No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERTA RONIQUE BELL,

Petitioner,

v.

WARDEN, FCI DUBLIN,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE DENIAL OF AN EVIDENTIARY HEARING IN SUPPORT OF § 2241 RELIEF CAN BE BASED EXCLUSIVELY ON THE RECORD DEVELOPED BY AN ALLEGED CO-CONSPIRATOR FROM SEPARATE PROCEEDINGS TO WHICH APPELLANT WAS NOT A PARTY, THEREBY DENYING HER A SIMILAR FULL AND FAIR OPPORTUNITY TO ESTABLISH HER ACTUAL INNOCENCE?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Roberta Ronique Bell, by and through her undersigned attorney, respectfully petitions for a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit appears in the Appendix.

JURISDICTION

On April 4, 2022, the Court of Appeals entered its Judgment affirming the denial of habeas relief pursuant to § 2241 and a denial of an evidentiary hearing. A petition for a panel re-hearing and *en banc* review was denied on June 13, 2022. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1). This petition is timely filed within 90 days of the decision below under Rule 13.1(3) of this Court.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent statutory provisions include Rule 8 of the Rules Governing § 2255, 28 U.S.C. § 2241 *et seq.*

STATEMENT OF THE FACTS

Ms. Bell is serving a life sentence at FCI Dublin after being convicted in 1996 in the Middle District of Pennsylvania for a violation of Witness Tampering, pursuant to 18 U.S.C. § 1512. Long after her direct appeal and *pro se* § 2255 motions were denied, the Supreme Court clarified the scope of the federal obstruction statute in *Arthur Andersen, LLP v. United States*, 544 U.S. 696 (2005) and *Fowler v. United States*, 563 U.S. 668 (2011). These intervening cases casts Ms. Bell's conviction and life sentence into serious doubt.

Indeed, Ms. Bell's co-conspirator, Willie Tyler, who had a separate trial, enjoyed a full remand and retrial in the Middle District of Pennsylvania of his conviction and life sentence precisely based upon the changes in the law under *Andersen* and *Fowler*. Unlike Ms. Bell, Mr. Tyler was fortunate enough to be housed in a federal prison in the Middle District of Pennsylvania where male federal prisons abound, able to file his post-conviction claims before the same court of conviction, maintain his prior counsel and obtain swifter relief.[1]

Nevertheless, undeterred, on December 28, 2017, Ms. Bell filed a *pro-se* § 2241 petition in the Northern District of California, her place of confinement and some 3,000 miles away from her district of conviction. In that petition, Ms. Bell claimed, like Willie Tyler, that she was actually innocent of the 1996 Tampering counts, based upon the *Andersen* and *Fowler* subsequent decisions that rendered her conduct non-criminal. On February 15, 2018, the district court concluded that Ms. Bell stated a cognizable claim and ordered the Government to show cause why her § 2241 petition should not be granted. On June 15, 2018, among other things, the Government moved to dismiss.

On March 13, 2019, the district court denied the Government's motion to dismiss and appointed the undersigned, who previously represented Ms. Bell in post-conviction proceedings in the Middle District of Pennsylvania. Notably, in its

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[1] The Third Circuit found that the record supported Mr. Tyler's claim of actual innocence on the communication charge and remanded the case back to the district court to simply "to allow Tyler to prove his claim of actual innocence." *United States v. Tyler*, 732 F.3d 241, 253 (3d Cir. 2013). Upon remand and affording Mr. Tyler that opportunity, the district court found Mr. Tyler was actually innocent of the communications charge and ordered a new trial, Mr. Tyler's third.

denial of the Government's motion to dismiss, the district court found that there were factual disputes that could allow a reasonable juror to conclude that the victim-informant, Doreen Proctor, was not reasonably likely to communicate with federal law enforcement. (D.C. ECF No. 23, at 28-29).

On February 19, 2021, without any evidentiary hearing, the district court denied Ms. Bell's habeas petition. A timely notice of appeal to the Ninth Circuit was filed. Oral argument was held on March 18, 2022. On April 4, 2022, a three-judge panel of the Ninth Circuit (the "Panel"), in a three-page opinion, affirmed. *See Bell v. Warden, FCI Dublin*, No. 21-15383, 2022 WL 999917, at * 1 (9th Cir. Apr. 4, 2022). In its decision, the Panel determined that the district court did not abuse its discretion in denying an evidentiary hearing based upon the evidence in the record. A timely petition for re-hearing and for *en banc* review was denied on June 13, 2022.

