People With HIV Report Roadblocks to Joining the Military, Despite Court Rulings in Their Favor

Advocates criticize the Biden administration for failing to ensure that the Pentagon updated its policy to allow HIV-positive enlistments.

January 17, 2025 By Trent Straube

Last August, a federal judge ruled that Americans living with HIV who maintain an undetectable viral load can enlist in the U.S. Armed Services, thus striking down a long-running and discriminatory ban. However, as NBC News reports this week, several people with HIV say they've been prohibited from enlisting or have faced roadblocks.

What's more, advocates are concerned that the Biden administration did not move fast enough to ensure the implementation of the judge's ruling and has likely left the issue in the hands of the incoming Trump team, which has already signaled its hostility to LGBTQ service members.

The U.S. District Court ruling that struck down the HIV ban on enlistment stems from the 2022 case Wilkins v. Austin, filed by Lambda Legal against the Department of Defense. The case was filed on behalf of three plaintiffs who are HIV positive. In August 2024, Judge Leonie Brinkema ruled on their behalf, noting that the policies prohibiting them from enlisting 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."

SCOOP: Advocates criticize Biden for inaction after judge orders military to accept recruits with HIVI report: They're concerned the Biden admin will not fully implement a ruling that allows enlistment by healthy HIV-positive Americans, leaving the matter to

Trump.www.nbcnews.com/feature/nbc-...

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— Benjamin Ryan (@benryanwriter.bsky.social) January 16, 2025 at 6:11 PM

Two months after the ruling, the Defense Department instructed its branches to comply with the judge's decision, reports NBC News. But on the same day, the Justice Department began filing paperwork to appeal the ruling, giving rise to confusion on the matter.

One individual with inside knowledge of the current situation is Army Lieutenant Nick Harrison, who is living with HIV and was commissioned as an officer in August 2023. In 2018, Harrison challenged the Pentagon policy banning service members who contracted HIV while in service from being appointed as officers. At the time, such service members were also considered non-deployable and faced discharge. In 2022, a federal judge ruled against those bans in what was considered a "landmark victory." That ruling set the stage for the Wilkins v. Austin case seeking to allow people with HIV to enlist.

The commissioning of Nick Harrison, center, as an officer in the U.S. Army in Washington, DC, on August 5, 2023. Lambda Legal CEO Kevin Jennings, left, attends.Courtesy of Lambda Legal

Today, Harrison confirms to NBC News that he knows of several HIV-positive people who have encountered roadblocks while trying to join the services. Harrison said he urged an assistant secretary in the Defense Department to settle the issue—but that person did not act.

In September, 23 Democratic lawmakers sent a letter to Defense Secretary Lloyd Austin urging him to instruct the Defense Department to update its enlistment policy. (The letter mirrors a similar effort in 2022 when Congress members wrote to Biden, pressing him to allow people with HIV and hepatitis B to enlist in the military.) However, Austin has not directed the military to follow the judge's ruling. In fact, the Defense Department has requested an extension of its appeal, NBC News reports; its deadline is now February 21, a month after Trump's inauguration.

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.

In numerous rulings striking down HIV bans in the military, judges have noted that most people living with HIV take one pill a day or a long-acting injectable for treatment and that those who maintain an undetectable viral load are able to carry out their daily activities. What's more, those with an undetectable viral load do not transmit the virus, a fact referred to as Undetectable Equals Untransmittable, or U=U.

As Judge Brinkema wrote in the Wilkins v. Austin 2024 ruling allowing people with undetectable

HIV to enlist: “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. 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.”

In related news, see “Defense Department Settles Lawsuit With Military Graduates Living With HIV” and “The Trump Biopic ’The Apprentice’ Is an AIDS Moive.”

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