

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-6563

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

PATRICK ALBERT BYERS, JR.,

Defendant – Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Richard D. Bennett, Senior District Judge. (1:08-cr-00056-RDB-1)

Submitted: March 6, 2026

Decided: March 30, 2026

Before KING, AGEE, and HARRIS, Circuit Judges.

Vacated and remanded with directions by unpublished per curiam opinion.

ON BRIEF: Brent Evan Newton, Gaithersburg, Maryland, for Appellant. Kelly O. Hayes, United States Attorney, Jason D. Medinger, First Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Patrick Albert Byers pursues an appeal from the District of Maryland's orders denying his 2016 "Motion for Request of Discovery," which the district court construed as a motion for relief under Federal Rule of Civil Procedure 60(b). *See United States v. Byers*, No. 1:08-cr-00056 (D. Md. Dec. 22, 2022), ECF Nos. 562 & 563; *United States v. Byers*, No. 1:08-cr-00056 (D. Md. July 7, 2025), ECF No. 594. In that regard, we have carefully reviewed the record on appeal and conclude that, notwithstanding the well-seasoned district judge's Rule 60(b) characterization, Byers's 2016 Motion was actually a second or successive 28 U.S.C. § 2255 motion. Pursuant to the 2016 Motion, Byers sought to collaterally attack his 2009 conviction, which our Court had affirmed in 2011. *See United States v. Byers*, 649 F.3d 197 (4th Cir. 2011). And that collateral attack was undertaken by Byers in spite of the fact that the district court had already adversely adjudicated his first § 2255 motion on the merits in September 2015. *See Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005) (recognizing "that a Rule 60(b) motion that seeks to revisit the federal court's denial *on the merits* of a claim for relief should be treated as a successive habeas petition").

In these circumstances, however, because Byers did not first obtain authorization from our Court to file a second or successive § 2255 motion, the district court necessarily lacked jurisdiction to consider the 2016 Motion. *See United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003), *abrogated on other grounds*, *United States v. McRae*, 793 F.3d

392 (4th Cir. 2015).^{*} We thus “vacate the [court’s] order[s] denying [Byers’s 2016 Motion] and remand to the district court with [directions] to dismiss the [M]otion.” *Id.* at 208.

Furthermore, consistent with our *Winestock* precedent, we hereby construe Byers’s notice of appeal and appellate brief as an application to file a second or successive § 2255 motion. And upon consideration thereof, we readily conclude that Byers’s claims fail to satisfy the relevant and applicable legal standard. *See* 28 U.S.C. § 2255(h).

Pursuant to the foregoing, we are satisfied to vacate the district court’s orders denying Byers’s 2016 Motion, and we remand with directions for the court to dismiss the 2016 Motion for lack of jurisdiction. *See Winestock*, 340 F.3d at 209. We are otherwise content to deny authorization for Byers to file a second or successive § 2255 motion.

*VACATED AND REMANDED
WITH DIRECTIONS*

^{*} It is appropriate to observe that our Court had heretofore denied two requests by Byers — pursued under 28 U.S.C. § 2244 — seeking authorization to file a second or successive § 2255 petition. *See United States v. Byers*, No. 18-326 (4th Cir. Sept. 12, 2018), ECF No. 5; *United States v. Byers*, No. 21-292 (4th Cir. Dec. 6, 2021), ECF No. 6.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PATRICK ALBERT BYERS, JR.,	*	
Petitioner,	*	Civil Action No. RDB-12-2348
v.	*	Criminal Action No. RDB-08-056
UNITED STATES OF AMERICA,	*	
Respondent.	*	
* * * * *		
* * * * *		

MEMORANDUM ORDER

Petitioner Patrick Albert Byers, Jr. (“Petitioner” or “Byers”) faced capital charges in this Court for conduct stemming from the murder of Carl Stanley Lackl, who was expected to testify against Byers in a state murder trial. On April 17, 2009, following a 23-day guilt phase trial before this Court, a jury convicted Byers of the following offenses with which he was charged in a Superseding Indictment: Conspiracy to Use a Facility of Interstate Commerce in the Commission of a Murder for Hire in violation of 18 U.S.C. § 1958(a) (Count One); Use of a Facility of Interstate Commerce in the Commission of a Murder for Hire in violation of 18 U.S.C. § 1958(a) (Count Two); Conspiracy to Kill Another Person with Intent to Prevent his Communication to a Law Enforcement Office or Judge of the United States Related to the Commission or Possible Commission of a Federal Offense in violation of 18 U.S.C. §§ 1512(a)(1)(C), (3)(A), and (k) (Count Three); Killing Another Person with intent to Prevent his Communication to a Law Enforcement Officer or Judge of the United States related to the Commission or Possible Commission of a Federal

Offense in violation of 18 U.S.C. §§ 1512(a)(1)(C), (3)(A), and (k) (Count Four); Using a Firearm in Furtherance of a Crime of Violence, and Aiding and Abetting the Use of a Firearm in Furtherance of a Crime of Violence in violation of 18 U.S.C. § 924(c) and 18 U.S.C. § 2 (Count Five); Causing the Death of Carl Stanley Lackl through the Use of a Firearm in the Course of the Commission of the Offense Charged in Count Five in violation of 18 U.S.C. § 924(j) (Count Six); Conspiracy to Use a Firearm in Furtherance of a Crime of Violence in violation of 18 U.S.C. § 924(o) (Count Seven); and Unlawful Possession of a Firearm by a Prohibited Person in violation of 18 U.S.C. § 922(g)(1) (Count Eight).¹ (Jury Verdict, ECF No. 316; Superseding Indictment, ECF No. 95; Notice of Intent to Seek the Death Penalty, ECF No. 94.)

On May 4, 2009, the jury was unable to reach a unanimous verdict as to the death penalty. (Special Verdict, ECF No. 339.) Accordingly, this Court sentenced Byers to four consecutive terms of life in prison.² (Judgment, ECF No. 340.) The United States Court of Appeals for the Fourth Circuit affirmed Byers' convictions and sentence. *United States v. Byers*, 649 F.3d 197, 201 (4th Cir. 2011). Byers later filed a motion to vacate pursuant to 28 U.S.C. § 2255. (ECF Nos. 412, 424.) In a Memorandum Opinion dated September 16, 2015,

¹ Byers was acquitted on Count Nine, which charged him with possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c). (ECF No. 316 at 3.)

² Specifically, this Court sentenced Byers to concurrent terms of life imprisonment on Counts One and Two; a consecutive term of life imprisonment on Count Three; a term of life imprisonment on Count Four which was to run concurrent to the sentence imposed on Count Three and Consecutive to Counts One and Two; a life sentence on Count Six which was to run consecutive to the sentences on Count One, Two, Three, and Four; a term of life imprisonment on Count Five which was to run consecutive to the sentences imposed on Counts One, Two, Three, Four, and Six; a twenty-year term of imprisonment on Count Seven to run concurrent to Count Five; and a term of 10 years of imprisonment on Count Eight to run concurrent with the sentences imposed on Counts Five and Seven. (Judgment, ECF No. 340.)

this Court DENIED Byers' motion to vacate and denied a certificate of appealability. (Memorandum Opinion, ECF No. 464.)

Presently pending before this Court are several additional post-conviction motions that Byers has filed *pro se*. The parties' submissions have been reviewed, and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2021). For the reasons that follow, Byers' Motion for Request of Discovery (ECF No. 474), construed as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b), is GRANTED IN PART AND DENIED IN PART such that Byers will be permitted to amend his original petition under § 2255 as to his convictions and sentences on Counts Three, Four, and Eight. Byers will not, however, be permitted additional discovery at this time nor will he under any circumstances be permitted personally to possess the discovery material in this case. The Government's objection to that motion (ECF No. 475) is OVERRULED. Byers' Motions to Appoint Counsel (ECF Nos. 528, 533) are GRANTED. Byers will be appointed counsel to assist in amending his § 2255 petition with respect to Counts Three, Four, and Eight. Byers' Rule 60(b)(2) & (6) Motion (ECF No. 529) is therefore MOOT. Byers' Motion to Vacate Pursuant to § 2255 on the basis of *Johnson v. United States*, 576 U.S. 591 (2015) (ECF No. 480) is DENIED.

STANDARD OF REVIEW

I. 28 U.S.C. § 2255 Standard

This Court recognizes that the Petitioner is *pro se* and has accorded his pleadings liberal construction. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Under 28 U.S.C. § 2255, a prisoner in custody may seek to vacate, set aside, or correct his sentence on four grounds: (1) the sentence was imposed in violation of the Constitution or laws of the United States, (2)

the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, or (4) the sentence is otherwise subject to a collateral attack. *Hill v. United States*, 368 U.S. 424, 426-27 (1962) (citing 28 U.S.C. § 2255).

The scope of a § 2255 collateral attack is far narrower than an appeal, and a “collateral challenge may not do service for an appeal.” *Foster v. Chatman*, 136 S. Ct. 1737, 1758 (2016) (quoting *United States v. Frady*, 456 U.S. 152, 165 (1982)). Thus, any failure to raise a claim on direct appeal constitutes a procedural default that bars presentation of the claim in a § 2255 motion unless the petitioner can demonstrate cause and prejudice, or actual innocence. *United States v. Pettiford*, 612 F.3d 270, 280 (4th Cir. 2010); see *Dretke v. Haley*, 541 U.S. 386, 393 (2004); *Reed v. Farley*, 512 U.S. 339 (1994); see also *United States v. Mikalajunas*, 186 F.3d 490, 492-93 (4th Cir. 1999).

II. Rule 60(b) Standard

Habeas proceedings under 28 U.S.C. § 2255 are brought as civil actions. Accordingly, the Federal Rules of Civil Procedures apply “to the extent that they are not inconsistent with the Habeas Corpus Rules.” *Woodford v. Garceau*, 538 U.S. 202, 208, 123 S. Ct. 1398, 155 L. Ed. 2d 363 (2003). Rule 60(b) of the Federal Rules of Civil Procedure states that “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons . . . (1) mistake, inadvertence, surprise, or excusable neglect; . . . (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b). Rule 60(c) requires that a motion under Rule 60(b) “must be made within a reasonable time – and for reason[] (1) . . . no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c). A motion under Rule 60(b)(6) requires

“extraordinary circumstances” or “situations involving undue hardship.” *See Reid v. Angelone*, 369 F.3d 363, 370 (4th Cir.2004) (citation omitted).

ANALYSIS

In the unique circumstances of this case, Petitioner’s Motion for Request of Discovery (ECF No. 474), construed as a motion under Federal Rule of Civil Procedure 60(b)(6), must be granted in the interests of justice.³ Petitioner has made a showing both of extraordinary circumstances and undue hardship. First, twenty days after the United States Court of Appeals for the Fourth Circuit upheld Petitioner’s convictions and sentence, the Supreme Court of the United States issued its decision in *Fowler v. United States*, 563 U.S. 668, 677 (2011), in which it held that in a prosecution for witness tampering murder under 18 U.S.C. § 1512(a)(1)(C)

where the defendant does not have particular federal law enforcement officers in mind [.] the Government must show *a reasonable likelihood* that, had, *e.g.*, the victim communicated with law enforcement officers, at least one relevant communication would have been made to a federal law enforcement officer. That is to say, where the defendant kills a person with an intent to prevent communication with law enforcement officers generally, that intent includes an intent to prevent communications with *federal* law enforcement officers only if it is reasonably likely under the circumstances that (in the absence of the killing) at least one of the relevant communications would have been made to a federal officer.

