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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO.: 16-cr-20803-BB All Defendants

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
v. )  
ARASH CABY, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ /

April 20, 2017

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HEARING PROCEEDINGS

BEFORE THE HONORABLE ALICIA M. OTAZO-REYES  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE  
99 NE 4th Street,  
Miami, FL 33132  
BY: RICARDO A. DEL TORO, AUSA

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APPEARANCES CONTINUED:

On behalf of the Defendants:

SEITLES & LITWIN, P.A.  
Courthouse Center  
40 N.W. 3rd Street,  
Penthouse One  
Miami, FL 33128.  
BY: MARC D. SEITLES, ESQ.

ALSO PRESENT:

GUY GIVERSON, ESQ.,  
Corporate Counsel

Transcribed By:

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1 (Thereupon, the following proceeding was held:)

2 THE COURTROOM DEPUTY: All rise. The United States  
3 District Court for the Southern District of Florida is now in  
4 session. The Honorable Alicia M. Otazo-Reyes presiding.

5 THE COURT: Good morning everyone.

6 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

7 THE COURTROOM DEPUTY: The United States of America  
8 versus Arash Caby; Case Number 16-20803-criminal, Bloom.

9 Counsel, please state your appearances for the record.

10 MR. DEL TORO: Good morning, Your Honor.

11 Rick Del Toro on behalf of the United States. With me  
12 at counsel table is Eden Carroll with the FBI.

13 THE COURT: Thank you.

14 MR. SEITLES: Good morning, Your Honor.

15 Marc Seitles on behalf of Arash Caby who is here  
16 present before the Court. And also next to me Guy Giverson who  
17 is corporate counsel for the corporation.

18 Thank you.

19 THE COURT: All right. Thank you very much.

20 Okay. We are here on the motion to modify bond  
21 conditions to clarify employment restrictions. I've reviewed  
22 the motion. I know that Mr. Del Toro opposes the motion. Did  
23 not oppose the hearing. We are having the hearing.

24 And the corporate counsel has laid out the areas that  
25 he feels that Mr. Caby needs to be involved in. And there is

1 some indication that the company is now only exporting within  
2 the American continent, which I presume there are no  
3 restrictions except, presumably, for Cuba.

4 MR. DEL TORO: Well, when you say restrictions, Your  
5 Honor, the question is, is it done legally and there are a lot  
6 of legal requirements.

7 THE COURT: Right.

8 MR. DEL TORO: And so, it depends on what is being  
9 shipped.

10 THE COURT: Right, but it is not --

11 MR. DEL TORO: And what licenses are being fulfilled.

12 So you can certainly illegally ship things to Central  
13 America, South America, North America, or anywhere in the  
14 world.

15 THE COURT: Right.

16 But it is not one of the countries that -- that was my  
17 question. Is there a country other than, I am assuming, Cuba  
18 that has restrictions itself that is --

19 MR. DEL TORO: Well, yes, there are restrictions on,  
20 for example, the shipment of military goods, U.S. munitions  
21 list goods to any country without a license.

22 And so they have to be done properly, which the  
23 allegations in the indictment, the evidence that we proffered  
24 is that's what the company did. They shipped goods without a  
25 license. They didn't follow the requirements of the law and so

1 those were illegal shipments.

2 THE COURT: All right. So it doesn't matter where  
3 they are sending stuff to, they still need licenses. Even if  
4 it is not rogue regimes.

5 MR. DEL TORO: They still need licenses, but they  
6 also, you know, licenses for certain military items are not  
7 going to be granted to Venezuela.

8 THE COURT: Right.

9 MR. DEL TORO: They may not be granted to other  
10 countries.

11 THE COURT: Right.

12 With what is going on in Venezuela, right.

13 MR. DEL TORO: Right.

14 For example, it is just not Cuba. And also, you know,  
15 it really just depends on what they're trying to ship. If  
16 they're trying to ship military items, then, obviously, that is  
17 very controlled.

18 THE COURT: All right. So my question and I guess  
19 maybe I don't know, Mr. Seitles, if you want to put the  
20 corporate counsel on the stand, Mr. Giverson.

21 My question would be is there someone who Mr. Caby  
22 could appoint to run the business sort of like, you know,  
23 somebody who would be in charge of these things that would not  
24 create the problem that we are having that Mr. Caby cannot be  
25 involved in the business?

1           And at the same time, ensure that the business  
2 continues to be an ongoing business and especially that  
3 employees do not lose their jobs.

4           So, obviously, this is something I believe -- let me  
5 hear from Mr. Del Toro. I am assuming the Government has an  
6 interest in the business continuing rather than falling apart  
7 or doesn't care.

8           MR. DEL TORO: Judge, we did not indict the business  
9 because we recognize that some of the business is legitimate.

10           However, there is a substantial amount of illegal  
11 activity that has taking place in the business. And the  
12 problem that we have with the motion to modify the bond  
13 conditions is it creates two problems.

