

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 09-1683

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Allen Payne,	*
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Appellant,	*
	* Appeal from the United States
v.	* District Court for the Western
	* District of Missouri.
United States of America,	*
	* [UNPUBLISHED]
Appellee.	*

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Submitted: January 19, 2010  
Filed: January 22, 2010

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Before MELLOY, BOWMAN, and SMITH, Circuit Judges.

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PER CURIAM.

Allen Payne appeals the district court's<sup>1</sup> adverse grant of summary judgment in his Federal Tort Claims Act (FTCA) suit. We conclude that summary judgment was proper, because the record shows that Payne seeks damages for injuries arising out of his exposure to Agent Orange while he was serving in Vietnam. Accordingly, his suit is barred under Feres v. United States, 340 U.S. 135, 146 (1950) (United States is not liable under FTCA for injuries to servicemen where injuries arise out of or are sustained in course of activity incident to service). See Saulsberry v. St. Mary's

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<sup>1</sup>The Honorable Greg Kays, United States District Judge for the Western District of Missouri.

Univ. of Minn., 318 F.3d 862, 866 (8th Cir. 2003) (appellate court may affirm on any basis supported by record); Brown v. United States, 151 F.3d 800, 803-04 (8th Cir. 1998) (injury is incident to service if it arises because of injured's military relationship with government; Feres doctrine limits scope of FTCA's waiver of sovereign immunity and is jurisdictional); Wood v. United States, 968 F.2d 738, 739 (8th Cir. 1992) (under Feres doctrine, claims under FTCA, negligence claims, 42 U.S.C. § 1983 claims, and claims brought under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), are nonjusticiable if they involve injuries arising out of or in course of activity incident to military service).

Accordingly, we affirm the district court's judgment.

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