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Court argument seeks reversal of military HIV policies

By **Matthew Barakat** | AP



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FALLS CHURCH, Va. — Lawyers for military service members whose careers were halted after testing positive for the AIDS virus asked a federal judge Monday to overturn policies restricting their service as irrational and discriminatory.

Lawsuits filed on behalf of two airmen and an Army National Guard sergeant say the military has no rational basis for holding the service members' HIV status against them. The Air Force wants to discharge the two airmen from the service. The Army is refusing to grant an officer commission to the Army sergeant.

Rules regarding service of HIV-positive members are not consistent across the military. Generally, people HIV-positive cannot join the military. But those who test positive after enlisting face varying treatment.

The Air Force says it wants to discharge the two airmen — even though their commanding officers recommended retaining them — because their HIV status bars them from deploying worldwide, and it generally wants its airmen to be universally deployable. The plaintiffs say a similar rationale was used to deny an officer commission to Army Sgt. Nicholas Harrison, an Oklahoma native who is seeking to join the Judge Advocate General Corps after earning his law degree.

Lawyers for the government acknowledge that medical advances significantly reduce the risk of deploying HIV-positive service members. But they say the risks remain real, and urged the judge to grant deference to the military in handling the issue.

“Plaintiffs seek to substitute their own risk assessment for the professional military judgment of the Department of Defense (DoD) and the Military Services regarding medical qualifications for service,” government lawyers wrote in court papers.

In battlefield situations, government lawyer Rebecca Cutri-Kohart said military doctors believe there is a legitimate risk that HIV-positive service members might not regularly take the medication that keeps the virus in check. She said there are also concerns about battlefield blood transfusions.

Scott Schoettes, a lawyer for the Lambda Legal Defense and Education Fund, which is representing the plaintiffs, said the risk of deploying HIV-positive service members is essentially nonexistent, so using HIV status to deny opportunities to serve makes no sense.

“The only thing holding these service members back is that they are living with HIV,” Schoettes said during Monday’s hearing in U.S. District Court in Alexandria.

In an interview after the hearing, Schoettes said airmen living with HIV faced increasing difficulties in the Air Force beginning under the Trump administration in 2017, when the service re-interpreted its rules to apply them more harshly to HIV-positive service members.

Judge Leonie Brinkema, who heard the case, already granted a temporary injunction last year barring the airmen’s discharge, and her injunction was upheld by the 4th U.S. Circuit Court of Appeals in Richmond. The injunction was based in part on her belief that the airmen’s lawsuit would be successful at this stage of the case.

In her ruling last year, which was focused on the airmen’s case, Brinkema acknowledged that the military is entitled a measure of deference but said “the Air Force’s approach to servicemembers living with HIV is irrational, inconsistent, and at variance with modern science.”

She said Monday that she’ll issue a ruling at a later date.

Schoettes said that, depending on how Brinkema crafts her ruling, it could apply not only to existing service members but also the bar on accepting new recruits who are HIV positive.

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