

**LAW REVIEW<sup>1</sup> 26024****June 2026****Yes, You Are Entitled to Transitional Health Care “*During a War or During a National Emergency.*” The Department of Defense Is Wrong.****By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup> and  
Sergeant Major Steve Minyard, JAGC, USAR (Ret.)<sup>3</sup>****9.0—Miscellaneous.*****Feliciano v. Department of Transportation*, 605 U.S. 38 (2025).<sup>4</sup>**

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<sup>1</sup> We invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses’ Protection Act (USFSPA), the title 38 chapters that provide for veterans’ benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997, and we add new articles each month. CAPT Wright is the author of more than 80% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

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<sup>4</sup> This is a decision of the United States Supreme Court. The decision was announced on 4/30/2025, 14 months ago. The citation means that you can find this case in Volume 605 of *United States Reports*, starting on page 38. We have also addressed the *Feliciano* case in Law Review 26023 (July 2026) and in Law Review 25025 (July 2025).

Under section 1145 of title 10 of the United States Code, some persons who leave active duty in the armed forces (Army, Navy, Marine Corps, Coast Guard, Air Force, or Space Force) are entitled to transitional health care from the Department of Defense (TRICARE), for themselves and their families, for the first 180 days after they are released from active duty. Here is the portion of section 1145 that sets forth who is eligible for this transitional health care.”

**(a) Transitional Health Care.—**

**(1)** For the time period described in paragraph (4), a member of the armed forces who is separated from active service as described in paragraph (2) (and the dependents of the member) shall be entitled to receive—

**(A)**

except as provided in paragraph (3), medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

**(B)**

health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

**(2)** This subsection applies to the following members of the armed forces:

**(A)**

A member who is involuntarily separated from active duty.

**(B)**

**A member of a reserve component who is separated from active duty to which called or ordered under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of**

**this title if the active duty is active duty for a period of more than 30 days.**

**(C)**

A member who is separated from active duty for which the member is involuntarily retained under section 12305 of this title in support of a contingency operation.

**(D)**

A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

**(E)**

A member who receives a sole survivorship discharge (as defined in section 1174(i) of this title.

**(F)**

A member who is separated from active duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component.

**(G)**

A member of the National Guard who is separated from full-time National Guard Duty to which called or ordered under section 502(f) of title 32 for a period of active service of more than 30 days to perform duties that are authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by Congress or the President and supported by Federal funds.

**(3)**

In the case of a member described in subparagraph (B) or (G) of paragraph (2), the dental care to which the member is entitled under this subsection shall be the dental care to which a member

of the uniformed services on active duty for more than 30 days is entitled under section 1074 of this title.

**(4)**

Except as provided in paragraph (7), transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active service. For purposes of the preceding sentence, in the case of a member on active service as described in subparagraph (B), (C), (D), or (G) of paragraph (2) who, without a break in service, is extended on active service for any reason, the 180-day period shall begin on the date on which the member is separated from such extended active service.<sup>5</sup>

For purposes of this article and the lawsuit to which this article pertains, here is the specific group of people who are eligible for this transitional health care:

A member of a reserve component who is separated from active duty to which called or ordered under section 12304b of this title or **a provision of law referred to in section 101(a)(13)(B) of this title** if the active duty is active duty for a period of more than 30 days.<sup>6</sup>

The U.S. Department of Defense implements this provision through the Transitional Assistance Management Program (TAMP). TRICARE Policy Manual 6010.63-M, April 2021, Chapter 10, paragraph 2.1.2, takes the language of the statute and distills all of the duty statuses qualifying for TAMP into the below:

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<sup>5</sup> 10 U.S.C. § 1145(a)(1)-(4) (emphasis supplied).

<sup>6</sup> 10 U.S.C. § 1145(a)(2)(B) (emphasis supplied).

*A member of a Reserve Component (RC) who is separated from active duty after serving more than 30 consecutive days either in support of a contingency operation or for a preplanned mission.*<sup>7</sup>

This oversimplification of the statute continues online. According to the publicly facing website at <https://tricare.mil/tamp/>, the benefit is available to “National Guard or Reserve” members who serve during “...a preplanned mission” or “support of a contingency operation.”<sup>8</sup>

Like too many benefits available to Reserve Component members, the publicly facing wording on eligibility, in light of case law explained below, is overly restrictive and potentially misleading. Congress built TAMP to assist Reserve service members in their transition from active duty to traditional Reserve lives. TAMP enables a continuity of care for injuries and conditions worsened by their military service and fills the gap between their arrival back home and integration into any civilian health insurance they had before mobilization.

