Military Can’t Ban All Americans With HIV From Joining

The ruling in “Wilkins v. Austin” means that HIV-positive people who are undetectable and on treatment may enlist in the military.

August 22, 2024 By Laura Schmidt

Americans living with HIV who maintain an undetectable viral load can no longer be barred from enlisting in the U.S. Armed Services, a federal judge ruled this week, striking down the last remaining policy limiting enlistment for those with HIV.

The ruling came in Wilkins v. Austin, which was filed against the Department of Defense November 2022 by the LGBTQ advocacy group Lambda Legal; Peter Perkowski, Esq.; Scott A. Schoettes, Esq.; and Winston & Strawn LLP.

“Defendants’ policies prohibiting the accession of asymptomatic HIV-positive individuals with undetectable viral loads into the military are irrational, arbitrary, and capricious. Even worse, they contribute to the ongoing stigma surrounding HIV-positive individuals while actively hampering the military’s own recruitment goal,” wrote Judge Leonie Brinkema of the U.S. District Court for the Eastern District of Virginia.

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As POZ reported in November 2022, Wilkins v. Austin was filed on behalf of three plaintiffs: Isaiah Wilkins, a 23-year-old Black gay cisgender man; Carol Coe, a 32-year-old Latina transgender lesbian; and Natalie Noe, a 32-year-old cisgender straight woman of Indigenous Australian descent living in California. All plaintiffs are HIV positive.

People living with HIV who take meds and maintain an undetectable viral load do not transmit the virus, a fact referred to as Undetectable Equals Untransmittable, or U=U. What's more, for many people with the virus, HIV is a manageable chronic condition that doesn't impede their daily activity; in fact, most take one pill a day or a long-lasting injectable treatment once every two months.

"Modern science has transformed the treatment of HIV, and this Court has already ruled that asymptomatic HIV-positive service members with undetectable viral loads who maintain treatment are capable of performing all of their military duties, including worldwide deployment," Brinkema wrote. "Now, defendants must allow similarly situated civilians seeking accession into the United States military to demonstrate the same and permit their enlistment, appointment and induction."

The court ruling marks a major win for people living with HIV who seek to join the U.S. Armed Services.

In a news release, the Modern Military Association of America, which has long been at the forefront of the battle against discriminatory policies within the U.S. military, said the victory "represents the culmination of years of dedicated advocacy and legal action to ensure that all service members and prospective service members are judged by their abilities and dedication, not by outdated and unjust biases."

The case was filed the same year that a federal judge struck down a Pentagon policy that discharged service members living with HIV and denied them promotions. For more about that ruling, see "'Landmark Victory' Court Ruling for Service Members Living With HIV." Also in 2022, the Department of Defense updated its policy to allow service members living with HIV whose viral load is undetectable to continue to serve and remain deployable.

In related news, earlier this year, the Nashville agreed to update its civil service policies to no longer automatically disqualify individuals from serving as a police officer or first responder because of their HIV status.

In the settlement, Nashville agreed to pay $145,000 to a former Memphis police officer living with HIV, identified as John Doe, and rewrite its civil service medical examiner's policies, which previously required all Metropolitan Nashville police officer candidates to meet the physical requirements for admission to the U.S. Army or Navy.

Last year, Doe filed a federal discrimination lawsuit claiming that the Metropolitan Nashville Police Department rescinded a job offer after learning about his HIV status. This occurred even though Doe had provided a letter from his health care provider stating that he had a suppressed viral load.

The rewritten policies will include language requiring medical examiners to "individually assess each candidate for their health and fitness to serve" as Metropolitan Nashville first responders or police officers.

To read more, click #Lawsuit. There, you'll find headlines such as "Court Mostly Upholds Coverage of PrEP and Preventive Health Care, for Now," "Drugmaker Gilead to Pay $40M to People With HIV in Lawsuit Settlement" and "Grindr Sued in U.K. for Allegedly Sharing Users' HIV Status, Private Info."

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