14           Number one, it creates a potential contact with  
15 potential witnesses, which the Court made as a bond condition  
16 that the Defendant would not have contact with potential  
17 witnesses. And obviously, engaging in the business of the  
18 company would necessarily bring him into contact with the  
19 witnesses.

20           We know that he has had contact with former employees  
21 which, you know, he didn't know at the time who the potential  
22 witnesses were. We had provided a list of potential witnesses  
23 to the probation officer who has now shared them with the  
24 Defendant. So there is contact with the witnesses. That is a  
25 major problem. I don't know how he could get around it, number

1 one.

2           Number two, the second issue is you said, you know, no  
3 work in export and import and that's a valid bond condition.  
4 It is standard in these types of cases because that was the  
5 nature of the offense. There were export violations. They  
6 were extensive. They were over a year long.

7           There were multiple transactions. The Defendant  
8 proffered evidence that he personally directed some of these  
9 things, including creating false end use certificates for  
10 vendors and things like that.

11           So our concern is he can't really run the business.  
12 He can't really go in and do anything in the business other  
13 than appoint, delegate, perhaps get lines of credit, things  
14 like that that he doesn't even have to be in the office for.

15           But, we know the proffer from the Defense at the PTD  
16 hearing was that there are over a hundred employees. So,  
17 certainly, the business ran and he certainly did not do  
18 absolutely everything in the business when he ran it.

19           And his wife, Catherine Caby, is a signatory on the  
20 bank accounts, on an operating bank account that they have at  
21 First Citizens Bank. And so, we know that she can make  
22 financial decisions if she chooses to.

23           Defense counsel has told me that she is not interested  
24 in doing that and I understand, but they could certainly  
25 designate other people to do that.

1 THE COURT: That is where I was coming from.

2 If the problems, if there is no way to separate Mr.  
3 Caby's, you know, performing these functions that the corporate  
4 counsel believes need to be performed by somebody, if there is  
5 no way he can perform those functions without becoming, you  
6 know, having contact with employees who potentially are  
7 witnesses or without being involved in, you know,  
8 import/export, which is the business of the business.

9 Then, it seems to me -- and I will hear from that Mr.  
10 Seitles and even Mr. Giverson -- it seems to me that the  
11 alternative would be to appoint someone who does not have any,  
12 you know, of these entanglement problems. And maybe, you know,  
13 maybe allow Mr. Caby to consult with this person, but kind of  
14 put a buffer in between so that it is this person who, you  
15 know, is the front person on running the business.

16 Let me hear from Mr. Seitles and counsel.

17 MR. SEITLES: Your Honor, may I approach?

18 THE COURT: Yes.

19 MR. SEITLES: Good morning, Your Honor.

20 There is a lot here and a lot of things that the  
21 Government has said and a lot of questions that the Court has  
22 already asked. So let me start to deal with one issue at a  
23 time.

24 We would not be here if there was another person  
25 capable of running the company. I wouldn't waste the Court's



1 time. I certainly wouldn't waste the Government's time.

2 I have been in communication with Mr. Del Toro. We've  
3 tried to work this out. He has been amenable to certain  
4 things. And even some things in the motion he was amenable to,  
5 but he wasn't amenable to everything, which is what  
6 precipitated the motion being filed.

7 He, Mr. Caby, is indispensable to the corporation.  
8 There is no question about it. There is nobody that can  
9 replace him. There is nobody that can take his role to allow  
10 the company to continue to exist. It is just that simple. So  
11 that should respond to the Court's first inquiry.

12 Second --

13 THE COURT: Well, you know, I have great respect for  
14 you, Mr. Seitles, as an officer of the court, but I think that  
15 would have to be a factual finding that I would make.

16 MR. SEITLES: Sure.

17 THE COURT: I cannot really do it that way.

18 MR. SEITLES: Your Honor, you are absolutely right.

19 And I am just making argument. And certainly, that is  
20 why I have corporate counsel here who either can come up and  
21 proffer as well and sort of advise the Court to what his  
22 perceptions of the corporation are, which I think he would have  
23 a better way to describe that than myself as being the  
24 corporate lawyer for ten years.

25 And certainly, the Court can decide and make a factual

1 finding as a result of that, but the Court is right.

2 I mean, this is certainly argument, but I could tell  
3 you I wouldn't be wasting the Court time if I didn't make my  
4 own independent inquiry to believe that Mr. Caby could find  
5 someone else.

6 His wife does not effectively manage the company and  
7 does not know with the inner workings of the corporation. She  
8 does not know anything about the IT department or the different  
9 departments of the corporation. So she would be incapable of  
10 running the company.

11 Could she sign checks? She could sign checks, yes.  
12 And I agree with Mr. DeL Toro, but really we need somebody to  
13 have executive functions to have that ability to actually run  
14 and manage the company.

15 But let's take a step back for a minute, Your Honor,  
16 if I may. This is a corporation that has been in business for  
17 more than ten years under two different names. It has grossed  
18 over 60 million dollars in sales.

