

Military Reinstates Ban, Prohibits People With HIV From Enlisting

A 2024 ruling stated people with HIV and an undetectable viral load pose no risk and can enlist. This week, an appeals court reversed that ruling.

February 20, 2026 By [Trent Straube](#)

A federal appeals court ruled that the Pentagon may reinstate its ban on the enlistment of people [living with HIV](#), even if they maintain an [undetectable viral load](#). This overturns a previous ruling by a lower court that found the HIV ban unconstitutional.

Specifically, a conservative three-judge panel of the U.S. Court of Appeals for the Fourth Circuit on February 18 reversed a 2024 lower court ruling. The panel said it deferred to the military, which sought to reinstate the ban, saying the military itself best understood the reasons for banning enlistment, [reports Courthouse News Service](#).

HIV advocates disagree. “As both the Fourth Circuit and the district court previously held, deference to the military does not extend to irrational decision-making,” said Scott Schoettes, who argued the case on appeal, [in a statement from Lambda Legal](#), which fights for HIV and LGBTQ causes. “Today, service members living with HIV are performing all kinds of roles in the military and are fully deployable into combat. Denying others the opportunity to join their ranks is just as irrational as the military’s former refusal to deploy service members living with HIV.” (Service members who contract HIV are not automatically discharged.)

This week’s appeals ruling stems from [Wilkins v. Austin](#), which was filed against the Department of Defense in November 2022 by Lambda Legal; Peter Perkowski, Esq.; Scott A. Schoettes, Esq.; and Winston & Strawn LLP.

[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.

[In the panel’s 19-page opinion](#) issued this week, U.S. Circuit Court Judge Paul Niemeyer, a George H. W. Bush appointee, wrote: “Medical conditions of all kinds may become relevant as they may limit a soldier’s fitness to deploy and implicate other relevant considerations. The HIV infection is never eliminated and always presents risks that require additional attention, can cause

complications and does cost money.”

“We are deeply disappointed that the Fourth Circuit has chosen to uphold discrimination over medical reality,” countered Gregory Nevins, senior counsel and employment fairness project director for Lambda Legal, in the group’s press statement. “Modern science has unequivocally shown that HIV is a chronic, treatable condition. People with undetectable viral loads can deploy anywhere, perform all duties without limitation and pose no transmission risk to others. This ruling ignores decades of medical advancement and the proven ability of people living with HIV to serve with distinction.”

Science and data show that 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.

The National Black Justice Collective (NBJC) also issued a statement condemning the Fourth Circuit ruling. David J. Johns, CEO and executive director of the organization, writes:

“This decision is a painful reminder that stigma can masquerade as policy. We are decades into the science of HIV treatment, and it is a universally known and accepted fact that people living with HIV, who are on medication and undetectable, pose no risk of transmission and are fully capable of meeting military standards. To pretend otherwise is to ignore medical reality and willfully prejudice people.

“We fully support Isaiah Wilkins, the young Black same-gender loving man, and plaintiff in this case, who sought to serve his country and was turned away solely because of his HIV status. His story is not about special treatment. It is about equal opportunity and the right to be judged on merit, not misinformation.

“Black LGBTQ+/Same-Gender Loving communities are disproportionately impacted by HIV, and policies like this compound structural inequities. Our military should reflect the strength, talent and diversity of the nation, and not recycle the biases and discrimination of the 1980s, which only serve to diminish our collective strength.

“We urge the Department of Defense and policymakers to align military policy with modern medical science and the Constitution’s promise of equal protection under the law.”

Wilkins v. Austin was filed the same year that a federal judge struck down a Pentagon policy that discharge and deny promotions to service members living with HIV. 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 reflect that ruling.

It is unclear whether the Trump administration and the Secretary of Defense (now rebranded as

Secretary of War) Pete Hegseth will challenge these established rulings, which pertain to servicemembers living with HIV and not to potential enlistees.

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