**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**
**MIAMI DIVISION**

**CASE NO. 22-CR-20505-GAYLES/TORRES**

**UNITED STATES OF AMERICA**

**vs.**

**KEVIN ABARCA,**

**Defendant.**
_____/

**ORDER AFFIRMING AND ADOPTING REPORT OF MAGISTRATE JUDGE**

**THIS CAUSE** comes before the Court on Chief Magistrate Judge Edwin G. Torres' Report and Recommendation on Defendant's Motion to Dismiss Counts One, Six, Nine, Twelve, and Fifteen for Lack of Jurisdiction (the "Report"). [ECF No. 253]. On December 22, 2023, Defendant Kevin Abarca ("Defendant") filed his Motion to Dismiss Counts One, Six, Nine, Twelve, and Fifteen for Lack of Jurisdiction (the "Motion"). [ECF No. 183]. The United States of America (the "Government") filed its Response in opposition to the Motion on January 18, 2024. [ECF No. 203]. On January 31, 2024, the Motion was referred to Judge Torres for a report and recommendation. [ECF No. 209]. On March 26, 2024, Judge Torres issued the Report which recommends that the Court deny Defendant's Motion as to all counts. [ECF No. 253]. Defendant filed his Objections to the Report on April 9, 2024. [ECF No. 267].

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review, if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see*

*also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

This Court, having conducted a *de novo* review of the record, agrees with Judge Torres' well-reasoned analysis and conclusion that the Motion should be denied.

Accordingly, after careful consideration, it is **ORDERED AND ADJUDGED** as follows:

(1) Chief Magistrate Judge Edwin G. Torres' Report and Recommendation on Defendant's Motion to Dismiss Counts One, Six, Nine, Twelve, and Fifteen for Lack of Jurisdiction, [ECF No. 253], is **AFFIRMED AND ADOPTED** and incorporated into this Order by reference; and

(2) Defendant Kevin Abarca's Motion to Dismiss Counts One, Six, Nine, Twelve, and Fifteen for Lack of Jurisdiction, [ECF No. 183], is **DENIED.**

**DONE AND ORDERED** in Chambers at Miami, Florida, this 16th day of April, 2024.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE