



**Testimony of The Center for HIV Law & Policy
Before the New York City Council's Committees on Civil Rights and Immigration
Regarding Condom Confiscation
June 18, 2013**

My name is Rashida Richardson, and I am a staff attorney with The Center for HIV Law and Policy (“CHLP”), the first national legal and policy resource and strategy center for people with HIV and their advocates. I also coordinate the Positive Justice Project, a national coalition of people living with HIV and their advocates, health care providers, public health professionals, and others working to end criminalization of HIV in the United States. CHLP supports the resolution calling for legislation to end the reliance on health protection measures, such as condoms, to support criminal charges against individuals at risk of HIV and other serious sexually transmitted infections (“STIs”).

Condom confiscation and reliance on health protection measures as evidence of wrongdoing is a matter of great public concern. CHLP works with communities disproportionately affected by this practice, including women of color, transgender individuals, and immigrants in Jackson Heights, Queens, and with attorneys representing individuals who have been targeted for prosecution. Our support for the City Council resolution is based on this experience, and the fact that condoms remain the best protection against not only HIV, but STIs such as treatment-resistant gonorrhea. Condom confiscation creates serious obstacles for public health campaigns to address these health threats because it makes people afraid of accessing, carrying, and using condoms.

Over 100,000 people are living with HIV in New York City. To help curb the HIV epidemic, New York City distributes millions of condoms. This is an important public health intervention: It encourages safe sex, prevents unwanted pregnancies, and protects individuals from STIs. To employ the resources of one government agency created to protect the public to undermine the public health initiatives of another is, at the very least, wastefully counterproductive.

Yet recent discussions with community members confirm an alarming trend: Women of color – especially immigrant and transgender women – are being stopped and searched for condoms. Police officers are confiscating and destroying condoms on the street, and leaving immigrant and transgender women – who are already at high risk for STIs and HIV – even more vulnerable to having unprotected sex.

Police officers also are using condom possession as grounds for arrest, and as evidence of criminal activity. These law enforcement practices are producing a chilling effect: In neighborhoods like Jackson Heights, transgender Latina women are refusing to carry condoms because they increase the likelihood of arrest and prosecution. Using the criminal system to penalize possession not only places these women at risk, it also contributes to the overcriminalization of people of color, immigrants, and transgender individuals.

Condom criminalization can have devastating collateral consequences, including barriers to housing, employment, and voting. Often, following arrest, HIV status is used improperly as an aggravating factor in criminal charges, which in turn can trigger serious immigration consequences, including deportation.

The Council's proposed resolution supports a national trend to end this misinformed practice evidenced by the recent agreement between prosecutors and public defenders in San Francisco, brokered by the San Francisco Human Rights Commission. More locally, Brooklyn

District Attorney Charles J. Hynes, and Nassau County District Attorney Kathleen Rice, also issued policy directives prohibiting the use of condoms as evidence of criminal activity. Since these policies and their implementation can change over time, we urgently need legislation. We applaud the New York City Council for showing leadership and calling for legislation that will end policing that undermines our investments in public health.

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The Center for HIV Law and Policy is a national resource and strategy center for people with HIV and their advocates. The organization works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people affected by HIV.