³ In his motion, which was filed six months after this Court decided the original § 2255 petition on the merits, Petitioner requests access to all trial discovery materials to assist him in preparing a “Motion 60(b) in accordance with the Federal Rules of Criminal Procedure.” (ECF No. 474 at 1.) Rule 60 of the Federal Rules of Criminal Procedure concerns victims’ rights. It is clear from the context of the filing that the *pro se* Petitioner meant to refer to Federal Rule of Civil Procedure 60(b), which provides a basis for a district court to reconsider a prior judgment. To the extent Petitioner requests that he be permitted personally to possess the discovery material in this case at his federal prison facility, the request is DENIED given the security concerns at issue. *United States v. Galloway*, 749 F.3d 238, 242 (4th Cir. 2014) (upholding the decision of this Court not to permit a criminal defendant to possess discovery material in a correctional facility due to safety considerations).

Fowler v. United States, 563 U.S. 668, 677-78 (2011). In *United States v. Smith*, 723 F.3d 510, 515 (4th Cir. 2013), the Fourth Circuit held that *Fowler* is retroactively applicable to cases on collateral review. Given this Court's instructions to the jury on Counts Three and Four, the Petitioner's convictions and sentences on those counts could possibly be subject to a meritorious collateral attack. (Apr. 16, 2009 Tr., ECF No. 392 at 722-26.) Byers, however, proceeding *pro se*, did not raise this issue in either his original or supplemental § 2255 petition.⁴ In light of the mandatory nature of the life sentences imposed on Counts Three and Four, this Court concludes that extraordinary circumstances warrant granting Petitioner relief under Federal Rule of Civil Procedure 60(b) and permitting him to amend his § 2255 petition to address the change in the law governing Counts Three and Four.⁵

Petitioner is also granted relief under Rule 60(b) such that he will be permitted to amend his § 2255 petition to raise challenges to his conviction and sentence on Count Eight, which charged him with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Petitioner has raised concerns about the participation of former Baltimore Police Sergeant Wayne Jenkins in the investigation of this case. On January 5, 2018, Jenkins pled guilty to federal racketeering, robbery, obstruction of justice, and deprivation of rights charges relating to the corruption of the Gun Trace Task Force. (CCB-17-106, Plea Agreement of Wayne Jenkins, ECF No. 254.) *See also generally* *United States v. Taylor*, 942 F.3d 205 (4th Cir. 2019); *Burley v. Balt. Police Dep't*, 422 F. Supp. 3d 986 (D. Md. 2019). Jenkins was ultimately sentenced to 240 months in prison. (CCB-17-106, Judgment, ECF No. 422.) In

⁴ Nor did the Government address *Fowler* in its response to Petitioner. (ECF No. 432.)

⁵ *See* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave [to amend] when justice so requires.").

this case, Jenkins testified against Petitioner regarding Petitioner's possession of the Sig Sauer .40 caliber semiautomatic handgun charged in Count Eight of the Superseding Indictment. (Apr. 7, 2009 Tr., ECF No. 380 at 165.) At the time Petitioner filed his original § 2255 petition, the details of Jenkins' corruption were not publicly known. Accordingly, on the facts of this case, relief under Rule 60(b) is appropriate to permit Petitioner to amend his § 2255 petition to raise arguments regarding his conviction and sentence on Count Eight.⁶

While Petitioner did request the appointment of counsel in the preparation of his § 2255 petition, this Court denied that request. (Memorandum Opinion, ECF No. 464 at 46 n.36.) However, in light of the factors noted above, this Court concludes that justice requires that Petitioner be appointed counsel to prepare his amended § 2255 petition regarding Counts Three, Four, and Eight. *See* 18 U.S.C. § 3006A(a)(2)(B). Accordingly, Petitioner's Motions to Appoint Counsel (ECF Nos. 528, 533) are GRANTED.

Finally, Petitioner's presently pending Motion to Vacate Pursuant to § 2255 (ECF No. 480) is DENIED. In his unauthorized and successive petition, Byers raises a single claim for relief based on the Supreme Court's decision in *Johnson v. United States*, 576 U.S. 591 (2015). *Johnson*, however, is inapplicable in this case. *Johnson* addressed 18 U.S.C. § 924(e), a provision of the Armed Career Criminal Act. Under that provision, a person convicted under § 922(g) who has three previous convictions for a violent felony or serious drug offense is subject to an enhanced mandatory minimum term of imprisonment of 15 years and a maximum term of imprisonment of life. 18 U.S.C. § 924(e). At the time of his

⁶ In light of the decision of this Court to grant Petitioner's first motion for relief under Rule 60(b) (ECF No. 474), his second Rule 60(b) motion (ECF No. 529) is MOOT.

conviction in this case, Byers did not have the requisite three qualifying prior convictions to trigger § 924(e). Therefore, Byers was sentenced to 10 years of imprisonment on Count Eight, the statutory maximum absent the Armed Career Criminal Act enhancement. (18 U.S.C. § 924(a)(2); Judgment, ECF No. 340.) Accordingly, Petitioner's Motion to Vacate (ECF No. 480) is DENIED. The Petition (ECF No. 480) does not satisfy the standard for a Certificate of Appealability, which may issue only if there is a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c). Therefore, a Certificate of Appealability is DENIED.

CONCLUSION

For the reasons stated above, it is HEREBY ORDERED this 22nd day of March 2022 that:

1. Byers' Motion for Request of Discovery (ECF No. 474), construed as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b), is GRANTED IN PART AND DENIED IN PART such that Byers will be permitted to amend his original petition under § 2255 as to his convictions and sentences on Counts Three, Four, and Eight of the Superseding Indictment. Byers will not, however, be permitted additional discovery at this time nor will he under any circumstances be permitted to possess the discovery material in this case. The Clerk of this Court shall REOPEN Civil Action No. RDB-12-2348. The Government's objection to that motion (ECF No. 475) is OVERRULED.
2. Byers' Motions to Appoint Counsel (ECF Nos. 528, 533) are GRANTED. Byers will be appointed counsel to assist in amending his § 2255 petition with respect to Counts Three, Four, and Eight.
3. Byers' Rule 60(b)(2) & (6) Motion (ECF No. 529) is MOOT.

4. Byers' Motion to Vacate Pursuant to § 2255 on the basis of *Johnson v. United States*, 576 U.S. 591 (2015) (ECF No. 480) is DENIED. The Clerk of this Court shall CLOSE Civil Action No. RDB-16-2394.

_____/s/_____
Richard D. Bennett
United States District Judge

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

PATRICK ALBERT BYERS, JR.,	*	
Petitioner,	*	Civil Action No. RDB-12-2348
v.	*	Criminal Action No. RDB-08-0056
UNITED STATES OF AMERICA	*	
Respondent.	*	
* * * * *		

MEMORANDUM OPINION

Following a capital trial, Petitioner Patrick Albert Byers, Jr. (“Petitioner” or “Byers”) was convicted by a jury of several charges stemming from the murder of Carl Lackl (“Lackl”). Although Byers was in state prison at the time of Lackl’s murder, the Government established at trial that he used a contraband cellphone to arrange the murder in order to prevent Lackl from testifying against him in his state trial for the 2006 murder of Larry Haynes (“Haynes”). He was convicted of conspiracy to use a facility of interstate commerce in commission of a murder for hire, in violation of 18 U.S.C. § 1958(a) (Count One); use of a facility of interstate commerce in the commission of a murder-for-hire, in violation of 18 U.S.C. § 1958(a) (Count Two); conspiracy to murder a federal witness, in violation of 18 U.S.C. § 1512(a)(1)(C) (Count Three); murder of a federal witness, in violation of 18 U.S.C. § 1512(a)(1)(C) (Count Four); three charges related to the use of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§ 924(c), 924(j), 924(o) (Counts Five, Six, and Seven); and possession of a firearm by a prohibited person, in violation of 18 U.S.C. § 922(g)(1) (Count Eight). (*See* Jury Verdict, ECF No. 316.)

On May 4, 2009, the jury failed to reach a unanimous verdict as to the death penalty. (*See* Notice of Intent to Seek the Death Penalty, ECF No. 94; Special Verdict, ECF No. 339.) This Court sentenced Byers to four consecutive terms of life imprisonment with no possibility of parole. (Judgment, ECF No. 340.) Specifically, this Court sentenced Byers to:

- Concurrent life sentences on Counts 1 and 2;
- Concurrent life sentences on Counts 3 and 4, to run consecutive to Counts 1 and 2;
- A life sentence on Count 6, to run consecutive to Counts 1 through 4; and
- A life sentence on Count 5, to run consecutive to Counts 1, 2, 3, 4, and 6;

(*Id.* at 3.)¹ Accordingly, the life sentences in Counts One, Two, Five, and Six are independent of the life sentences imposed in Counts Three and Four.

The United States Court of Appeals for the Fourth Circuit affirmed Byers' convictions on May 6, 2011. *See United States v. Byers*, 649 F.3d 197, 201 (4th Cir. 2011). Thereafter, Byers filed a motion to vacate sentence pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel. (ECF No. 412; *see also* Supplement, ECF No. 424.) On September 16, 2015, this Court denied that motion and denied a certificate of appealability. (Sept. 6, 2015 Mem. Op., ECF No. 464; Sept. 16, 2015 Ord., ECF No. 465.) In the following years, Petitioner has twice requested authorization from the Fourth Circuit to file successive § 2255 motions, and twice been denied. (*See* Appeal No. 18-326, ECF No. 557-2; Appeal No. 21-292, ECF No. 557-4.)

On March 22, 2022, this Court construed Byers' *pro se* Motion for Discovery (ECF No. 474) as a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b),

¹ Petitioner also received a 20-year sentence on Count 7, to run consecutively with Count 5, and a 10-year sentence on Count 8, to run consecutively with Counts 5 and 7. (*Id.*)

and granted this motion in part. (*See* Mar. 22, 2022 Mem. Ord. 8, ECF No. 534.) This Court reopened Byers’ original § 2255 Motion (ECF No. 412), permitting him to amend this motion and challenge his convictions as to Counts Three, Four, and Eight, and appointing counsel to assist him. (Mar. 22, 2022 Mem. Ord. 6–7.) Currently pending are Byers’ Amended Motion to Vacate Sentence (ECF Nos. 543, 412), Motion for Home Confinement (ECF No. 553); Motion for Compassionate Release (ECF No. 510); Motion for Review of Detention Order (ECF No. 513); and Motion for Deficient Service (ECF No. 460). The parties’ submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2018). For the following reasons, Byers’ Amended Motion to Vacate Sentence (ECF Nos. 543, 412) is hereby **DISMISSED** in part and **DENIED** in part. His remaining motions (ECF Nos. 460, 510, 513, 553) shall be addressed separately.

STANDARD OF REVIEW

Under 28 U.S.C. § 2255, a prisoner in custody may move to vacate, set aside, or correct his sentence on four grounds: (1) “the sentence was imposed in violation of the Constitution or laws of the United States,” (2) “the court was without jurisdiction to impose the sentence,” (3) “the sentence was in excess of the maximum authorized by law,” or (4) “the sentence ‘is otherwise subjected to collateral attack.’” *Hill v. United States*, 368 U.S. 424, 426–27 (1962) (quoting 28 U.S.C. § 2255). “[A]n error of law does not provide a basis for collateral attack unless the claimed error constituted a ‘fundamental defect which inherently results in a complete miscarriage of justice.’” *United States v. Addonizio*, 442 U.S. 178, 185 (1979) (quoting *Hill*, 368 U.S. at 428).

The scope of a § 2255 collateral attack is far narrower than an appeal, and “a collateral challenge may not do service for an appeal.” *United States v. Frady*, 456 U.S. 152, 165 (1982). Thus, any failure to raise a claim on direct appeal constitutes a procedural default that bars presentation of the claim in a § 2255 motion unless the petitioner can demonstrate cause and prejudice, or actual innocence. *United States v. Pettiford*, 612 F.3d 270, 280 (4th Cir. 2010); *see Dretke v. Haley*, 541 U.S. 386, 393 (2004); *Reed v. Farley*, 512 U.S. 339 (1994); *see also United States v. Mikalajunas*, 186 F.3d 490, 492-93 (4th Cir. 1999).

ANALYSIS

The facts of this case and the evidence produced at trial were reviewed in the Fourth Circuit’s opinion denying Byers’ appeal, *see United States v. Byers*, 649 F.3d 197, 201–06 (4th Cir. 2011), and this Court’s opinion denying his first collateral attack, *see Byers v. United States*, Civ. No. RDB-12-2348, Crim. No. RDB-08-0056, 2015 WL 5450179, at **1–5, 8–11 (D. Md. Sept. 16, 2015). This Court reopened Byers’ § 2255 motion and granted leave to amend in light of the Supreme Court’s intervening decision in *Fowler v. United States*, 563 U.S. 668 (2011), and the involvement of former Baltimore Police Sergeant Wayne Jenkins, who has since been convicted of federal racketeering, robbery, obstruction of justice, and other related charges arising out of his participation in the Baltimore Police Department’s disgraced Gun Trace Task Force. (Mar. 22, 2022 Mem. Ord. 6.) This motion challenges Byers’ convictions under Counts Three, Four, and Eight in light of these developments, presents several additional arguments against his remaining convictions, and seeks further leave to amend.

Although this Court authorized Byers to amend his Motion to Vacate Sentence (ECF No. 412) and introduce new challenges against Counts Three, Four, and Eight, that narrow

mandate does not necessarily suggest that Petitioner's new claims would be successful. After careful review of the parties' arguments, this Court finds that many of Petitioner's claims are untimely, while others are jurisdictionally barred. In the alternative, this Court concludes that each of Petitioner's arguments fail on the merits. This Court has already determined that the pre-*Fowler* jury instructions used in this case were harmless. *See Goodman v. United States*, Civ. No. RDB-12-2972; Crim. No. RDB-08-0056; 2015 WL 5735364, at *5 (D. Md. Sept. 8, 2015). Additionally, Petitioner fails to demonstrate that Jenkins committed perjury in his testimony, or that there is any reasonable probability this alleged perjury affected the verdict in this case. Accordingly, Byers' Amended Motion to Vacate (ECF No. 543, 412) is hereby **DENIED** in part and **DISMISSED** in part.

I. Jurisdiction to Consider Successive Habeas Claims

As an initial matter, the Government contends that this Court lacks jurisdiction to consider Byers' arguments, as the instant motion constitutes an unauthorized habeas petition. (*See* Gov't's Resp. 2, 8–12, ECF No. 557.) The Supreme Court has held that a collateral motion that “seeks to add a new ground for relief” or “attacks the federal court’s previous resolution of a claim on the merits” is properly recharacterized as a successive habeas petition. *Gonzales v. Crosby*, 545 U.S. 524, 532 (2005); *accord United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003), *abrogated in part on other grounds by United States v. McRae*, 793 F.3d 392 (4th Cir. 2015) (“[A] motion directly attacking the prisoner’s conviction or sentence will usually amount to a successive application.”). The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) amended 28 U.S.C. § 2255 to require appellate precertification for successive habeas petitions:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h); *see also* § 2244(b)(3)(A); *accord In re Vial*, 115 F.3d 1192, 1197–98 (4th Cir. 1997) (en banc); *Felker v. Turpin*, 518 U.S. 651, 664 (1996) (describing effects of AEDPA). Accordingly, absent pre-filing authorization from the Court of Appeals, this Court lacks jurisdiction to consider a second or successive habeas motion. *Winestock*, 340 F.3d at 205.

The Government correctly observes that Petitioner’s challenges to Counts Three, Four, and Eight constitute direct attacks on his convictions and sentences that would ordinarily trigger the jurisdictional bar against unauthorized successive filings. (*See* Gov’t’s Resp. 10–11.) However, habeas proceedings under 28 U.S.C. § 2255 qualify as civil actions and are subject to the Federal Rules of Civil Procedure “to the extent that they are not inconsistent with the Habeas Corpus Rules.” *Woodford v. Garceau*, 538 U.S. 202, 208 (2003). Among them, Rule 60(b) authorizes a court to “relieve a party or its legal representatives from a final judgment, order, or proceeding” in certain circumstances, such as the emergence of “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial,” “fraud . . . misrepresentation, or other misconduct of an adverse party;” or “any other reason that justifies relief.” Fed. R. Civ. P. 60(b). “[A] motion under Rule 60(b)(6) may not be granted absent ‘extraordinary circumstances.’” *Cf. Reid v. Angelone*, 369 F.3d 363, 370 (4th Cir. 2004) (quoting *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 118 n.2 (4th Cir. 2000)).

In granting Petitioner’s Rule 60(b) motion, this Court concluded that Byers’ mandatory

life sentences and lack of legal representation constitute “extraordinary circumstances,” and that Jenkins’ rampant perjury in the Gun Trace Task Force and the Supreme Court’s decision in *Fowler* provide appropriate grounds for relief from this Court’s final judgment. (*See* Mar. 22, 2022 Mem. Ord. 6–7.) Accordingly, this Court modified its final judgment on Petitioner’s original § 2255 motion and authorized him to amend that motion to introduce challenges to Counts Three, Four, and Eight. (*Id.* at 8–9.) The effect of this decision is that Byers’ original § 2255 petition (ECF No. 412) is once again pending before this Court, as supplemented by the additional arguments presented in his amended motion (ECF No. 543). In these unique circumstances, Byers’ challenges to Counts Three, Four, and Eight are not successive—they are a component of his original, reopened § 2255 motion, which this Court retains jurisdiction to consider. Accordingly, this Court will consider the merits of Byers’ challenges to Counts Three, Four, and Eight.²

However, Petitioner raises several additional challenges in his motion that exceed the scope of this Court’s Rule 60(b) relief. These include (1) a challenge to Counts Five, Six, and Seven based on an argument that murder for hire and conspiracy to commit murder for hire do not constitute “crime[s] of violence” within the meaning of 18 U.S.C. §§ 924(c), 924(j), and 924(o) (Pet.’s Amended Mot. 21–22, ECF No. 543); (2) a challenge to Counts Four and Five, asserting that these counts are duplicative in violation of the Double Jeopardy Clause, (*id.* at 23 n.21); and (3) a challenge to *all* of Byers’ remaining convictions based on Jenkins’ alleged perjury, (*id.* at 20–21). These arguments raise additional, substantive attacks against Byers’

² Although this Court granted Rule 60(b) relief, this Court’s denial of Byers’ ineffective assistance of counsel claims remains in full effect.

convictions, and constitute unauthorized, successive habeas petitions under 28 U.S.C. § 2255. *Cf. Winestock*, 340 F.3d at 207 (“[A] motion directly attacking the prisoner’s conviction or sentence will usually amount to a successive application, while a motion seeking a remedy for some defect in the collateral review process will generally be deemed a proper motion to reconsider.”). Accordingly, to the extent Petitioner’s Amended Motion to Vacate raises these arguments, it is hereby **DISMISSED** for lack of jurisdiction.³

II. Counts Three and Four – *Fowler v. United States*

In addressing the implications of the Supreme Court’s opinion in *Fowler v. United States*, 563 U.S. 668 (2011), it is important to note that the *Fowler* decision affects only Counts Three and Four. The Petitioner’s terms of life imprisonment on Counts One, Two, Five, and Six are in no way affected by that opinion. Counts One and Two relate to Petitioner’s use of a facility of interstate commerce in relation to a murder for hire, in violation of 18 U.S.C. § 1958(a). Counts Five and Six relate to Petitioner’s use of a firearm in the commission of a crime of violence, in violation of 18 U.S.C. § 924(c), and to causing the death of another through the use of a firearm in the commission of a crime of violence, in violation of 18 U.S.C. § 924(j). These convictions will remain intact regardless of the resolution of Byers’ *Fowler* claims.

In Counts Three and Four, Byers was convicted of murdering a federal witness (Count Four); and conspiring to commit this offense (Count Three), each in violation of 18 U.S.C. §

³ Petitioner also seeks permission to amend his motion further to introduce these challenges. (Pet.’s Amended Mot. 20–22.) That request is denied. Byers’ challenge to Counts Four and Five under the Double Jeopardy Clause is untimely, as it rests on a Fourth Circuit case that was decided in 2020, well over one year ago. *See United States v. Palacios*, 982 F.3d 920, 925 (4th Cir. 2020). His argument that murder-for-hire is not categorically a “crime of violence” is foreclosed by Fourth Circuit authority holding otherwise. *United States v. Runyon*, 994 F.3d 192, 200–201 (4th Cir. 2021). And, as discussed below, Petitioner fails to show that Jenkins committed perjury in this case, or that the alleged perjury had an effect on the verdict.

1512(a)(1)(C). These offenses require that the killing be committed with intent to prevent the victim from communicating with federal law enforcement officers or a federal judge regarding the commission or potential commission of a federal offense. *See* 18 U.S.C. § 1512(a)(1)(C). At the time of Byers’ March 2009 trial, the Fourth Circuit’s opinion in *United States v. Harris*, 498 F.3d 278 (4th Cir. 2007), *abrogated by Fowler v. United States*, 563 U.S. 668 (2011), defined this intent element broadly, providing that “[s]o long as the information the defendant seeks to suppress actually relates to the commission or possible commission of a federal offense, the federal nexus requirement is established.” 498 F.3d at 286.

However, in *Fowler v. United States*, 563 U.S. 668 (2011), decided twenty days after the Fourth Circuit affirmed Byers’ convictions,⁴ the Supreme Court held that the government must instead show “a reasonable likelihood that, had, *e.g.*, the victim communicated with law enforcement officers, at least one relevant communication would have been made to a federal law enforcement officer.” 563 U.S. at 677. As the Court explained:

[W]here the defendant kills a person with an intent to prevent communication with law enforcement officers generally, that intent includes an intent to prevent communications with *federal* law enforcement officers only if it is reasonably likely under the circumstances that (in the absence of the killing) at least one of the relevant communications would have been made to a federal officer.

563 U.S. at 677–78 (emphasis in original). This “reasonable likelihood” standard “requires that the government establish the federal nexus by presenting evidence showing that a communication with a federal officer was more than a possibility but less than a probability,

⁴ The Fourth Circuit has held that *Fowler* applies retroactively to cases on collateral review. *United States v. Smith*, 723 F.3d 510, 515 (4th Cir. 2013) (“[W]e agree that the *Fowler* right has been ‘newly recognized’ by the Supreme Court and that it is retroactively applicable to cases on collateral review.”).

so long as the chance of the communication was not remote, outlandish, or simply hypothetical.” *United States v. Smith*, 723 F.3d 510, 518 (4th Cir. 2013).

