

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

**Case Number: 16-21465-CIV-MORENO
13-20230-CR-MORENO**

CARLOS ABEL FERNANDEZ,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND DENYING MOTION TO VACATE**

THE MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, for a Report and Recommendation on Movant's Motion to Vacate pursuant to 28 U.S.C. 2255, filed on **April 25, 2016**. The Magistrate Judge filed a Report and Recommendation (**D.E. 21**) on **May 23, 2017**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and being otherwise fully advised in the premises, it is


ADJUDGED that United States Magistrate Judge Patrick A. White's Report and Recommendation is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that Movant's Motion to Vacate pursuant to 28 U.S.C. 2255 is **DENIED**. The Court agrees with the Magistrate Judge that there are three predicate offenses that allow the sentencing enhancement in this case. Movant does not object to the Magistrate Judge's recommendation that the two Florida aggravated battery convictions serve as predicate offenses under the Armed Career Criminal Act. His only objection is to the recommendation that the

Court find the Florida crime of “resisting an officer with violence” qualifies as a predicate offense under the Act’s elements clause. “In looking to the decisions of Florida’s intermediary courts before, [the Eleventh Circuit] held that a prior conviction for resisting an officer with violence qualified as a violent felony under the elements clause of the [Armed Career Criminal Act].” *United States v. Hill*, 799 F.3d 1318, 1322 (11th Cir. 2015) (citing *United States v. Romo-Villalobos*, 674 F.3d 1246, 1251 (11th Cir. 2012)). Consistent with *Hill* and *Romo-Villalobos*, the Court agrees with the recommendation that the Florida crime of “resisting an officer with violence” qualifies as a predicate offense under the Act’s elements clause. Accordingly, the Court denies the motion to vacate as *Johnson v. United States*, 135 S. Ct. 2551 (2015) does not affect the sentencing enhancement in this case. It is further

ADJUDGED that no certificate of appealability issue.

DONE AND ORDERED in Chambers at Miami, Florida, this 14th of July 2017.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
United States Magistrate Judge Patrick A. White
Counsel of Record