do. This allows advocates to better partner with law enforcement to meet their obligations, if any, and reduces the ability of agencies to misunderstand this requirement to the detriment of survivors.
  4. Publicly release guidance on the process for CP based on pending civil cases.  
This is an unusual provision and it is to be expected that federal agencies will be confused by this very unique legal protection. Consider streamlining these applications, routing them through the Center to Combat Human Trafficking, allowing survivors and their representatives to provide documentation of a civil matter directly to a single contact at the Center who is empowered to file CP applications for these survivors.
  5. Provide ongoing training and education to federal agents.  
Federal agents often change positions, agencies, and workloads, necessitating ongoing training and technical assistance. Partnerships with other federal agencies working to improve the response to human trafficking (such as DOJ's EOUSA, OVC and BJA; HHS' OTIP; and the FBI) to create standard training materials and to divide the workload will assist to ensure that the training is consistent and increase the impact.
  6. Take measures to ensure accountability.  
The Center should conduct periodic audits of HSI Field Offices, US Attorney Offices, and FBI Field Offices to debrief how reports of human trafficking have been handled, which reports led to CP applications and which did not, and why. Identify where changes are needed to better support survivors, and follow up to ensure that improvements are made.
  7. Reward federal offices that appropriately file for CP for victims through public or internal recognition.  
Federal agents continue to show reluctance to apply for CP if they are not certain that the victimization rises to the level of human trafficking. Agents need to be encouraged to understand that CP is a temporary form of relief that is designed for exactly this purpose: to give the law enforcement agency and victim support while investigating the case further. Federal agents that properly use CP for cases that are still being investigated should be held up as role models to encourage other agents to do the same.
  8. Address intersecting challenges with T Visa adjudications.  
Eliminating the T Visa backlog will reduce the need for CP renewals, and reduce the number of survivors who experience a gap in immigration status and access to legal employment. It will also reduce the stress and fear experienced by trafficking survivors, improving their

physical and mental health and their ability to comply with reasonable requests from law enforcement.

9. Address intersecting challenges with labor trafficking investigations and prosecutions. Additional training, technical assistance, and sustained focus on labor trafficking will assist law enforcement agents in recognizing labor trafficking survivors and increase the likelihood that they will apply for CP for labor trafficking survivors. All federal agencies should include a thorough screening for labor trafficking in every workplace enforcement action, border enforcement effort, and smuggling investigation to ensure that trafficking survivors are not deported by the very agencies charged with identifying and protecting them.