

DEC 07 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHELLY ANNE HUDSON,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 10-55561

D.C. No. 3:09-cv-01246-JAH-AJB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John Allen Houston, District Judge, Presiding

Argued and Submitted November 7, 2011
Pasadena, California

Before: SCHROEDER and LEAVY, Circuit Judges, and GILLMOR, District
Judge.**

Plaintiff-Appellant Shelly Anne Hudson appeals the district court's
dismissal of her Federal Tort Claims Act ("FTCA") claim pursuant to *Feres v.*

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Helen W. Gillmor, United States District Judge for the
District of Hawaii, sitting by designation.

United States, 340 U.S. 135 (1950). The district court held that Hudson's FTCA claims were incident to her active military service and were, therefore, barred by the *Feres* doctrine. We appreciate Hudson's counsel's acknowledgment that *Feres* is binding upon this Court. Hudson seeks to overturn *Feres* in the United States Supreme Court.

We review a dismissal pursuant to the *Feres* doctrine *de novo*. *Jackson v. Tate*, 648 F.3d 729, 732 (9th Cir. 2011). When a service member's injury is incident to military service, the service member lacks standing to pursue an FTCA claim. *Id.* at 733. Hudson was an active duty service member of the United States Navy during the events giving rise to the controversy. The *Feres* Doctrine, therefore, bars Hudson's FTCA claim. *See, e.g., Atkinson v. United States*, 825 F.2d 202, 203-06 (9th Cir. 1987), *cert. denied*, 485 U.S. 987 (1988) (barring servicewoman's medical malpractice claim alleging military hospital's negligence caused her child to be stillborn).

AFFIRMED.