

Alex Berg ([00:02](#)):

Hi, and welcome to Making The Case with Lambda Legal, a podcast from Lambda Legal highlighting, impactful cases and policy work. I'm Alex Berg, a journalist and host, and I cover all things LGBTQ plus, and the issues that impact us.

Alex Berg ([00:17](#)):

During Trump's presidency, Lambda Legal filed multiple lawsuits against the US Department of Defense, including two recently decided cases regarding the active service of people living with HIV. These lawsuits challenged the Pentagon's unjust policies preventing enlistment, deployment or commissioning of an officer if a person is living with HIV, as well as unfair discharges for service members living with HIV. On today's episode, we sit down with senior attorney, Kara Ingelhart, to discuss how she approached these cases and how she took on one of the largest employers in the world, the US Department of Defense. The first a lawsuit on behalf of DC Army National Guard Sergeant Nick Harrison, who was denied the opportunity to serve as an officer and faced possible discharge from the United States Armed Services because he's living with HIV. The second, a lawsuit on behalf of two HIV positive members of the United States Air Force who were given discharge orders just days before the holiday season. Let's dive in.

Alex Berg ([01:13](#)):

Hi, Kara. Thank you so much for joining me.

Kara Ingelhart ([01:15](#)):

Thanks so much for having me Alex, I'm really excited to talk with you today.

Alex Berg ([01:18](#)):

I'm so excited to talk to you because I covered Harrison back in 2018. Can you briefly tell us what this case was about?

Kara Ingelhart ([01:24](#)):

Sure. The decision we're talking about today, the big win, is actually in two cases. There's two federal cases against the Department of Defense in the US District Court for the Eastern District of Virginia that were combined for purposes of discovery and summary judgment, which led to the final decision. Long intro to say, Harrison v. Austin and Roe v. Austin are two cases on behalf of service members in the US military who are living with HIV who were facing sort of at least three different kinds of discrimination based solely on their HIV status. Sergeant Nick Harrison was being denied the ability to move from an enlisted position to an officer position. He wanted to commission as a JAG officer or an attorney in the Army. Our clients Roe and Voe who are anonymous and the organizational plaintiff, Modern Military Association of America in the roe case were facing discharge because of their HIV status. That was under a new policy during the Trump administration that had to do with their inability to deploy for calendar 12 months. Actually, until this lawsuit, all people in the military living with HIV were arbitrarily and irrationally marked as unable to deploy. So, this case is on behalf of people who are currently serving in the military and living with HIV and now they will no longer face that discrimination.

Alex Berg ([02:47](#)):

Now, one of the things you said is these people were marked arbitrarily unable to deploy. And it seems like at the heart of it is this idea of being undetectable and that really enables someone to serve just as anyone else who is not living with HIV would. For those who might not know this term, what does it mean to be undetectable?

Kara Ingelhart (03:06):

Certainly that's a really important question. So when taken as prescribed HIV, medications can decrease the amount of HIV present in a person's blood or what we call their HIV viral load to be too low to measure. This is called being undetectable. Being undetectable basically prevents the HIV from progressing as a disease and allows people to live long and healthy lives. And it also protects the health of other people. So for instance, their sexual partners can't be transmitted. People can't pass HIV through sex when they have undetectable levels of HIV. It's estimated to be truly 100% effective, that's why we say undetectable equals untransmittable or the short term U=U. As long as the person who's living with HIV continues to take their medication as prescribed and stays undetectable.

Kara Ingelhart (03:57):

What we found out is in the military, people who are service members are more option likely to be undetectable than the average person. And that's because they're such excellent healthcare in the military and people who are undetectable are just as healthy as people who aren't living with HIV. There's no barrier to being able to serve in the military.

Alex Berg (04:16):

Yeah. Can you really connect the dots here? So undetectable equals untransmittable, how is it that this does not impact individual's ability to serve?

Kara Ingelhart (04:27):

So people living with HIV are living with what's considered to be a chronic treatable condition, it's just not a reason to discriminate against them. And this groundbreaking ruling represents a landmark moment for the courts to have acknowledged and reconciled with that scientific fact. Specifically, in this context, the military here in the US is an all voluntary force, which depends on allowing every citizen who is willing and fit to serve to do so. And in fact, the brief at the fourth circuit in our case, which was joined and authored by a number of former service branch secretaries, said specifically, "In our professional military judgment, any policy that discharges willing and able service members based on chronic, but well managed medical conditions, should be based on the most up to date science and be justified by credible, not just theoretical risks. It is our professional military judgment that there's no legitimate reason to deny HIV positive service members the opportunity to deploy." And of course we agree. And so did the court.

Kara Ingelhart (05:31):

I think what's really exciting from an HIV advocacy perspective is that there's so much deference given to military defendants in federal court. The military is an incredible amount of deference from the court systems and other branches to do what they think is best in their military judgment. But even considering that and even considering that they're the most well resourced opposing counsel we could see in an HIV discrimination case presenting all the science most favorable to them, the science that we presented, the unbiased unvarnished, mainstream medical science was prevailing and persuasive here because it's accurate.

Alex Berg ([06:08](#)):

So let's get into a little bit more of the human impact of this case. This came to be called the deploy or get out policy. How did it impact the plaintiff, Nick Harrison?

Speaker 3 ([06:18](#)):

We're fully capable of doing our job. We're fully ready to volunteer and go on all these deployments. We want to do our jobs just like everyone else.

