



**Testimony before the  
The Council of the City of New York  
Immigration Committee On The Needs of  
The LGBT Immigrant Population**

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Chairperson Dromm, Members, and Staff of the New York City Council Committee on Immigration:

On behalf of the HIV Law Project, I appreciate the opportunity to testify before you today at this hearing on the needs of the LGBT Immigrant Population in New York City.

The HIV Law Project was founded in 1989 in response to the growing need for legal and advocacy services for low-income people living with HIV/AIDS in New York City.<sup>1</sup> In addition to our policy advocacy and impact work, we have handled nearly 20,000 individual legal cases for our clients. 90% of our clients are people of color; approximately one third are women; on third self-identify as Lesbian, Gay, Bisexual or Transgender; and more than half are new or recent immigrants. The overwhelming majority of our clients receives public assistance and depends on Medicaid or ADAP to obtain access to HIV primary care. Most come from New York City's poorest communities and frequently have few educational, familial and community resources at their disposal. The HIV Law Project represents New Yorkers living with HIV in immigration, housing, benefits, discrimination, and future planning matters.

The HIV Law Project applauds your efforts to learn more about the needs of the LGBT Immigrant population in New York City. While HIV rates among foreign-born populations on a national level cannot be obtained from the Centers for Disease Control, country of origin data published by the Massachusetts Department of Public Health show that among non-US born people, the rates of HIV are nearly equally distributed among males and females.<sup>2</sup> The majority of people living with HIV/AIDS (PLWHAs) in NYC (82.6%) are of African/African-American/Caribbean or Hispanic descent, and a growing number are new or recent immigrants.<sup>3</sup> In 2010, the CDC reported that the highest rate of new HIV infections is found among young men of African/African-American and Hispanic descent.<sup>4</sup> Although these numbers do not reflect immigration status, it is widely accepted based on service experience that HIV is a growing epidemic among immigrant communities in New York. And, as reflected in the HIV Law Project's legal docket, increasing numbers of people with HIV/AIDS in New York City are low-income immigrants.

### ***The Secure Communities Program Would Increase the Number of Detained HIV-Positive LGBT Immigrants***

HIV Law Project applauds the efforts of this committee to oppose implementation of the Memorandum of Agreement between ICE and New York State to implement the Secure Communities program in our state, and strenuously opposes its expansion to the New York City metropolitan area. It is our hope that the City Council and other concerned municipalities will succeed in obtaining a rescission of the agreement similar to that announced earlier this week by

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<sup>1</sup> Additional information can be found on our website [www.hivlawproject.org](http://www.hivlawproject.org)

<sup>2</sup> Mass. Dept. of Health HIV/AIDS Surveillance Data, 1990-2000.

<sup>3</sup> New York City HIV/AIDS Surveillance Statistics 2003. NYC Dept. of Health and Mental Hygiene, HIV Epidemiology Program, 4<sup>th</sup> Quarter Report, October 2004.

<sup>4</sup> CDC Fact Sheet: HIV and AIDS Among Gay And Bisexual Men (2010), available at <http://www.cdc.gov/nchhstp/newsroom/docs/FastFacts-MSM-FINAL508COMP.pdf>

the state of Illinois. HIV Law Project considers the expansion of the Secure Communities program in New York to present a dire humanitarian crisis for LGBT immigrants living with HIV.

As reported in the newly published report by the Immigration Court Observation Project of the National Lawyer's Guild that details the due process crisis faced by immigrants in removal proceedings, over 50% of the respondents observed had had contact with the criminal justice system, most of whom were long term residents with minor criminal convictions.<sup>5</sup> Indeed over 72% of individuals with convictions who were deported between 1997 and 2007 were convicted of non-violent offenses. Many of those detained spent more time incarcerated for immigration violations than they did for criminal offenses. Adoption of the Secure Communities program in New York City would no doubt exponentially increase the numbers of all immigrants, including LGBT immigrants, who are detained for immigration violations following contacts with the NYPD, even if the charges against them are ultimately dismissed, or resolved as disorderly conduct violations or misdemeanors with no incarceration time ordered.