ARGUMENT

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE IMPORTANT ISSUE OF WHETHER THE DENIAL OF AN EVIDENTIARY HEARING IN SUPPORT OF § 2241 RELIEF CAN BE BASED EXCLUSIVELY ON THE RECORD DEVELOPED BY AN ALLEGED CO-CONSPIRATOR FROM SEPARATE PROCEEDINGS TO WHICH APPELLANT WAS NOT A PARTY, THEREBY DENYING HER A SIMILAR FULL AND FAIR OPPORTUNITY TO ESTABLISH HER ACTUAL INNOCENCE.

The standards of what a habeas petitioner must allege to secure an evidentiary hearing is a recurring issue of exceptional national importance. This Court's review is required to avoid the destruction of "the only writ explicitly protected by the Constitution." *Holland v. Florida*, 560 U.S. 631, 649 (2010).

This Court has long held that when the record supports a habeas petitioner's claim of actual innocence, the matter should be remanded for an evidentiary hearing to afford the petitioner an opportunity to establish "actual innocence." *See Bousley v. United States*, 523 U.S. 614, 623-24 (1998); *see also Walker v. Johnston*, 312 U.S. 275 (1941) (where allegations of habeas corpus and traverse present an issue of fact, the proper procedure is to hold evidentiary hearing). The evidence used to establish "actual innocence" at an evidentiary hearing is broad and goes beyond simply review of the trial record. *Bousley,* 523 U.S. at 624 (petitioner may rest on the record as it stands or present additional evidence).

Notably, in denying the Government's motion to dismiss the § 2241, the district court made an initial threshold determination that there *was* evidence in the record in support of Ms. Bell's actual innocence claim. The district court stated there were "identified factual disputes that—viewed in the light most favorable to Petitioner—could allow a reasonable juror to conclude that Proctor was not reasonably likely to communicate with federal law enforcement." (D.C. ECF No. 33, at 13) (emphasis added). Nevertheless, in the course of denying § 2241 relief without an evidentiary hearing, the district court held that Ms. Bell could not establish actual innocence. In making that conclusion, the district court relied exclusively on the rulings and factual findings from co-conspirator Willie Tyler's final re-trial in 2017 and the Third Circuit's reversal of that district court's judgment of acquittal. (D.C. ECF No. 33, at 23-25).

While there is no dispute that the district court could look outside Ms. Bell's own trial record, she was never a party to any of Willie Tyler's proceedings in which the district court relied. In fact, the only time she was able to ever question any law enforcement witnesses, was at her own original trial back in 1996, pre-*Andersen* and *Fowler*. Furthermore, as the district court originally recognized, there were factual disputes that could have allowed a reasonable juror to conclude that Doreen Proctor was not reasonably likely to communicate with law enforcement. Indeed, it is indisputable that there were multiple inconsistencies over the years from law enforcement officers (Diller & Fones) on this issue beginning in Ms. Bell's trial through all of Willie Tyler's multiple trials. Moreover, the law enforcement testimony at Ms. Bell's trial were abbreviated and limited in scope, constituting a mere ten pages of Diller testimony (direct and cross) and nine pages of Fones' testimony (direct and cross). *See* Bell Trial Tr. at 43-62, Jan. 10, 1996. In addition, their respective testimonies even evolved over the years in the Willie Tyler case to satisfy the Government's federal jurisdiction problem.

Significantly, a DEA Special Agent's (Humphrey) testimony from the last Willie Tyler trial, in which the district court extensively relied upon in denying habeas relief, was never even a witness in Ms. Bell's trial. Thus, Ms. Bell was never afforded an opportunity to question that agent on these important issues.
The evidentiary record in the *Tyler* case is not, and should not be, interchangeable to Roberta Bell, who in the post-*Andersen* and *Fowler* world, has never had an opportunity to have an evidentiary hearing to establish her own actual innocence.

Using the *Tyler* record exclusively as the district court did, that involved a separate case in which Ms. Bell was not a party, does not suffice to satisfy her opportunity to establish actual innocence.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Court should grant the petition for writ of certiorari.

Dated: September 12, 2022

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERTA RONIQUE BELL,

Petitioner,

v.

WARDEN, FCI DUBLIN,

Respondent.

CERTIFICATE OF SERVICE

I, Edward J. Rymsza, hereby certify that on this 12th day of September 2022, I served copies of the Petition for a Writ of Certiorari in the above-captioned case were mailed, first class postage prepaid to the following:

Elizabeth Prelogar
Solicitor General
United States Department of Justice
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Molly Dwyer, Clerk
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95 7th Street
San Francisco, CA 94103

Roberta Bell
08116-067
FCI Dublin
5701 8th Street – Camp Parks
Dublin, CA 94568

I certify that all parties required to be served have been served.

