



**Testimony of The Center for HIV Law and Policy
Before the New York City Council's Committee on Public Safety
Regarding Condom Confiscation
June 9, 2014**

My name is Ivan Espinoza-Madrigal, and I am the Legal Director of The Center for HIV Law and Policy (“CHLP”), a national legal and policy resource and strategy center for people with HIV and their advocates. CHLP coordinates the Positive Justice Project, a national coalition of people living with HIV, community advocates, health care providers, public health professionals, and others leading the fight to end the criminalization of HIV in the United States. CHLP supports Resolution No. 264-2014 – calling on the New York State Legislature to pass A.2736/S.1379, proposed legislation that would prohibit the use of condom possession as evidence in prostitution and prostitution-related trials, hearings or proceedings.

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 women of color, and undocumented immigrants in Jackson Heights, Queens. 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 also against sexually transmitted infections (“STIs”), including 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. As an epicenter of the domestic HIV epidemic – New York City carries the attendant individual, community, and economic costs. To help curb the HIV epidemic, New York City distributes millions of condoms. This is an important public health intervention: It encourages safer sex, prevents unwanted pregnancies, and protects individuals from STIs.

Yet outreach in communities of color confirms 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 women of color, immigrant women, and transgender women – who are already at high risk for STIs and HIV – even more vulnerable to having unprotected sex.

Police officers are also 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 women of color are refusing to carry condoms because they increase the likelihood of arrest and prosecution. Using the criminal system to penalize condom 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 City's proposed resolution supports a national trend to end this misinformed practice. On May 12, 2014, New York Police Department (NYPD) Commissioner William J. Bratton announced a policy change, which would limit the practice of confiscating condoms in certain prostitution-related offenses. However, condoms will still be invoiced as evidence for arrests

made for promoting prostitution and sex trafficking cases. New York State needs to further restrict condom possession from being used as evidence in all prostitution-related offenses.

We applaud the New York City Council for showing leadership and urge you to call 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.