Lieutenant Commander (LCDR) Anthony Gontarz, a life member of the Reserve Organization of America (ROA), is a Navy Reserve officer. He is not currently on active duty, but he was on active duty for many months, until 9/30/2025 (the end of Fiscal Year 2025). His most recent active-duty orders referred to section 12301(d) of title 10.<sup>9</sup>

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<sup>7</sup> Def. Health Agency, TRICARE Policy Manual 6010.63-M, ch. 10, ¶ 2.1.2 (Apr. 2021), <https://manuals.health.mil/pages/DisplayManual.aspx?SeriesId=TPT5>.

<sup>8</sup> Def. Health Agency, Transitional Assistance Management Program, TRICARE, <https://tricare.mil/tamp/> (last visited May 11, 2026).

<sup>9</sup> 10 U.S.C. § 12301(d).

LCDR Gontarz applied for transitional health care, for himself and his family, under section 1145(a)(2)(B) of title 10, quoted above. The Navy denied him that transitional health care because section 12301(d) of title 10 is not one of the sections of the United States Code that is specifically mentioned in section 101(a)(13)(B) of title 10. Here is the entire text of section 101(a)(13):

*(13) The term “contingency operation” means a military operation that--*

*(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or*

*(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 13 of this title, section 3714 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.<sup>10</sup>*

Just last year (2025), the Supreme Court definitively interpreted the final clause of section 101(a)(13)(B): “*or any other provision of law during a war or during a national emergency declared by the President or Congress.*”<sup>11</sup> In that case, the Supreme Court held:

At its core, the dispute before us turns on the meaning of the phrase “during a national emergency.” Does that language promise differential pay to certain federal civilian employees

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<sup>10</sup> 10 U.S.C. § 101(a)(13) (emphasis supplied).

<sup>11</sup> See *Feliciano v. Department of Transportation*, 605 U.S. 38 (2025).

called to active-duty service while a national emergency is ongoing, as Mr. Feliciano argues? Or does it require a reservist to prove some additional, substantive connection between his service and a particular national emergency, as the Federal Circuit held, and the government contends? Several considerations persuade us that Mr. Feliciano's interpretation is the sounder one.

Start with the word "during." Normally, we have said, that word "denotes a temporal link" and means "contemporaneous with." *United States v. Ressam*, 553 U. S. 272, 274-275, 128 S. Ct. 1858, 170 L. Ed. 2d 640 (2008). Any number of dictionaries from around the time of §101(a)(13)(B)'s adoption in 1991 offer up similar formulations. See, e.g., Black's Law Dictionary 504 (6th ed. 1990) (defining "during" as "[t]hroughout the course of; throughout the continuance of; in the time of; after the commencement and before the expiration of").

Conversely, the word "during" does not generally imply a substantive connection. The government itself has previously acknowledged as much. As its briefing in *Ressam* explained, "[t]he plain everyday meaning of 'during' is 'at the same time' or 'at a point in the course of.' It does not normally mean 'at the same time *and in connection with*.'" Brief for United States in *United States v. Ressam*, O. T. 2007, No. 455, pp. 13-14 (emphasis added). Reading "during" to require a substantive connection, the government warned, risks "read[ing] in a relational element" that the word does not necessarily convey. Tr. of Oral Arg. In *United States v. Ressam*, O. T. 2007, No. 455, p. 31. Adopting just that view, this Court in *Ressam* held that a sentencing enhancement addressing those who carry an explosive "during" the commission

of a felony applies to individuals who carry explosives “contemporaneous with” their felonies even in the absence of a substantive “relationship between the explosive carried and the underlying felony.” 553 U. S., at 275, 128 S. Ct. 1858, 170 L. Ed. 2d 640.<sup>12</sup>