Dated: September 12, 2022

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CERTIFICATIONS

I, Edward J. Rymsza, Esq., hereby certify that:

1. I am a member of the bar of the Supreme Court of the United States,

2. the text of the electronic brief e-mailed to the Court is identical to the text of the other paper copies mailed to the Court,

3. the attached brief has been automatically scanned during preparation and upon sending by Avast anti-virus detection program and no virus was detected,

4. on the date below, one copy of the foregoing Petition for Writ of Certiorari was placed in the United States mail, first class, postage pre-paid addressed to:

Carl Marchioli, Esq.
Office of the U.S. Attorney Middle District of Pennsylvania
228 Walnut Street
Harrisburg, PA 11754

5. on the date below, ten copies of the same were placed in the United States mail, first class, postage pre-paid, addressed to:

Supreme Court of the United States
Office of Clerk
One First Street NE
Washington, D.C. 20543

Dated: September 12, 2022

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NOT FOR PUBLICATION

FILED

APR 4 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERTA RONIQUE BELL, Petitioner-Appellant, v. WARDEN, FCI DUBLIN, Respondent-Appellee.	No. 21-15383 D.C. No. 5:17-cv-07346-LHK MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

Argued and Submitted March 18, 2022
San Francisco, California

Before: W. FLETCHER, GOULD, and COLLINS, Circuit Judges.

In 1996, a federal jury found Roberta Ronique Bell ("Bell") guilty of two charges related to witness tampering in violation of 18 U.S.C. § 1512(a)(1), (b) in connection with the torture and murder of Doreen Proctor ("Proctor"). She was sentenced to life imprisonment on the murder charge. *See id.* § 1512(a). In 2017, Bell sought to vacate her § 1512 convictions and requested a new trial because she

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

DEFENDANT'S EXHIBIT
A

claimed that intervening Supreme Court precedent rendered her actually innocent of federal witness tampering. The district court denied Bell's *habeas* petition and her request for an evidentiary hearing, and we affirm.

"A district court's denial of a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is reviewed de novo." *Lane v. Swain*, 910 F.3d 1293, 1295 (9th Cir. 2018). "A district court's decision to deny a motion for an evidentiary hearing is reviewed for an abuse of discretion." *United States v. Rodrigues*, 347 F.3d 818, 823 (9th Cir. 2003).

1. A petitioner may file a § 2241 *habeas* petition "under the escape hatch of § 2255 when [she] (1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at presenting that claim." *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006) (internal quotations omitted). To prove actual innocence, a "petitioner must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted [her]." *Id.* (quoting *Bousley v. United States*, 523 U.S. 614, 623 (1998)).

Here, Bell cannot establish her actual innocence. The record contains sufficient evidence upon which a reasonable juror could have relied to conclude that it was reasonably likely that Proctor would have communicated with a federal law enforcement officer had she not been killed. *See Fowler v. United States*, 563 U.S. 668, 678 (2011) ("The Government need not show that such a

communication, had it occurred, would have been federal beyond a reasonable doubt, nor even that it is more likely than not"; rather, "the Government must show that the likelihood of communication to a federal officer was more than remote, outlandish, or simply hypothetical."). Therefore, under our Circuit's precedent, Bell's undisputed actual innocence under the alternative official proceeding theory of witness tampering, on its own, does not entitle her to a new trial. *See Lorentsen v. Hood*, 223 F.3d 950, 954–55 (9th Cir. 2000) (requiring that when a petitioner seeking *habeas* relief was convicted under two theories, and one of those theories was later precluded by intervening Supreme Court precedent, the petitioner must still prove actual innocence under the remaining theory).

2. The district court did not abuse its discretion in declining to hold an evidentiary hearing. The district court wrote a detailed opinion that discussed and considered the evidence in the record, and Bell has not shown that there is additional, material evidence not already considered.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 13 2022

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

ROBERTA RONIQUE BELL,

Petitioner-Appellant,

v.

WARDEN, FCI DUBLIN,

Respondent-Appellee.

No. 21-15383

D.C. No. 5:17-cv-07346-LHK
Northern District of California,
San Jose

ORDER

Before: W. FLETCHER, GOULD, and COLLINS, Circuit Judges.

Judge W. Fletcher has voted to deny the Petition for Panel Rehearing and recommended the denial of the Petition for Rehearing *En Banc*; Judge Gould and Judge Collins have voted to deny the Petition for Panel Rehearing and Rehearing *En Banc*. *See* Docket Entry No. 39. The full court has been advised of the Petition for Rehearing *En Banc*, and no judge has requested a vote on whether to rehear the matter *en banc*. Fed. R. App. P. 35. Accordingly, the Petition is DENIED.

DEFENDANT'S EXHIBIT
B