Byers claims that his convictions under Count Three and Count Four do not satisfy this standard. (Pet.’s Amended Mot. 4–6.) Petitioner argues that he was not charged with a federal offense until after Lackl was killed, that the government did not present any evidence of an ongoing federal investigation, and that the prosecution’s law enforcement witnesses were “*non-federal* officials—from the Baltimore City or Baltimore County Police Departments.” (*Id.* at 5 n.4 (emphasis in original).) Additionally, while Byers’ conduct unrelated to Lackl’s murder ultimately amounted to several federal offenses, he argues that “[t]here was no evidence at trial that other such criminal conduct made it ‘reasonably likely’ that what Lackl told the local authorities would be reported to federal authorities.” (*Id.* at 13.)

As an initial matter, Petitioner’s *Fowler* challenge is untimely. In enacting AEDPA, Congress imposed “demanding strictures” on the availability of habeas relief in order “to advance the finality of criminal convictions.” *Hyman v. Hoekstra*, 41 F.4th 272, 290 (4th Cir. 2022) (quoting *Mayle v. Felix*, 545 U.S. 644, 662 (2005)). Among such limitations, 28 U.S.C. § 2255(f) provides that a habeas petitioner must file their claims within one year of any of the following triggering events:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f). The Fourth Circuit affirmed Byers’ convictions on May 6, 2011, and the Supreme Court decided *Fowler* on May 26, 2011. Byers filed his original § 2255 motion on August 7, 2012, (*see* ECF No. 412), his supplement on February 7, 2013, (*see* ECF No. 424), and his amended motion on July 11, 2022, (*see* ECF No. 543). Each of these dates falls outside the one-year timeframe prescribed by 28 U.S.C. § 2255(f).

None of the exceptions to this limitations period apply. First, to relate back to the date of Byers’ original filing, his amendments must “arise out of the same conduct, transaction, or occurrence set forth in the original pleading.” *United States v. Pittman*, 209 F.3d 314, 317–18 (4th Cir. 2000). Petitioner’s earlier motion raised only ineffective assistance of counsel claims and did not present any arguments based on the intervening effects of *Fowler*. *Cf. id.* (holding that petitioner’s amended claim of ineffective assistance of counsel based on a failure to appeal did not relate back to original § 2255 motion challenging the district court’s jurisdiction and the propriety of a sentence enhancement). Second, “[t]o be entitled to equitable tolling, [Byers] must show ‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Petitioner’s only evidence of diligence is the requests for certification he presented to the Fourth Circuit in 2018 and 2021, well beyond one year after *Fowler* was decided. (Appeal No. 18-326; Appeal No. 21-292.) Petitioner fails to adduce any evidence that any “extraordinary circumstance[s]” prevented him from filing these requests and pursuing relief earlier. *Lawrence*, 549 U.S. at 336.

Third, Byers has not established that he is “actually innocent” of Counts Three and Four on account of the *Fowler* standard. (See Gov’t’s Resp. 13–14.) “[A] credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . on the merits notwithstanding the existence of a procedural bar to relief.” *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); accord *Murray v. Carrier*, 477 U.S. 478, 496 (1986) (“[I]n an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in [the event of] procedural default.”). However, “‘actual innocence’ means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998) (quoting *Sanyer v. Whitley*, 505 U.S. 333, 339 (1992)). “To establish the requisite probability, the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Schlup v. Delo*, 513 U.S. 298, 397 (1995). “Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred claim.” *Id.* at 316. Byers offers no new evidence suggesting that he is “actually innocent” of Counts Three and Four and raises a claim only of “legal insufficiency”—that is, an argument that the evidence presented at trial is insufficient to meet the *Fowler* federal nexus standard. This is insufficient to bypass the limitations period imposed by § 2255(f).

Even if this Court were to reach the merits, Byers’ *Fowler* claim is unavailing. In *United States v. Smith*, 723 F.3d 510 (4th Cir. 2013), a defendant appealing his conviction for federal witness tampering by challenging the district court’s use of a pre-*Fowler* jury instruction for the federal nexus element. 723 F.3d at 511–12. Emphasizing that the effects of a pre-*Fowler* jury

instruction must be analyzed for harmless error, the Court concluded that “[w]hile the presence of drug trafficking alone might not be enough to satisfy the ‘reasonable likelihood’ standard . . . the federal nature of drug trafficking, plus ‘additional appropriate evidence’ does meet the standard.” *Id.* at 518 (quoting *United States v. Bell*, 113 F.3d 1345, 1349 (3d Cir. 1997)). In Smith’s case, the “evidence satisfying the ‘reasonable likelihood’ standard was substantial.” *Id.* The Government had shown that the DEA’s “biggest source of information” was the Baltimore City Police Department, and that the two agencies were closely collaborating in drug enforcement task forces. *Id.* Moreover, the victim had been “complaining about large scale gang activity and drug trafficking in her neighborhood,” and a DEA special agent testified that “even street level drug cases come to the attention of the DEA.” *Id.*

This Court has already found that the evidence offered in this case is sufficient under *Fowler*, and applied *Smith* to functionally identical claims raised by Byers’ co-defendant, Frank Goodman. See *Goodman v. United States*, Civ. No. RDB-12-2972; Crim. No. RDB-08-0056; 2015 WL 5735364, at *5 (D. Md. Sept. 8, 2015). As this Court already observed, the evidence against both co-defendants is sufficient to satisfy the *Fowler* standard:

Just as in the *Smith* case, the evidence in this case against Byers and Goodman was substantial and satisfied the “reasonable likelihood” standard set forth in the *Fowler* case. The evidence at trial indicated possession of a firearm by a prohibited person in violation of 18 U.S.C. § 922(g)(1). Furthermore, the evidence at trial indicated prior acts of obstruction of justice, firearm violations, and drug trafficking. As the Supreme Court noted in the *Fowler* case, the Government must merely establish the “likelihood of communication to a federal officer,” which must have been “more than remote.”

As in the *Smith* case, the evidence in this case involved extensive drug activity, the type of which is addressed jointly by the Drug Enforcement Administration with the Baltimore City Police Department. Accordingly, the pre-*Fowler* jury instructions in this case were harmless error just as they were in the *Smith* case. As the Fourth Circuit recognized in *Smith*, the pre-*Fowler* jury instructions did

not have a substantial and injurious effect or influence in determining the jury's verdict. Consequently, these instructions constitute harmless error.

Id. at *5 (quoting *Fowler*, 563 U.S. at 578). As the evidence against Goodman suffices equally against Byers, the same reasoning applies, yielding the same result. Accordingly, Byers' Motion to Vacate (ECF Nos. 412, 543) is **DENIED** as to Counts Three and Four.

III. Count Eight – Allegations of Perjury by Sergeant Wayne Jenkins

In Count Eight, Byers was convicted of possession of a firearm by a prohibited person, arising from his possession of a firearm on the day Larry Haynes was murdered. (*See* Jury Verdict 3.) At trial, Baltimore Police Department Sergeant Wayne Jenkins testified that Byers operated a drug shop near the location Haynes was murdered, (Apr. 7, 2009 Tr. 114–16, ECF No. 380), and that Byers was an informant who had previously provided him information on drug dealers in the area, (*id.* at 111). According to Jenkins, on the day of the Haynes murder, Byers called him to report the shooting and later met with him to recount the incident:

[Byers] explained to me that he heard from a friend, which I was also trying to find out who that friend was. He explained to me he had heard from a friend that he just saw a shooting take place about a big tall black male [who was at least six feet tall] wearing all black and by the garages. He also informed me his friend told him that a handgun was thrown on the roof.

I believe I was being played, I was being used as an alibi, being used as a scapegoat. . . . Somebody who was just accused of murdering someone used me[,] [a] narcotics detective in Baltimore City, . . . [to] try to cover it to make it look like he's cooperating with the police [regarding a murder committed by someone else].

(*Id.* at 123–26, 130.) The prosecutor referenced these remarks in his closing statement, and returned to them in his rebuttal remarks. (Apr. 15, 2009 Tr. 541–42, ECF No. 391 (Closing); Apr. 16, 2009 Tr. 648–49, 651, 661, ECF No. 392 (Rebuttal).)

On January 5, 2018, Jenkins pled guilty to federal racketeering, robbery, obstruction of

justice, and deprivation of rights charges relating to the corruption of the Gun Trace Task Force. (See Plea Ag't of Wayne Jenkins, No. GLR-17-106, ECF No. 254.) See generally *United States v. Taylor*, 942 F.3d 205 (4th Cir. 2019); *Burley v. Balt. Police Dep't*, 422 F. Supp. 3d 986 (D. Md. 2019) (Hollander, J.). In light of these recent developments, Byers contends that Jenkins' testimony in his case was false, that its use by the prosecution violated his due process rights, and that his conviction on Count Eight should be vacated.⁵

"In prosecuting a criminal trial, the Due Process Clause obliges the government "not [to] knowingly use false evidence, including false testimony, to obtain a tainted conviction." *United States v. Basham*, 789 F.3d 358, 376 (4th Cir. 2015) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). Accordingly, "[a] conviction acquired through the knowing use of perjured testimony by the prosecution violates due process." *Boyd v. French*, 147 F.3d 319, 329 (4th Cir. 1997). "On collateral attack, a movant alleging this sort of misconduct must demonstrate three elements: (1) that the testimony at issue was false; (2) that the prosecution knew or should have known of the falsity; and (3) that a reasonable probability exists that the false testimony may have affected the verdict." *Basham*, 789 F.3d at 376; *United States v. Roane*, 378 F.3d 382, 400 (4th Cir. 2004); *United States v. Kelly*, 35 F.3d 929, 933 (4th Cir. 1994); *Thompson v. Garrison*, 516 F.2d 986, 988 (4th Cir. 1975); accord *Kyles v. Whitley*, 514 U.S. 419, 433 n.7 (1995) (holding that the prosecution's knowing use of false testimony violates due process when "there is any

⁵ Unlike Byers' *Fowler* claims, his challenge to Count Eight is timely. This amendment relates back to Byers' original § 2255 filing, which predicated one ineffective assistance of counsel claim on allegations that Jenkins lied in his testimony. (See Pet.'s Mot. Vacate 5.) Additionally, Byers would be entitled to equitable tolling on this Count: The extent of Jenkins' corruption was not revealed until 2018, and Byers sought appellate precertification to file a subsequent § 2255 motion addressing this basis on August 20, 2018, less than one year following Jenkins' conviction for involvement in the Gun Trace Task Force. (See Appeal No. 18-326, ECF No. 557-1.)

reasonable likelihood that the false testimony could have affected the judgment of the jury”). “Testimony by a law enforcement officer that is knowingly false or misleading ‘is imputed to the prosecution.’” *Basham*, 789 F.3d at 376 (quoting *Boyd*, 147 F.3d at 329).

