Military Sued for Barring People With HIV From Enlisting

Lambda Legal, which filed the suit, argues the policy is “discriminatory” and disproportionately affects LGBTQ people and people of color.

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The U.S. military is being sued over a policy that prevents people living with HIV from enlisting in the armed forces. The lawsuit was filed November 10 by Lambda Legal, which advocates for the LGBTQ and HIV communities and argues that the policy is “senseless” and “discriminatory.”

The lawsuit 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, according to a Lambda Legal press release. All plaintiffs are HIV positive.

Minority Veterans of America (MVA), a nonprofit advocacy group that represents minority veterans and service members, including people with HIV who wish to serve in the military, is another plaintiff in the lawsuit. Joining Lambda Legal in the case are cocounsels Winston & Strawn LLP, Perkowski Legal, PC, and Scott A. Schoettes, Esq.

“The existing policy is out of step with science and unlawfully excludes people living with HIV from performing as members of the U.S. military. A positive HIV status alone has no effect on a person’s ability to safely serve,” said Kara Ingelhart, Esq., senior attorney at Lambda Legal in the press release. “Because HIV disproportionately impacts LGBTQ+ people and people of color, this discriminatory policy is not only outdated, but is also a serious equity issue that has a significant impact on communities who already face countless systemic barriers to accessing full life in America. Striking this policy would help expand opportunities for over 1.2 million people in the U.S. living with HIV— 42% of which are Black and 21.7% are Latinx.”

The lawsuit arrives in a year of several milestones for service members living with HIV. In April, 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.”

A few months later, 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 addition, the policy prevents commanders from involuntarily separating service members living with HIV from other troops and from blocking them from training to become officers. It also allows cadets and midshipmen—young people already on the path to military service—who test HIV positive to continue their commissioning program.

Each year, about 350 service members test positive for HIV, according to a 2019 congressional report. Lambda Legal estimates that, overall, about 2,000 service members are living with HIV.

And yet current Department of Defense policy continues to bar people who have HIV from joining the military.

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. For example, the service members involved in the HIV lawsuit that led to the overturn of the Pentagon policy had been deemed healthy and fit to serve. Thus, they claimed the policy was discriminatory and based on outdated science. The court agreed, adding that the Pentagon's policy was "unlawful, arbitrary and capricious—and unconstitutional," in the words of Lambda Legal's Scott Schoettes.

The military ban prohibiting Americans living with HIV from enrolling "is yet another holdover from a long era of needless discrimination," said Bryce Cooper, Esq., of Winston & Strawn in the November 10 Lambda Legal press release. "The time has long passed for this senseless policy to end."

"I served honorably and ably as a member of the Georgia National Guard," plaintiff Wilkins added. "It's frustrating that although I am healthy and fit for service, an outdated policy keeps me from continuing my family's legacy of proud service to our country."

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