HIV Law Project sees numerous foreign-born LGBT clients who have had minor contacts with the criminal justice system. Some have been the victims of domestic violence incidents, in which both parties are often arrested, while others have been briefly detained for traffic violations or other minor criminal offenses. The majority of clients we see report relatively positive interactions with the NYPD, and experience tremendous relief when their cases are resolved without involvement of the immigration enforcement authorities. For our clients, their relief is especially profound, because for them, the difference between removal and release from custody is the difference between life and death.

***Increased Detention Rates for LGBT Immigrants Living With HIV Would Exacerbate the Existing Humanitarian Crisis in Immigration Detention***

Increased rates of detention for LGBT Immigrants living with HIV would result in the separation of family members, interruption of necessary life-extending medical treatment, and dangerous conditions of confinement for some of the most vulnerable members of the community. Clients of the HIV Law Project are largely dependent on daily anti-retroviral medications that prevent their HIV infection from progressing to AIDS or prevent the development of opportunistic infections that can cause rapid decline and death. Missing even one daily dose of medication can lead to the development of drug resistance, which, combined with stress and unhygienic environments, can be extremely catastrophic.

In 2007, Human Rights Watch published a report titled "Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States," which detailed the inadequate treatment provided to HIV-positive detainees, including failure to provide consistent anti-retroviral regimens, failure to treat opportunistic infections – even as detainees lay dying in their cells, failure to ensure continuity of care as detainees are transferred between facilities, and failure to ensure confidentiality of medical care and HIV status, exposing detainees to discrimination and

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<sup>5</sup> Fundamental Fairness: A Report on The Due Process Crisis in New York City Immigration Courts (2011), available at <http://nycicop.wordpress.com/icop-publications/>

harassment.<sup>6</sup> The report concluded that “medical care for HIV positive detainees in ICE custody was delayed, interrupted, and inconsistent to an extent that endangered the health and lives of the detainees.”<sup>7</sup>

Our LGBT clients know that detention environments will be disastrous for their health, but they also fear returning to countries of origin where they will experience persecution on account of their sexual orientation. Many of our clients are ineligible for asylum because they did not apply within a year of their last arrival to the United States, a circumstance which makes it more difficult for them to find pro bono counsel despite even the best efforts of our many fine colleagues in the public interest community. They face lengthy, protracted struggles for relief in immigration courts and, if they are placed in detention, are at a high risk of being transferred by ICE to jurisdictions thousands of miles away from their homes and loved ones, where competent counsel is even more difficult to locate. Throughout this odyssey, many such detainees must endure the denial of necessary medical care and discrimination and harassment resulting from violations of their HIV confidentiality. Moreover, because federal law prevents our LGBT clients from obtaining immigration benefits based on marriage, they are foreclosed from many of the options available to heterosexual immigrants in removal proceedings.

Refusal to participate in the Secure Communities Program would avert the increase of LGBT immigrants living with HIV in these dire situations, and avoid subjecting them to further discrimination and mistreatment on account of their sexual orientation and HIV status.

***Implementation of the Secure Communities Program in New York City Would Disrupt Efforts to Address Domestic Violence and Hate Crime Offenses Committed Against Members of the LGBT Immigrant Population***

The HIV Law Project applauds the efforts of both the City Council and the NYPD to ensure that LGBT and immigrant communities have access to justice when their members suffer domestic violence or hate crime offenses. The National Coalition of Anti-Violence Programs reported that nationwide in 2008, approximately 24% of domestic violence complaints made by members of the LGBT community were made by recent immigrants, including undocumented immigrants (14%), permanent residents, and asylees.<sup>8</sup> The same group noted that in New York, reports of hate crimes against all members of the LGBT community went down in 2009, and that the NYPD remains an important resource for LGBT survivors of hate violence in New York City.<sup>9</sup>

The HIV Law Project currently has cases pending in which LGBT immigrants living with HIV have pursued prosecution of hate crimes or domestic violence, and as a result are eligible for U

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<sup>6</sup> Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States (2007), Human Rights Watch, available at <http://www.hrw.org/en/reports/2007/12/05/chronic-indifference>

<sup>7</sup> *Id.*, at p. 2.