Even assuming Jenkins’ testimony is false,⁶ Byers has made no showing that it could have reasonably affected his conviction on Count Eight. This Court, and the Fourth Circuit, have consistently found alleged perjury harmless when substantial corroborating evidence gave the jury ample grounds to convict. In *United States v. Roane*, 378 F.3d 382 (4th Cir. 2004), two defendants convicted of “an array of criminal activity, including several capital murders” related to drug trafficking activities in Richmond, Virginia alleged that a government witness was incarcerated at the time he allegedly identified them as members of a New York gang. 378 F.3d at 389, 401. The district court rejected this claim, and the Fourth Circuit affirmed, observing that the trial had featured independent evidence of their gang membership: another witness had attested to the defendants’ activities in the gang and their drug sales in New Jersey, one of the defendants had threatened to “invoke the assistance of his New York associates,” and various external evidence indicated that both defendants had made frequent trips to New York in order to obtain drugs. *Id.* Accordingly, even assuming the witness had testified falsely,

⁶ Byers offers very little evidence to suggest that Jenkins committed perjury in his case. As an initial matter, Jenkins’ involvement in the Gun Trace Task Force does not automatically invalidate his testimony in a given case. *See, e.g., United States v. Barronette*, 46 F.4th 177, 196 (4th Cir. 2022) (“Appellants do not offer any evidence, for example, that Broughton’s arrest was tainted by any of the officers’ unlawful activity. They also cite no legal authority for their assertion that we should disregard the evidence.”). Byers relies solely on the evidence presented in his original Motion to Vacate (ECF No. 412), in which he names several witnesses who would have testified that Jenkins’ testimony was designed to cover up the detective’s working relationship with the petitioner, whereby Byers would provide Jenkins tips in exchange for information on informants and protection from investigations. As observed in that case, Jenkins openly acknowledged in his testimony that Byers offered him tips, and no evidence supports Petitioner’s bald assertion that he was compensated in any way.

defendants had failed to show that “such testimony . . . could have affected the outcome of their trial.” *Id.*

Likewise, in *Bramblett v. True*, 59 F. App’x 1 (4th Cir. 2003), a defendant convicted of capital murder and related charges presented an affidavit suggesting that a witness had fabricated her testimony with the assistance of a police investigator. 59 F. App’x at 14. Leaving the issue of falsity undecided, the Fourth Circuit noted that the witness statements in question were “cumulative of substantial other evidence regarding Bramblett’s fixation with [the victim]—some of it from Bramblett himself, in the form of audio tapes he recorded.” *Id.* at 15. Moreover, while the prosecutor placed substantial emphasis on the challenged statements during his closing arguments, the court observed that “the vast majority of the prosecutor’s lengthy closing argument was devoted to a careful detailing of the circumstantial evidence against Bramblett,” which “was more than sufficient to convict.” *Id.* Accordingly, in light of “the extremely strong circumstantial case against Bramblett and the weakness of [the witness’s] testimony,” the court concluded that the defendant had suffered no prejudice on account of the alleged perjury. *Id.*

Finally, in *Wardrick v. United States*, Civ. No. PJM-99-3381, Crim. No. PJM-95-094, 2001 WL 34711501 (D. Md. Aug. 1, 2001), a defendant convicted of various drug offenses alleged “that newly discovered evidence of the perjury of an expert witness for the prosecution entitle[d] him to relief.” 2001 WL 34711501, at *1. Both parties acknowledged that the witness, who testified that he was an “international narcotics expert,” had “perjured himself during trial by claiming false academic credentials and mischaracterizing his past investigative experience.”

*Id.*⁷ Although the witness’s perjury was “well-documented in letters submitted to this Court, in the public record, and in a separate criminal proceeding,” Judge Messitte of this Court found that “the evidence against Wardrick was overwhelming” even without the tainted testimony. *Id.* at **2–3. At trial, the prosecution had called twenty-two witnesses to establish the defendant’s drug-trafficking activities in detail. *Id.* at *3. Moreover, physical evidence including pager records and drug seizures corroborated the government’s version of events. *Id.* Evaluating the expert’s “false credentials . . . against the totality of facts in the case,” this Court concluded that there was no “reasonable likelihood that the false testimony could have affected the judgment of the jury.” *Id.* at *3 (quoting *United States v. Kelly*, 35 F.3d 929, 933 (4th Cir. 1994)).

Much like the defendants in these cases, Byers vastly overstates the importance of Jenkins’ testimony, and fails to demonstrate that any perjury would have a material effect on his conviction under Count Eight. At trial, the Government established that Byers arranged to have Lackl murdered using a contraband cell-phone while he was incarcerated, and that

⁷ The evidence of this perjury was substantial:

Brown testified that he was a ‘board-certified pharmacist,’ having stated in his curriculum vitae that he held a degree in Pharmacy from Howard University. Neither Virginia, Maryland, nor the District of Columbia, however, have any record of Brown ever being a licensed pharmacist in those jurisdictions, nor does Howard University have any record of ‘Johnny Brown, Jr.’ ever receiving a degree of any kind. Wardrick’s co-defendant, Groom, in a post-conviction challenge to his own conviction, has also submitted information tending to show that, contrary to his testimony at trial, Brown never traveled to Pakistan to investigate narcotics cases; that he was hired by the Metropolitan Police Department not as a narcotics consultant but as a senior police officer; and that the Metropolitan Police Department paid him \$30,000 per year, not \$70,000 per year.

Id.

Byers arranged this killing with the intent to prevent Lackl from testifying as a key witness at Byers' state trial for the prior murder of Larry Haynes. *See Byers*, 2015 WL 5450179, at *4 (reviewing evidence). The prosecution offered Jenkins' testimony as circumstantial evidence of motive—namely, that Byers was involved in the drug trade and that he was responsible for the Haynes murder. *Id.* at *5.

The prosecution offered a volume of evidence Petitioner's involvement in the Haynes shooting. In a post-arrest interview, Byers acknowledged that he had been involved in the sale of heroin, that he believed Haynes had murdered his cousins only four days prior, and that he had hidden a gun in the proximity of the murder. *Id.* at *9 (discussing links to Haynes murder). Moreover, Byers' father acknowledged that Byers was involved in the drug trade, (ECF No. 557-7), and Carlisle Coleman testified that Byers possessed and used a firearm on a previous occasion, in 2004 (ECF No. 577-12). *See* Fed. R. Evid. 404(b) (authorizing evidence of other criminal acts to show motive). Joseph Parham positively identified Byers as the shooter, only to recant his testimony after Byers placed multiple calls to his home from a contraband phone.⁸ And two witnesses established that Lackl would have done the same, had he lived to testify. *See* Fed. R. Evid. 804(b)(6) (authorizing exception to hearsay rule in the event of forfeiture by wrongdoing). Melinda Lee Humes, Lackl's girlfriend, recounted that Lackl informed her he

⁸ Joseph Parham was arrested on drug possession charges on the same day as the Haynes murder, identified Byers as the man who shot Haynes, corroborating the identification provided by Carl Lackl, and informed police that he had seen Haynes arguing with a man he knew as "Pat," who had previously been involved in the Coleman shooting. *See Byers*, 2015 WL 5450178, at **2-3, 9. Although Parham recanted this testimony and refused to cooperate in the days preceding the trial, the Government obtained and introduced evidence that he did so after Byers placed several calls to Parham's home on a second contraband cell phone found in Byers' cell. *Id.* at *22. As this Court already noted, while this recantation "was, at least superficially, exculpatory," the calls between Byers and Parham served as damaging evidence of "Petitioner's own clear—and apparently successful—intimidation of witnesses." *Id.*

had “seen a man shoot another man,” and that “the man ran past him and looked at him and laughed” before “he threw the gun up on the roof.” (ECF No. 577-6.) Detective Tom Martin of the Baltimore City Police Department explained that Lackl described an identical series of events in a police interview, that Lackl’s depiction aligned perfectly with the firearm discovered at the scene of the crime, and that Lackl confidently identified Byers as the shooter in a photo array, corroborating Parham’s identification. (ECF No. 577-8.)

Accordingly, as in *Wardrick*, *Roane*, and *Bramblett*, Petitioner has failed to demonstrate a reasonable likelihood that Jenkins’ alleged perjury had any material impact on his convictions. The prosecution’s case included identifications by several witnesses, physical evidence located at the crime scene,⁹ a reconstruction of Lackl’s testimony, and Petitioner’s own statements. This evidence is far more persuasive than Jenkins’ testimony regarding Petitioner’s attempt to construct an alibi. Even if Jenkins lied and his testimony was entirely disregarded, the evidence against Byers was more than sufficient to establish that Byers was involved in the murder of Haynes—and that he killed Lackl with the intention to prevent him from testifying, regardless of whether he in fact murdered Haynes. *Cf. Roane*, 378 F.3d at 401 (highlighting corroborating witnesses, statements by defendants, and external evidence); *Wardrick*, 2001 WL 34711501, at *3 (finding that “the totality of [the] facts in the case” rendered perjury harmless); *Bramblett*, 59 F. App’x at 15 (observing that “the extremely strong circumstantial case against [appellant]” was “more than sufficient to convict”).

⁹ A gun was recovered on the ground in the alley adjacent to North Montford Avenue, and Detective Martin surmised that the gun had bounced off of the roof and landed on the ground. *Byers*, 649 F.3d at 202 n.1.

This evidence is particularly dispositive of Byers’ challenge to Count Eight, possession of a firearm by a prohibited person—the only count of conviction predicated on the events of the Haynes murder. As relevant to this Count, Jenkins testified that Byers informed him that the man who shot Haynes threw a gun atop a rooftop as he fled the scene. This testimony is “cumulative of substantial other evidence” on the record. *Cf. Bramblett*, 59 F. App’x at 15; *Roane*, 378 F.3d at 401. Specifically, Humes and Martin each recounted that Lackl would have testified that Byers threw a gun on a rooftop, Coleman independently testified regarding Byers’ possession of a gun and involvement in a prior shooting, and Byers himself admitted that he had hidden a gun near the scene of the Haynes murder. Jenkins’ testimony adds little weight to this chain of evidence. Accordingly, even if Jenkins testified falsely, Byers fails to show that “a reasonable probability exists that the false testimony may have affected the verdict” on his firearm possession charge. *Basham*, 789 F.3d at 376. Byers’ motion is accordingly **DENIED** as it relates to Count Eight.

CONCLUSION

For the foregoing reasons, Petitioner’s Amended Motion to Vacate Sentence (ECF Nos. 412, 453) is **DISMISSED** in part and **DENIED** in part.

Pursuant to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2255, the court is required to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability is a “jurisdictional prerequisite” to an appeal from the court's earlier order. *United States v. Hadden*, 475 F.3d 652, 659 (4th Cir. 2007). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the court denies a

petitioner's motion on its merits, a petitioner satisfies this standard by demonstrating that reasonable jurists would find the court's assessment of the constitutional claims debatable or incorrect. *See Miller–El v. Cockrell*, 537 U.S. 322, 336–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). With respect to Byers' challenge to his conviction on Count Eight, and any supplemental challenges to his convictions on Counts One, Two, Five, Six, and Seven, reasonable jurists would not find these claims debatable, and a certificate of appealability is **DENIED** as to these claims.

With respect to Counts Three and Four, this Court concludes that a limited certificate of appealability is appropriate in this case, as Petitioner's claims under *Fowler v. United States*, 563 U.S. 668 (2011), present a debatable question regarding the sufficiency of the evidence under 18 U.S.C. § 1512(a)(1)(C). As noted above, these claims do not affect Byers' concurrent life sentences on Counts One and Two, related to the use of facilities of interstate commerce in the commission of a murder for hire, or his *consecutive* life sentences on Counts Five and Six, related to the use of a firearm in the commission of a crime of violence. Nevertheless, the resolution of the *Fowler* issue may be relevant to the number of consecutive life terms Byers is serving, and both defendants have pending motions for compassionate release. Neither Goodman nor Byers have been afforded an opportunity to appeal this Court's denial of relief under *Fowler*. *See, e.g., Goodman v. United States*, Civ. No. RDB-12-2972; Crim. No. RDB-08-0056; 2015 WL 5735364, at *9 (D. Md. Sept. 8, 2015) (denying certificate of appealability). With respect to Byers' challenges to Counts Three and Four, as reasonable jurists would find these claims debatable, a certificate of appealability is **GRANTED**.

A separate order follows.

Dated: December 22, 2022

_____/s/_____
Richard D. Bennett
United States Senior District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,

*

Respondent,

*

v.