Kara Ingelhart ([06:25](#)):

The deploy or get out policy actually impacted our clients in the Roe and Voe case, but it also sort of impacted Nick. So the idea behind it, deploy or get out is the sort of colloquial name we gave a military regulation here. What it said was that if you have a condition or something in your file that marks you as undeployable worldwide for 12 months and that's many conditions, but in this case specifically it was impacting people living with HIV, then the military wanted to discharge you. It was a new policy in February 2018, and so for the first time ever, actually, the military branches were discharging people based solely on their HIV status. In past if people seroconverted or acquired HIV while in service, people might select to leave the military for a medical discharge. But this was the first time that people were being actively forced to discharge based on their HIV status.

Kara Ingelhart ([07:17](#)):

What happens in the other context like Nick's where he just wanted to sort of seek a promotion or commission to a higher rank, is that because he's not worldwide deployable they don't want to let you join the military in the first place. And when you commission, you technically separate from the military as an enlisted person to recommission, rejoin, reassess, as an officer. And he was barred from doing that because he was living with HIV and that's based on the decision previously, not to deploy people living with HIV.

Alex Berg ([07:50](#)):

Can you talk about the strategy you used for this case, did precedent from Lambda's past cases or HIV medicine and policy development help here?

Kara Ingelhart ([07:58](#)):

Certainly. We had been considering this fact pattern, the discrimination in the military for many years and the medical science and health science and the case law and the public understanding of the mainstream science had developed to a point that this was the right time for this case. In Pierce case, for instance had a public settlement, which wasn't a court decision so there wasn't persuasive case law here. But the settlement had a huge fee award and damages and had the sheriff's department come out and state that someone living with HIV could perform the duties of a police officer, a first responder, types of jobs that have historically been denied to people living with HIV.

Alex Berg ([08:39](#)):

This decision has implications that extend far beyond the military. What does this victory mean for people living with HIV?

Kara Ingelhart ([08:46](#)):

First and foremost, it's the biggest legal victory for people living with HIV in decades. The military is permanently enjoined from discriminating against our clients and service members living with HIV. There's no more discharges, no more bans on deployment, no bans on commissioning as officers. And when a federal court found that military policies that treat people with HIV differently from other healthy people, it found that it was irrational under the US Constitution because they were based on outdated and unsupported understanding and unsupported with today's science and medicine. The court order means the military of all entities must acknowledge the current science regarding HIV. That's easily treated, not easily transmitted, and that people in treatment are as healthy as HIV negative people. And what this will do is combat HIV related stigma persisting for years after the start of the epidemic. The enjoined antiquated policies here are just a reflection of fear and ignorance about HIV transmission that have really just driven persistent discrimination throughout the epidemic.

Alex Berg ([09:49](#)):

I just want to repeat what you said. This is the biggest legal victory for people living with HIV in decades. You mentioned that this will combat stigma around living with HIV. I remember when I was covering this actually encountering so many people who didn't even know what undetectable meant. Of course, that was a couple of years ago, but how does this win further combat stigma around living with HIV?

Kara Ingelhart ([10:13](#)):

Sure. I mean, it's probably the most important decision since a case called *Bragdon v. Abbott*, which held that HIV is a disability entitled to protections under the Americans with Disability Act Protections. But what's interesting here is that the ADA, which is a federal non-discrimination law, doesn't apply to the military and so we achieved a similar outcome using constitutional principles that do apply to the military, and using administrative procedure acts that do apply to the military, to find that there wasn't individualized assessments, that the assessments were based on irrational and arbitrary information. And what that shows is that when scrutinized discrimination based on someone's HIV status, when's not rooted in science, is arbitrary. It's just based on stigma.

Alex Berg ([10:59](#)):

How does Lambda's work extend beyond the case to educating the public about HIV?

Kara Ingelhart ([11:04](#)):

I mean, Lambda does three different things really well. We do impact litigation, we do public policy and we do community education. And what we can do with this case is opportunities like this, talking in podcast and news articles and talking with our donors to really spread the word with the amazing spokespeople like Nick Harrison, to show people what it looks like to be somebody living with HIV and show people that somebody living with HIV can proudly serve in the military and protect the rights and freedoms of Americans and show people that someone living with HIV is capable of doing any job in the entire world. US military is the largest employer in the world. It's just a really fantastic opportunity to reach into every corner and access people living in all different walks of life.

Alex Berg ([11:51](#)):

What did you learn from this case that you'll take with you?

Kara Ingelhart ([11:53](#)):

I learned so much in this case, truly. It was an intensive litigation effort so as a lawyer nerd, super fun. I learned about the resilience and brilliance of my clients who are doing incredible work in the military. I learned that science not stigma can prevail, that the facts that we have for putting into admissible evidence are persuasive and undeniable and I'm rejuvenated and excited to put those skills forward in the next case.

Alex Berg ([12:23](#)):

Well Kara, thank you so much for taking the time to talk about this case with me.

Kara Ingelhart ([12:27](#)):

Thank you.

Alex Berg ([12:27](#)):

Thank you for listening to thank you for listening to this week's episode of Making The Case with Lambda Legal. Making The Case is hosted by me, Alex Berg, and written and produced by Erika Kramer for Lambda Legal. Our show is recorded and mixed by Erik Monical from Mouth Media Network. Original music was made for making the case by Meghan Rose.

Alex Berg ([12:49](#)):

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