

DEC 24 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARLENE JUNE, Conservator for minor  
and surviving son of deceased in his own  
right and on behalf of all statutory  
beneficiaries conservator for A.K.B.  
deceased, Anthony Edward Booth,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 11-17776

D.C. No. 2:11-cv-00901-SRB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Susan R. Bolton, District Judge, Presiding

Submitted December 20, 2013\*\*  
San Francisco, California

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: THOMAS and McKEOWN, Circuit Judges, and BENNETT, District Judge.\*\*\*

Plaintiff Marlene June, acting as conservator for A.K.B., (“June”) appeals the district court’s judgment in favor of the United States. We have jurisdiction pursuant to 28 U.S.C. § 1291 and reverse and remand. Because the parties are familiar with the factual and procedural history of the case, we will not recount it here.

After the district court entered judgment, an en banc panel of this Court held that 28 U.S.C. § 2401(b) of the Federal Tort Claims Act is not jurisdictional and that equitable adjustment of the limitations period in that section is not prohibited. *Wong v. Beebe*, -- F.3d ---, 2013 WL 5539621 (9th Cir. 2013) (en banc), *overruling Marley v. United States*, 567 F.3d 1030 (9th Cir. 2009). In light of *Wong*, we must reverse the district court’s contrary ruling and remand for further proceedings consistent with this disposition.

We need not, and do not, reach any other issue urged by the parties on appeal.

**REVERSED AND REMANDED.**

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\*\*\* The Honorable Mark W. Bennett, District Judge for the U.S. District Court for the Northern District of Iowa, sitting by designation.