*

Criminal Action No. RDB-08-0056

Civil Action No. RDB-12-2348

PATRICK ALBERT BYERS, JR.,

*

Petitioner.

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MEMORANDUM OPINION

Petitioner Patrick Albert Byers, Jr., (“Petitioner” or “Byers”) is serving four consecutive life sentences for his involvement in the murder of Carl Lackl (“Lackl”), who was expected to testify against Byers in a state trial for the murder of Larry Haynes (“Haynes”). (ECF No. 562 at 1, 2.) After a federal capital trial and appeal, Byers’ convictions became final in 2011, and he has since filed numerous petitions for postconviction relief. Presently pending before this Court is Byers’ Motion for Partial Reconsideration of this Court’s Opinion and Order of December 22, 2022 (ECF No. 564) (“Byers’ Motion” or “Motion for Partial Reconsideration”), in which he seeks limited reconsideration of this Court’s determination that it lacked jurisdiction under 28 U.S.C. § 2255 over his assertion that former Baltimore Police Sergeant Wayne Jenkins’ allegedly perjurious trial testimony tainted his convictions.¹

¹ Also pending before the Court are several other motions filed by Byers, described below. The Court emphasizes that Byers’ pending Motion for Compassionate Release (ECF No. 510, 577) and related Motion to Appoint Counsel to Help Him Prepare a Motion for Compassionate Release (ECF No. 590) will remain pending the outcome of any review of his Amended Motion to Vacate Sentence (ECF Nos. 543, 412), including any review of this Court’s decisions in the instant Memorandum Opinion and the prior Memorandum Opinion and Order dismissing in part and denying in part that Amended Motion (ECF Nos. 562, 563).

As further explained below, under 28 U.S.C. § 2255 and the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. 104–132, 110 Stat. 1214 (1996), this Court has jurisdiction over Byers’ perjury arguments. The Court now adopts its previous holding in the alternative that Byers’ perjury challenge to all convictions under 28 U.S.C. § 2255 is denied on the merits. In so holding, the Court emphasizes its previous conclusions that Byers has not shown that any perjury occurred and, even if he had made such a showing, the prosecution presented overwhelming evidence of his guilt at trial.

Before reaching the facts relevant to the instant Memorandum Opinion, the Court provides a brief overview of the procedural and factual history of Byers’ case. At the time of Lackl’s murder, Byers was incarcerated in state prison awaiting trial for Haynes’ murder. (ECF No. 562 at 1.) During a capital trial in this Court, the Government proved that Byers used a contraband cellphone to coordinate Lackl’s death and prevent him from testifying. (*Id.*) The Government’s case included testimony from former Baltimore Police Sergeant Wayne Jenkins (“Jenkins”), who was later convicted of federal crimes arising from his conduct as a member of the Baltimore Police Department’s disgraced Gun Trace Task Force. (*Id.* at 4.) At the conclusion of the guilt phase of trial on April 17, 2009, the jury convicted Byers of eight of the nine Counts charged against him: conspiracy to use a facility of interstate commerce in the commission of a murder-for-hire, in violation of 18 U.S.C. § 1958(a) (Count One); use of a facility of interstate commerce in the commission of a murder-for-hire, in violation of 18 U.S.C. § 1958(a) (Count Two); conspiracy to murder a federal witness, in violation of 18 U.S.C. § 1512(a)(1)(C) (Count Three); murder of a federal witness, in violation of 18 U.S.C. § 1512(a)(1)(C) (Count Four); three charges related to the use of a firearm in furtherance of a

crime of violence, in violation of 18 U.S.C. §§ 924(c), 924(j), 924(o) (Counts Five, Six, and Seven); and possession of a firearm by a prohibited person, in violation of 18 U.S.C. § 922(g)(1) (Count Eight).² (ECF No. 316.)

The jury failed to reach a unanimous verdict as to the death penalty, and this Court sentenced Byers to four consecutive terms of life imprisonment with no possibility of parole. (ECF Nos. 94; 339; 340.) Specifically, this Court imposed concurrent life sentences as to Counts One and Two; concurrent life sentences as to Counts Three and Four, to run consecutive to Counts One and Two; a life sentence as to Count Six, to run consecutive to Counts One through Four; and a life sentence as to Count Five, to run consecutive to Counts One through Four and Count Six. (ECF No. 340 at 3.) The Court also sentenced Byers to twenty years' incarceration as to Count Seven, to run consecutive to Count Five; and ten years' incarceration as to Count Eight, to run consecutive to Counts Five and Seven. (*Id.*) The United States Court of Appeals for the Fourth Circuit affirmed Byers' convictions on May 6, 2011. *United States v. Byers*, 649 F.3d 197, 201 (4th Cir. 2011).

After his case became final, Byers filed numerous motions for collateral relief. On August 7, 2012, he filed a Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 412; Supplement ECF No. 424), in which he raised ineffective assistance of counsel based in part on his trial counsel's failure to impeach Jenkins. This Court denied that motion and denied a certificate of appealability on September 16, 2015. (ECF Nos. 464, 465.) Between 2015 and 2022, the

² The jury acquitted Byers of Count Nine, which charged possession of a firearm in furtherance of a drug trafficking crime. (ECF No. 316 at 3.) Additionally, because Byers faced capital punishment, *see* (ECF No. 94), his trial was divided into a guilt phase and a penalty phase. *See* (ECF No. 316 (Verdict Form); ECF No. 339 (Special Verdict Form).)

Fourth Circuit twice denied Byers' requests for authorization to file successive § 2255 motions. *See* (Appeal No. 18-326, ECF No. 557-2; Appeal No. 21-292, ECF No. 557-4). On March 22, 2022, after Jenkins' misconduct became public, Byers filed a *pro se* Motion for Discovery (ECF No. 474), which this Court granted in part as a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b). (ECF No. 534.) The Court allowed Byers to reopen his original § 2255 Motion (ECF No. 412) to challenge Counts Three, Four, and Eight and appointed counsel to assist him. (ECF No. 534 at 8.) Byers then filed an Amended Motion to Vacate Sentence ("Byers' Amended Motion") (ECF No. 543; ECF No. 412) in which he challenged his convictions as to Counts Three, Four, and Eight and sought leave to contest all his convictions. *See* (ECF No. 543 at 20–24.)

As relevant to this Memorandum Opinion, Byers raised two arguments based on his allegation that Jenkins committed perjury at his trial: (1) a narrow perjury claim asserting that his conviction under Count Eight should be vacated; and (2) a broader perjury claim seeking to expand the scope of the authorized § 2255 amendment to challenge all convictions based on Jenkins' alleged perjury. (ECF No. 543 at 14–21.) On December 22, 2022, this Court by Memorandum Opinion and Order (ECF Nos. 562, 563) dismissed in part and denied in part Byers' Amended Motion. The Court dismissed the broader perjury claim for lack of jurisdiction and denied on the merits the narrow perjury claim.³ (ECF No. 562.) The Court granted a certificate of appealability ("COA") as to Byers' separate challenges to Counts Three

³ Byers also challenged his convictions on Counts Three and Four on separate bases, including a challenge to the jury instructions for those Counts under the Supreme Court's intervening decision in *Fowler v. United States*, 563 U.S. 668 (2011). (ECF No. 543 at 3–14.) The Court denied those arguments on the merits. *See* (ECF No. 562 at 8–14).

and Four but denied a COA as to the narrow perjury claim and “any supplemental challenges to his convictions on Counts One, Two, Five, Six, and Seven.” (*Id.* at 22.)

Presently pending before this Court are numerous motions filed by Byers,⁴ but this Memorandum Opinion and Order address only the following: (1) Petitioner’s Motion for Partial Reconsideration of this Court’s Opinion and Order of December 22, 2022 (ECF No. 564) (“Byers’ Motion” or “Motion for Partial Reconsideration”), filed on December 30, 2022; and (2) Petitioner’s Motion for Deficient Service (ECF No. 460).⁵ Byers’ other pending motions, (ECF Nos. 510, 513, 553, 577, 590), will be addressed separately. The parties’ submissions have been reviewed, and no hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2025).

For the reasons that follow, Byers’ Motion for Partial Reconsideration (ECF No. 564) is GRANTED. Specifically, the Court GRANTS (1) reconsideration of the jurisdictional determination as the perjury claim, and (2) Byers’ request to expand the certificate of appealability to include the perjury claim. Accordingly, the Court VACATES its prior determination that it lacks jurisdiction over Byers’ broader perjury claim; DENIES on the merits Byers’ that perjury claim; and GRANTS a certificate of appealability as to Byers’ perjury

⁴ The following motions, all filed *pro se* by Byers, are presently pending before this Court: (1) Petitioner’s Motion for Compassionate Release (ECF No. 510), filed November 5, 2020; (2) Petitioner’s Motion for Review of Detention Order (ECF No. 513), filed November 9, 2020; (3) Petitioner’s Motion for Home Confinement (ECF No. 553), filed October 6, 2022; (4) Petitioner’s Motion for Permission to Amend his Motion for Compassionate Release (ECF No. 577), filed November 9, 2023; and (5) Petitioner’s Motion to Appoint Counsel to Help Him Prepare a Motion for Compassionate Release (ECF No. 590), filed September 23, 2024.

⁵ Although the docket and this Court’s prior Memorandum Opinion (ECF No. 562) reflect that this Motion for Deficient Service (ECF No. 460) is still pending, the Court DENIED this Motion (ECF No. 460) in its September 26, 2015, Memorandum Opinion (ECF No. 464). *See* (ECF No. 464 at 2, 11 n.7, 47.) Accordingly, the Court clarifies that Petitioner’s Motion for Deficient Service (ECF No. 460) is DENIED for the reasons stated in its Memorandum Opinion dated September 26, 2015, *see* (ECF No. 464 at 11 n.7), and reiterates that denial in the attached Order.

claims.⁶ Byers' Motion for Deficient Service (ECF No. 460) is DENIED for the reasons stated in this Court's Memorandum Opinion dated September 16, 2015 (ECF No. 464).

BACKGROUND

This Court and the United States Court of Appeals for the Fourth Circuit have repeatedly summarized the factual and procedural history of this case. *See* (ECF No. 464; ECF No. 562); *United States v. Byers*, 649 F.3d 197 (4th Cir. 2011). Accordingly, the Court provides only a brief overview of the trial testimony and subsequent conviction of former Baltimore Police Department Sergeant Wayne Jenkins ("Jenkins"), which form the basis for Byers' underlying perjury arguments and Motion for Reconsideration (ECF No. 564).

During Byers' trial in 2009, Jenkins testified for the Government about his interactions with Byers as a Baltimore Police sergeant. Jenkins testified that Byers operated a drug shop near the location where Haynes was murdered and that Byers was an informant who ten or fifteen times had given Jenkins "information . . . in reference to narcotics, people wanted for questioning, police matters." (ECF No. 380 at 111.) Jenkins further testified regarding Byers' possession of the Sig Sauer .40 caliber semiautomatic handgun charged in Count Eight. (ECF No. 534 at 7 (citing (ECF No. 380 at 165).) Jenkins also told the jury that, on the day Haynes was murdered, Byers called Jenkins to report the shooting and later recounted the incident to him in person:

[Byers] explained to me that he heard from a friend, which I was also trying to find out who that friend was. He explained to me he had heard from a friend that he just saw a shooting take place about a big tall black male [who was at

⁶ By denying this challenge on the merits, the Court adopts its previous ruling in the alternative that the broader perjury argument is denied on its merits. *See* (ECF No. 562 at 5).

least six feet tall] wearing all black and by the garages. He also informed me his friend told him that a handgun was thrown on the roof.