<sup>8</sup> Lesbian, Gay, Bisexual, Transgender and Queer Domestic Violence in the United States in 2008 (2009), National Coalition of Anti-Violence Programs, p. 24, available at <http://www.avp.org/documents/2008NCAVPLGBTQDVRReportFINAL.pdf>

<sup>9</sup> Hate Violence Against the Lesbian, Gay, Bisexual, Transgender and Queer Communities in the United States in 2009 (2010), National Coalition of Anti-Violence Programs, pp. 63-64, available at [http://www.avp.org/documents/NCAVP2009HateViolenceReportforWeb\\_000.pdf](http://www.avp.org/documents/NCAVP2009HateViolenceReportforWeb_000.pdf)

visa immigration relief. Because the Defense of Marriage Act (DOMA) prevents federal recognition of same sex marriages, many LGBT immigrants who experience domestic violence cannot avail themselves of the marriage-based immigration benefits offered by the Violence Against Women Act (VAWA). For this reason, it is all the more important to encourage LGBT immigrant survivors of domestic violence and hate crimes to participate in police investigations and prosecutions of their assailants.

Adoption of the Secure Communities program in New York City would result in a chilling effect on complaints by undocumented victims of crimes, and inhibit the ability of law enforcement to conduct investigations into complaints. Because calls reporting domestic violence sometimes result in the arrest of both parties, even the wrongful arrest of victims can result in their detention and deportation. Once detained, victims may be transferred to immigration detention centers thousands of miles away from New York State, thus inhibiting their access to legal representation or social services throughout their detention and deportation proceedings.

It is absolutely imperative that LGBT immigrants living with HIV not be discouraged from seeking justice for crimes committed against them. Many LGBT immigrant crime victims have experienced harm or indifference by authorities in their home countries, and are already reluctant to come forward to report crimes against them. Those living with HIV will experience even greater harm if detained as a result of the Secure Communities program.

***The Defense of Marriage Act Presents a Barrier to the Full Participation of LGBT Immigrant New Yorkers and Exacerbates the HIV Epidemic***

For many of our clients whose health is precarious, the difference between death and homelessness, and full medical coverage and stable housing is an immigration status that places them within the definition of “Qualified Alien” utilized by the Human Resources Administration (HRA) in its distribution of Safety Net Assistance, Food Stamps, and Medicaid. With assistance from these benefits programs, many of our clients are able to transcend the twin challenges of poverty and illness and obtain necessary medical treatment not covered by the AIDS Drug Assistance Program (ADAP) that enables them to return to work and support their families, partners, or other community members in need.

Many long-term LGBT immigrant residents of New York City are ineligible for asylum because they did not apply within one year of their last arrival to the United States. Unlike long term heterosexual immigrants, however, they are unable to apply for green cards based on marriage to US citizens or green card holders because of the discriminatory policy represented by the Defense of Marriage Act (DOMA). Without the ability to obtain legal immigration status based on a bona fide marriage to a US citizen or green card holder, many undocumented LGBT immigrants remain in limbo, without access to employment authorization or social security numbers, and ineligible for many health insurance plans that may enable them to transcend their illness and contribute fully to the New York City economy.

HIV Law Project, Inc., endorses and joins the testimony given here today our colleagues and allies requesting a resolution by the New York City Council calling on the U.S. Department of

Justice and the U.S. Department of Homeland Security to cease efforts to deport LGBT immigrants who would be eligible for marriage-based immigration benefits but for the restrictions codified in the DOMA.

***Recommendations***

- Pass a resolution calling upon Governor Cuomo to rescind the Memorandum of Agreement implementing the Secure Communities Program in New York State;
- Pass a resolution opposing implementation of the Secure Communities Program in New York City; and
- Pass a resolution calling upon the Department of Justice and the Department of Homeland Security to cease efforts to deport LGBT immigrants otherwise eligible for marriage-based immigration benefits.