

Lambda Legal Asks Court to Allow People With HIV to Join the Military

The move follows a lawsuit filed in November to strike down the ban that keeps people with HIV from enlisting in military service.

June 13, 2023 By [Trent Straube](#)

Lambda Legal wants a U.S. District Court to end the Pentagon's policy prohibiting people with [HIV](#) from joining the [military](#). Specifically, Lambda Legal filed a motion for summary judgment, meaning that it asked the court to issue a judgement in a lawsuit without holding a trial, since there is no dispute about the key facts of the case.

[Lambda Legal](#), which advocates for [LGBTQ](#) and HIV causes through the courts, filed the HIV discrimination lawsuit, Wilkins v. Austin, in November 2022 on behalf of three people who were not allowed to enlist in the military because of their HIV status.

Lambda Legal filed the motion for summary judgement on May 31.

"We ask that this court strike down this discriminatory policy barring people living with HIV from seeking enlistment or appointment to the military because they are able to perform all job duties associated with military service, including worldwide deployment," said Kara Ingelhart, senior attorney for [Lambda Legal in a press release](#). "It is time for the military to acknowledge that arguments based on outdated science or concern for preserving monetary resources are no longer defensible. Neither can continue to be used to deny anyone the opportunity to join the military and to serve their country."

"Giving up on my dream to serve my country is not an option. The military is in my blood. My family has served in every military campaign dating back to the Civil War," added plaintiff Isaiah Wilkins. "From joining the Georgia National Guard at age 17, being honored with a prestigious scholarship to attend Georgia Military College, to earning a prestigious spot at the U. S. Military Academy Preparatory School at West Point, I was on a trajectory to fulfilling this dream. I urge this court to strike down this discriminatory policy. People living with HIV want to serve. We raised our hands and said, 'I volunteer.'"

???? It's time to let people living with HIV join the

military. pic.twitter.com/ZLyU3BjuLC

— Lambda Legal (@LambdaLegal) [June 1, 2023](#)

For more information, read our press release

↓ <https://t.co/1RLi3Rpxah>

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[As POZ reported in November](#), Wilkins v. Austin was filed on behalf of Wilkins, a 23-year-old Black cisgender gay 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 (the ages were correct as of November 2022). All are living with HIV.

Also last year, 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 attorney Bryce Cooper, of Winston & Strawn in a November 10 Lambda Legal press release about the lawsuit. “The time has long passed for this senseless policy to end.”

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