(ECF No. 380 at 123–26.) He explained that he believed Byers sought to use him to create an alibi:

I believe I was being played, I was being used as an alibi, being used as a scapegoat. . . . Somebody who was just accused of murdering someone used me[,] [a] narcotics detective in Baltimore City, . . . [to] try to cover it to make it look like he's cooperating with the police[,] like he's trying to help out when in fact [he was a suspect].

(*Id.* at 130–31.) The Government referenced Jenkins' testimony in its closing statement and rebuttal remarks at the conclusion of trial. (ECF No. 562 (citing (ECF No. 391 at 541–42 (Closing); ECF No. 392 at 648–49, 651, 661 (Rebuttal))).)

After Byers' convictions became final in 2011, he filed a Motion to Vacate Under 28 U.S.C. § 2255 (ECF No. 412) and Supplement (ECF No. 424) in which he raised, among other arguments, a claim of ineffective assistance of counsel based on his trial counsel's failure to impeach Jenkins' testimony. (ECF No. 424-1 ¶¶ 9–15 (alleging Jenkins' corruption); ¶¶ 16–17 (alleging Jenkins lied at trial).) On January 5, 2018, Jenkins pled guilty to federal racketeering, robbery, obstruction of justice, and deprivation of rights charges relating to the corrupt Gun Trace Task Force within the Baltimore Police Department. (ECF No. 562 at 15 (citing No. GLR-17-106, ECF No. 254)); *see also United States v. Taylor*, 942 F.3d 205 (4th Cir. 2019); *Burley v. Balt. Police Dep't*, 422 F. Supp. 3d 986 (D. Md. 2019). Jenkins is presently serving a 240-month (20-year) sentence in federal custody. *See* (GLR-17-106, Judgment, ECF No. 422); (ECF No. 534 at 6).

In 2022, based in part on Jenkins' convictions, the Court granted Byers leave under Federal Rule 60(b) to amend his original § 2255 motion to challenge Counts Three, Four, and

Eight and appointed counsel to assist him. (ECF No. 534 at 3.) On July 11, 2022, Byers, through counsel, filed an Amended Motion to Vacate Under 28 U.S.C. § 2255 (ECF No. 543) (“Byers’ Amended Motion”), arguing in relevant part that (1) Count Eight should be vacated due to Jenkins’ alleged perjury; and (2) leave to amend should be broadened to encompass his challenge to each conviction based on Jenkins’ alleged perjury. (ECF No. 543 at 14–21.) On December 22, 2022, this Court dismissed in part and denied in part Byers’ Amended Motion. (ECF No. 562.) The Court denied Byers’ narrow argument that Jenkins’ alleged perjury should invalidate his conviction as to Count Eight and held that it lacked jurisdiction to consider his broader argument that Jenkins’ alleged perjury tainted all his convictions. (ECF No. 562 at 7–8, 14–21.) Alternatively, the Court concluded that even if it had jurisdiction over the broader perjury argument, that argument was denied on the merits. (*Id.* at 5, 8 n.3.)

On December 30, 2022, Byers filed a Motion for Partial Reconsideration (ECF No. 564), in which he asks the Court to reconsider its holding that (1) it lacked jurisdiction over his broader perjury claim; and (2) no certificate of appealability should issue as to Count Eight or the broader perjury claim. The Government has responded in Opposition (ECF No. 565), and Byers has replied (ECF No. 566). This matter is now ripe for review.

STANDARD OF REVIEW

The Federal Rules of Civil Procedure do not expressly recognize a motion for reconsideration. Rather, if the motion was filed within 28 days of the judgment, it is analyzed as a motion to alter, amend, or vacate a prior judgment under Rule 59(e). *See* FED. R. CIV. P. 59(e); *see also* *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 280 (4th Cir. 2008). The Fourth Circuit has repeatedly recognized that a final judgment may be amended under Rule

59(e) in only three circumstances: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *See, e.g., Gagliano v. Reliance Standard Life Ins. Co.*, 547 F.3d 230, 241 n.8 (4th Cir. 2008). “In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pac. Ins. Co. v. Am. Nat’l Fire Ins.*, 148 F.3d 396, 403 (4th Cir. 1983).

ANALYSIS

As an initial matter, this Court construes Byers’ Motion for Reconsideration (ECF No. 564), filed within 28 days of denial of relief under 28 U.S.C. § 2255, as a motion to alter, amend, or vacate a prior judgment under Federal Rule 59(e). *See MLC Auto., LLC*, 532 F.3d at 380. Byers seeks very narrow reconsideration and requests solely that the Court: (1) vacate its prior determination that it lacks jurisdiction as to his broader perjury claim; (2) enter its alternative ruling denying this claim on the merits; and (3) expand the certificate of appealability to include both the narrower perjury claim as to Count Eight and the broader perjury claim as to all Counts. (ECF No. 564 at 1–7.) In Opposition (ECF No. 565), the Government contends that Byers fails to identify a proper basis for such relief under Federal Rule 59(e). (ECF No. 565 at 2–4.) The Court addresses Byers’ arguments in turn.

I. Jurisdiction as to Broader Perjury Claims

In his Motion (ECF No. 564), Byers asks the Court to reconsider its holding that under the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. 104–132, 110 Stat. 1214 (1996), it lacked jurisdiction over his broader perjury claim. Byers contends that this ruling was clear error because “same reasons for permitting [him] to amend his

original § 2255 motion to include the narrower perjury claim justify permitting [him] to further amend his § 2255 motion to raise the broader perjury claim . . . —namely, the evidence of Jenkins’ extensive misconduct as a Baltimore City Police Officer . . . which was not fully known to Mr. Byers until 2018” (ECF No. 564 at 2–3); (ECF No. 566 at 1–2.) Byers asserts that granting such relief would not violate the AEDPA’s statute of limitations because the broader perjury claim relates back to the narrower perjury claim this Court authorized in 2022. (*Id.* at 3 n.1 (citing (ECF No. 534)).) In Opposition, the Government contends that Byers has not identified appropriate grounds for reconsideration. *See generally* (ECF No. 565). To prevent error of law, this Court must reconsider its determination that the broader perjury claim was an unauthorized successive habeas petition over which it lacked jurisdiction.

As explained above, Byers filed his Amended Motion after this Court authorized limited relief under Federal Rule of Civil Procedure 60(b), which allows relief where a movant can show “timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances.” *Dowell v. State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1998); (ECF No. 562 at 7). Motions under Rule 60(b) are subject to the AEDPA, which requires appellate precertification for successive habeas petitions. 28 U.S.C. § 2255(h); *see also id.* § 2244(b)(3)(A); *Felker v. Turpin*, 518 U.S. 651, 664 (1996); *Gonzales v. Crosby*, 545 U.S. 524, 532 (2005); *Bixby v. Stirling*, 90 F.4th 140, 149–50 (4th Cir. 2024). A collateral motion is a “successive” habeas petition when it “seeks to add a new ground for relief” or “attacks the federal court’s previous resolution of a claim on the merits.” *Bixby*, 90 F.4th at 149–50. The Fourth Circuit has held that, absent precertification, “the [district] court must either dismiss the motion for lack of jurisdiction or transfer it to this Court so that we could consider it under

our gatekeeping function.” *Id.* at 155 (citation omitted). Although this Court limited Rule 60(b) relief in this case to Counts Three, Four, and Eight, (ECF No. 562 at 7), Byers argued in his Amended Motion that the Court should expand such relief to include his broader perjury claim. (ECF No. 543 at 17–18, 20–21.) Applying the AEDPA, this Court construed Byers’ broader perjury claim as a Rule 60(b) motion, which constituted an unauthorized successive habeas petition over which it lacked jurisdiction.⁷ (ECF No. 562 at 6–8.)

Motions for reconsideration are “an extraordinary remedy which should be used sparingly.” *TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009); *see also Travis X.C. v. Saul*, Civ. No. GJH-18-1210, 2020 WL 6684636, at *3 (D. Md. Nov. 12, 2020) (discussing clear error in context of Rule 59(e) motions). This Court has previously explained that clear error forms a basis to alter or amend a judgment under Rule 59(e) only when “the prior judgment . . . strike[s] the court as wrong with the force of a five-week-old, unrefrigerated, dead fish.” *Smith v. Maryland*, Civ. No. RDB-17-3051, 2020 WL 128670, at *2 (D. Md. Jan. 10, 2020) (quoting *June v. Thomasson*, Civ. No. GLR-14-2450, 2016 WL 7374432, at *2 (D. Md. Dec. 20, 2016)). In this case, it was error to allow the narrow perjury argument but determine that the broader perjury argument was an unauthorized successive § 2255 petition.

The Court originally granted Byers Rule 60(b) relief as to his narrower perjury claim on the basis that (1) “[a]t the time Petitioner filed his original § 2255 petition, the details of Jenkins’ corruption were not publicly known,” (ECF No. 534 at 7); (2) “Byers’ mandatory life sentences and lack of legal representation constitute ‘extraordinary circumstances,’” (ECF No. 562 at 6–

⁷ Byers’ narrow perjury claim did not constitute a successive petition because the Court authorized Byers to reopen and supplement his original § 2255 Motion with that challenge to Count Eight. (ECF No. 562 at 7.)

7); and (3) “Jenkins’ rampant perjury in the Gun Trace Task Force . . . provide appropriate grounds for relief from this Court’s Final Judgment,” (*Id.* at 7 (citing ECF No. 534 at 6–7)). Generally, this relief fell within Rule 60(b)(2)’s authorization of relief based on newly discovered evidence that could not reasonably have been discovered previously. *See* FED. R. CIV. P. 60(b)(2). As this Court has already explained, Jenkins’ misconduct was not discovered until several years after Byers’ trial and conviction. (ECF No. 562 at 6–7.) For the purposes of allowing § 2255 arguments related to perjury, therefore, the only distinction between the narrow perjury challenge to Count Eight and the broader perjury challenge to all Counts are the underlying convictions at issue. Upon careful review, this distinction is not significant for the purposes of Jenkins’ testimony. That is, if Rule 60(b) authorized relief as to Byers’ narrow perjury challenge to Count Eight, it inherently authorized relief as to his broader perjury claim. Both perjury claims rested on the same grounds such that it was clear error to deem the broader perjury claim an “additional, substantive attack[]” constituting an unauthorized successive petition. *See* (ECF No. 562 at 7).

The Government used Jenkins’ testimony both in relation to the firearm possession charge in Count Eight *and* to provide additional circumstantial evidence of Byers’ motive for Lackl’s murder, which undergirded the charges in Counts One, Two, Three, Four, Five, Six, and Seven. *See* (ECF No. 95). Jenkins testified that: (1) he knew Byers as an informant whom he met in person to discuss narcotics transactions approximately ten-to-fifteen times; (2) he spoke to Byers on the telephone numerous times each week; (3) he saw Byers in the area where Haynes was murdered; (4) Byers sold narcotics in the area where Jenkins frequently saw him; (5) Byers called him to report Haynes’ murder and provide details, including descriptions of

the shooter; (6) Haynes' murder was the only time Byers informed him about a violent crime; (7) Byers met with him in person on the day of Haynes' murder to report what he had heard about the murder; (8) Byers seemed abnormally nervous during their meeting about Haynes' murder; (9) before Byers was arrested for Haynes' murder, he was evading police because he feared arrest for the murder; (10) he attempted to help arrest Byers by assuring him over the phone that detectives only wanted to speak to him; (11) Byers' grandmother called Jenkins two or three times; and, (12) he did not make a police report or take notes when Byers reported Haynes' murder because he believed that Byers was not being truthful and instead sought to use Jenkins to legitimize his claim of his innocence. (ECF No. 380 at 110–149, 153–160, 165–172.)