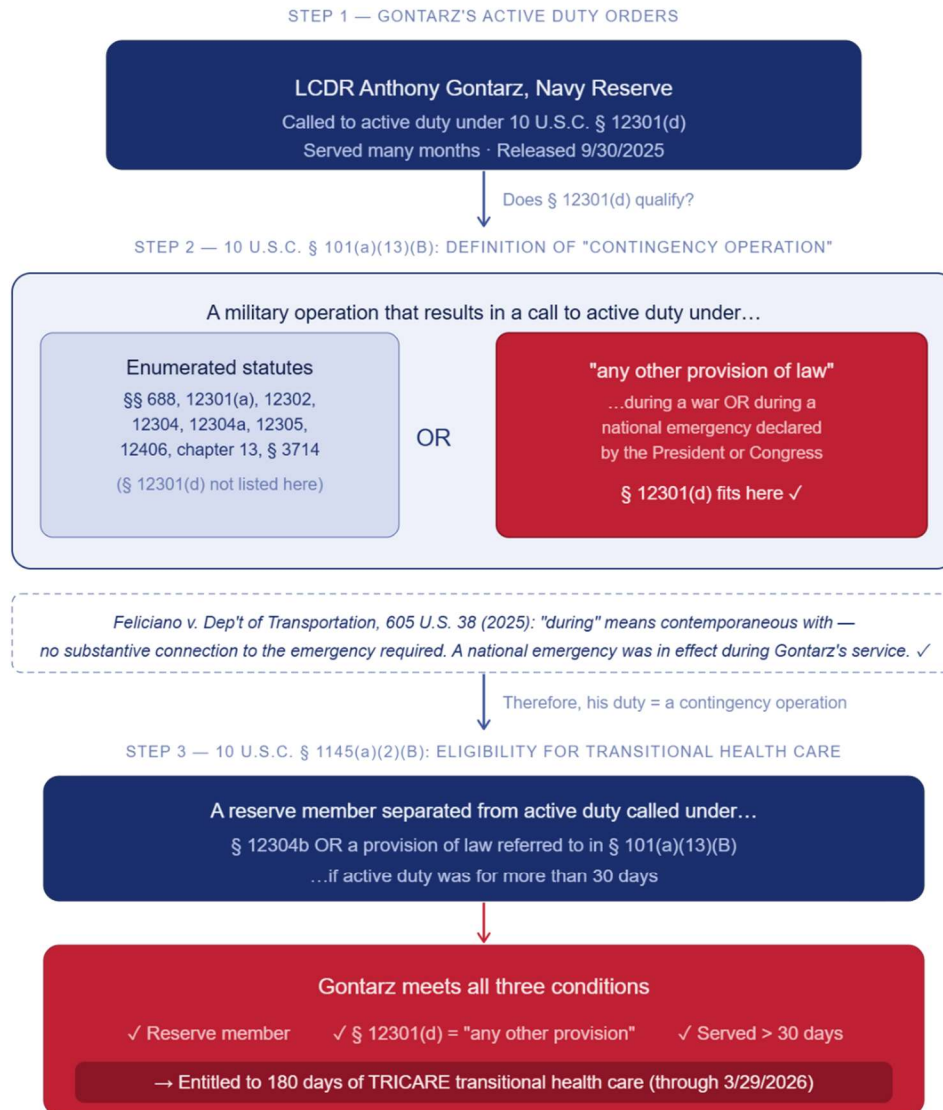
Under section 1145(a)(2)(B), LCDR Gontarz was entitled to transitional health care for himself and his family until 3/29/2026 (180 days after he left active duty on 9/30/2025). During that 180-day period, he incurred several thousand dollars of health care expenses that should have been covered by TRICARE but were not covered because of the Navy’s erroneous denial of LCDR Gontarz’ application for transitional health care.

LCDR Gontarz is the putative plaintiff in a class-action lawsuit against the Navy and the Department of Defense, on behalf of himself and all others similarly situated. This case has not yet been certified for class-action adjudication, but we predict that this will happen soon. This should also drive examination of the true reach of *Feliciano*. Tens of thousands have served since the implementation of TAMP, “during a war or during a national emergency declared by the President or Congress,” with unknown thousands serving in non-preplanned or contingency operations and, assumedly, denied TAMP benefits. The cost of their medical care, in turn, was either borne by the Service member or their civilian insurance—a cost that was rightfully the Department of Defense’s to pay.

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<sup>12</sup> *Feliciano*, 605 U.S. at 44-45. See also Law Review 26023 (June 2026), for a detailed discussion of the implications of the *Feliciano* case.

**We call upon the Navy and the Department of Defense to confess error instead of answering the complaint. The Navy and the Department of Defense should not waste any more time trying to defend the indefensible. *Feliciano* is directly on point and indistinguishable.**



**Figure 1: Analysis of Active Duty Orders and Controlling Statute**



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