The substance of this testimony exceeded evidence related to Count Eight and provided further support for the Government's theory that Byers orchestrated Lackl's death. Jenkins' description of Byers' apparently abnormal behavior—his decision to report a violent crime, nervousness, and fear that he would be arrested—provided a factual basis for the jury to believe that Byers had been involved in Haynes' murder. This factual basis, in turn, supported the Government's theory that Byers coordinated Lackl's murder to prevent Lackl from testifying against him in his state trial for Haynes' murder. The prosecutor explicitly drew this logical connection for the jury in his closing, when he urged jurors to think about Jenkins' testimony when considering “why . . . Mr. Byers ha[d] to worry about Mr. Lackl[.]”⁸

⁸ Additionally, before the case proceeded to trial, the Court denied Byers' request to sever the conduct charged in Count Eight because that conduct was relevant to his motive for Lackl's murder. (ECF No. 168 at 1–5.) This further supports that Jenkins' testimony as to Count Eight was relevant to Byers' motive to coordinate the murder of Lackl.

(ECF No. 391 at 43–46.) Similarly, during rebuttal argument, the prosecutor expressly used Jenkins’ testimony to undermine the credibility of the defense’s witnesses and theory of the case. (ECF No. 392 at 8–9, 20–21.)

Accordingly, the Court cannot discern any substantive reasoning that would allow consideration of the narrower perjury argument but not the broader perjury argument, and the Court’s prior decision that it lacked jurisdiction was erroneous. If extraordinary circumstances⁹ compelled the Court to allow Byers to amend his original § 2255 motion to challenge Jenkins’ testimony as to Count Eight, then those same circumstances require the Court to consider the broader perjury claim. Byers’ broader perjury claim did not meet the definition of a “successive” habeas petition because it did not add a new ground for relief. *See Bixby*, 90 F.4th at 149–50 (defining successive habeas petition). Rather, like the narrow perjury claim, it amended Byers’ original § 2255 Motion on the same grounds—the Government’s use of Jenkins’ allegedly perjurious testimony—authorized by this Court’s grant of Rule 60(b) relief.

Byers’ Motion for Partial Reconsideration (ECF No. 564) is GRANTED to the extent that it requests that the Court reconsider its judgment as to the broader perjury argument. Specifically, the Court VACATES its prior ruling that it lacked jurisdiction to consider the broader perjury argument because it constituted an unauthorized successive § 2255 motion.

⁹ In particular, the Court recognized Jenkins’ “rampant perjury” in relation to his work for the now disgraced Gun Trace Task Force, and, in recognition of the gravity of any potential perjury in Byers’ case, deemed it appropriate to allow Byers to amend his original § 2255 Motion to address his perjury arguments. (ECF No. 534 at 6–7.)

For the reasons explained below and in this Court’s prior Memorandum Opinion, the Court now adopts its alternative holding denying the broader perjury argument on the merits.

II. Merits of Broader Perjury Argument

The Court does not construe Byers’ Motion for Reconsideration (ECF No. 564) to seek relief related to the Court’s alternative determination that his perjury arguments are denied on the merits.¹⁰ As explained in this Court’s previous ruling, “[a] conviction acquired through the knowing use of perjured testimony by the prosecution violates due process.” (ECF No. 562 at 15 (quoting *Boyd v. French*, 147 F.3d 319, 329 (4th Cir. 1997).) To obtain collateral relief based on claims of perjury, the movant must demonstrate “(1) that the testimony at issue was false; (2) that the prosecution knew or should have known of the falsity; and (3) that a reasonable probability exists that the false testimony may have affected the verdict.” *United States v. Basham*, 789 F.3d 358, 376 (4th Cir. 2015); *see also* (ECF No. 562 at 15 (collecting cases)).

In this case, as this Court determined in the alternative in its previous Memorandum Opinion, Byers did not meet this standard. The Court emphasizes its prior conclusions that “Byers offers very little evidence to suggest that Jenkins committed perjury in this case,” and “Jenkins’ involvement in the Gun Trace Task Force does not automatically invalidate his testimony in a given case.” (ECF No. 564 at 16 n.6); *see also United States v. Barronette*, 46 F.4th 177, 196 (4th Cir. 2022). As this Court reasoned in its prior decision, Jenkins’ testimony largely

¹⁰ The Government argues that Byers seeks broad reconsideration of all his arguments, including the merits of his broader perjury argument. (ECF No. 565 at 4 (discussing merits of perjury argument).) By the express language of Byers’ Motion (ECF No. 564), however, he “is *not* seeking reconsideration of this Court’s alternative ruling denying his broader perjury claim *on the merits*.” (ECF No. 564 at 3 (emphasis in original).) Accordingly, the Court limits its analysis to the relief Byers expressly seeks in his Motion (ECF No. 564).

consisted of “circumstantial evidence of motive—namely, that Byers was involved in the drug trade and that he was responsible for the Haynes murder,” but the prosecution presented significant additional evidence of Byers’ guilt. (ECF No. 562 at 19 (citing *Byers v. United States*, Crim No. RDB-08-56, Civ. No. RDB-12-2348, 2015 WL 5450179, at *4 (D. Md. Sept. 16, 2015).) As this Court explained in its prior decision, “[t]his Court and the Fourth Circuit have consistently found alleged perjury harmless when substantial corroborating evidence gave the jury ample grounds to convict.” (ECF No. 562 at 16.) In this case, this Court and the Fourth Circuit have determined that the prosecution presented significant evidence of Byers’ guilt at trial. *See Byers*, 649 F.3d at 204 (summarizing evidence); *accord Byers*, 2015 WL 5450179, at *4–*5. Accordingly, for the reasons provided in the Court’s prior Memorandum Opinion (ECF No. 562), the Court adopts its prior ruling in the alternative that Byers’ broader perjury claim is DENIED on the merits.

III. Expansion of Certificate of Appealability

Finally, Byers asks the Court to expand the certificate of appealability (“COA”) to include both perjury claims. (ECF No. 564 at 4.) Although the Court granted a limited COA as to Byers’ claims under *Fowler v. United States*, 563 U.S. 668 (2011), it denied a COA as to his remaining claims, including his narrow perjury challenge to Count Eight. (ECF No. 562 at 21–22.) Additionally, because the Court concluded that it lacked jurisdiction as to the broader perjury argument, it did not consider whether a COA was appropriate as to the merits of the broader perjury argument. (*Id.*) In his Motion for Reconsideration, Byers contends that these perjury arguments satisfy the “low” standard to receive a COA. (*Id.* at 7 (quoting *Frost v.*

Gilbert, 835 F.3d 883, 888 (9th Cir. 2016).) In Opposition (ECF No. 565), the Government argues that Byers has not identified a satisfactory basis for reconsideration.

Although Byers’ request to expand the COA ostensibly implicates two distinct standards of review, his broader perjury claim inherently includes his narrow perjury challenge to Count Eight. The Court concluded that no COA should issue as to the narrow perjury claim, but it determined that it lacked jurisdiction over the broader perjury claim such that it did not reach the COA issue as to the merits of the broader claim. Accordingly, Byers’ request to expand the COA to include the narrow perjury claim is subject to the standard of review for a motion for reconsideration, while the COA as to the broader perjury claim is subject to the ordinary COA standard. In practice, however, the broader perjury claim encompasses the narrow perjury challenge to Count Eight. For this reason, the Court addresses the broader perjury claim—including the narrow challenge to Count Eight—and applies the standard to grant a COA in the first instance.

Expansion of the COA to include the merits of the perjury claim is appropriate in this case. As this Court explained in its prior opinion, “[a] certificate of appealability may issue ‘only if the applicant has made a substantial showing of the denial of a constitutional right.’” (ECF No. 562 at 21 (quoting 28 U.S.C. § 2253(c)(2)).) A petitioner makes such a showing “by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)); accord *Cox v. Weber*, 102 F.4th 663, 671 (4th Cir. 2024) (quoting *Miller-El*, 537 U.S. at 336). The Fourth Circuit has clarified that “a substantial

showing of the denial of a constitutional right” includes a showing “that reasonable jurists could debate whether . . . the issues presented were adequate to deserve encouragement to proceed further.” *Cox*, 102 F.4th at 674. Significantly, “a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.” *Miller-El*, 537 U.S. at 338. Thus, the COA “inquiry ‘is not coextensive with a merits analysis.’” *Cox*, 102 F.4th at 674 (quoting *Buck v. Davis*, 580 U.S. 100, 115 (2017)).

In this case, Byers has shown that reasonable jurists may debate whether his constitutional due process rights were violated based on his perjury argument. Byers asserts that an evidentiary hearing is required to fully address his perjury claims, *see* (ECF No. 566 at 3), and reasonable jurists may agree based on Jenkins’ widely publicized misconduct as a police officer.¹¹ *See United States v. Taylor*, Civ. No. SAG-24-2015, Crim. No. SAG-17-0106, 2024 WL 4493383, at *18–*19 (D. Md. Oct. 15, 2024) (granting COA on claims including allegations of perjury by members of Gun Trace Task Force where district court relied in part on Fourth Circuit’s ruling on direct appeal); *see also United States v. Paylor*, 88 F.4th 553, 563 n.2 (4th Cir. 2023) (explaining “[t]he GTTF [Gun Trace Task force] is a section of the Baltimore Police Department, now infamous for . . . corruption . . . In total, at least 13 officers were convicted on charges related to the GTTF’s corruption and violence against citizens”); *Goode-Bey v. Campbell*, Civ. No. PWG-18-595, 2019 WL 2453761, at *1 (D. Md. June 12, 2019) (noting

¹¹ Certain evidence adduced at trial—including Jenkins’ admission that neither he nor his partner took notes, reported to the homicide unit, or made a police report about Byers’ description of Haynes’ murder despite speaking with Byers on the phone and meeting with him in person—may support further investigation of Byers’ allegations regarding Jenkins. Byers also emphasizes that he filed “a sworn declaration (ECF No. 544) contending that Jenkins had testified falsely.” (ECF No. 566 at 3); *see also* (ECF No. 544-1).

criminal defendant's state charges were vacated on basis that Gun Trace Task Force planted evidence on him). Similarly, the severity of the potential constitutional violation where a petitioner alleges perjury by a specific law enforcement officer convicted of federal crimes based on documented misconduct may prompt reasonable jurists to conclude that Byers' claims of perjury merit "encouragement to proceed further." *See Taylor*, 2024 WL 4493383, at *18–*19. Accordingly, Byers' Motion for Partial Reconsideration (ECF No. 564) is GRANTED, and the COA is expanded to include the perjury challenge to all Counts.

CONCLUSION

For the reasons stated above, Byers' Motion for Partial Reconsideration (ECF No. 564) is GRANTED. Specifically, it is GRANTED as to (1) the Court's prior decision that it lacked jurisdiction over Byers' broader perjury claim; and (2) the request to expand the certificate of appealability ("COA") to include the broader perjury claim. The Court's previous jurisdictional ruling as to the broader perjury claim is VACATED. The Court now DENIES ON THE MERITS the perjury claim to all Counts and EXPANDS the COA to include the perjury claim. The Court's prior rulings, *see* (ECF Nos. 562, 563), otherwise remain unchanged.

A separate Order follows.

Date: July 7th, 2025

/s/

Richard D. Bennett
United States Senior District Judge