19 They have sold over 500,000 aviation parts worldwide.  
20 They had over 100 employees. They have 720 active clients.  
21 This is a large company, okay, or midsized company. And had  
22 the company been indicted we would not be here today because  
23 the corporation would have effectively shut down.

24 The other relevant part which is, arguably, the most  
25 relevant part is the Government's accusations are from conduct

1 that relates to 2014 and the last overt act in the indictment  
2 is March of 2014.

3           So there has been no criminal conduct alleged by the  
4 Government post that time. And that is certainly relevant in  
5 determining whether or not Mr. Caby can assist in allowing the  
6 company to continue to exist and produce. At this point, which  
7 is obvious as a result of the indictment, the 700 clients have  
8 diminished tremendously. The number of employees have gone  
9 from 100 to eleven.

10           The company in Bulgaria ceases to exist. There are  
11 many, many now former employees. So he is trying to salvage  
12 the business that he has and the employees that have been loyal  
13 to the corporation and need employment and that's what is  
14 relevant here.

15           And what troubles me, Your Honor, and why I think Your  
16 Honor should really consider the motion that I filed very  
17 seriously is, how is this any different than the indictment of  
18 corporate executives at Volkswagon or British Petroleum? These  
19 large corporations do not then go bankrupt.

20           The Government is seeking to hold responsible  
21 corporate executives of these large companies, but they are not  
22 -- they are ensuring -- I wouldn't say ensuring, but these  
23 companies are not then going under. They are indicting  
24 individuals and seeking individual accountability.

25           So whatever happens to Mr. Caby is one issue.

1 Certainly that is going to be a decision for twelve jurors, but  
2 that has nothing to do with the existence of the company.

3           So as long as I put in the motion, we limit, and the  
4 Court limits exports to the Americas it would eliminate any  
5 issue. And I disagree with Mr. DeL Toro. The whole issue of  
6 this case is licenses. And the reason that a license is  
7 required by individuals, United States citizens, or those doing  
8 business in the United States that do business with Syria,  
9 which is the crux in the allegation in the indictment is  
10 because they're on the OFAC list.

11           Syrian Arab Airlines is a designated entity on the  
12 special designated nationals list. That's why we are here. So  
13 I disagree with him. It doesn't matter whether it's a widget  
14 or whether it's a military part, you have to get a license.  
15 And the Government will seek to prove that at trial, but that  
16 has nothing to do with exporting in general.

17           And I think that's the problem, right, when we were  
18 arguing about bond it is the emotional argument of whether he  
19 should be released or not, or whether he is a risk of flight,  
20 or a danger to the community.

21           Unfortunately, I could only blame myself for this is  
22 when it came to the issue about bond restrictions, I didn't  
23 argue. I didn't jump up and down because I was thrilled that  
24 the Court granted a bond. I was hoping to resolve this.

25           And Mr. DeL Toro and I have a good level of

1 communication but, again, we are going to agree to disagree  
2 about certain things and that's okay. But my point is because  
3 I didn't bring it up at the time of the detention hearing it  
4 has become relevant because this is how he provides for his  
5 family and how he provides for his employees.

6           And the reality is unlike where we have a boiler-room  
7 situation where somebody is engaged in stock fraud, that's all  
8 they're doing is they are stealing from people. Or in the  
9 Medicare fraud context when we prohibit somebody from engaging  
10 in healthcare is because everything they are doing with respect  
11 to healthcare has some fraudulent capacity to it.

12           So that's why in every one of these cases, oftentimes  
13 before Your Honor, both the Defense and Government when there  
14 is a bond that has been granted will agree that this should be  
15 a restriction for this person to engage in X business, but we  
16 know here that's not the case.

17           We know we have a legitimate prosperous corporation  
18 that was engaged in \$30,000 or so of parts that were shipped  
19 illegally. As Mr. Del Toro said OFAC violations. Black and  
20 white in the Government's view.

21           And that's fine, but this was a very successful  
22 corporation that when he says a lot, I mean, Your Honor, it  
23 just defies logic. That's not the facts here. The facts are  
24 that this is 60 million dollars in revenue over eleven years  
25 and we're talking about \$30,000. He may be guilty maybe.

1 Maybe that's what the jury may decide, but that should not put  
2 the company in a situation where it will go bankrupt.

3           And employees who easily could have left Mr. Caby at  
4 this point but, obviously, they want their jobs or they would  
5 have gone somewhere else. And either it is because they are  
6 concerned about finding a new job, they like their job, or  
7 they're loyal to Mr. Caby. I don't know the reasons, but the  
8 reality is there is no reason that this company should go under  
9 because of someone's opinion.

10           If they felt that the corporation was engaged in  
11 illegal activity continually they would have indicted the  
12 company and, quite frankly, that just did not happen here.

13           So I think the bond modification, at least one of the  
14 ideas that I am suggesting to Your Honor, is to limit the  
15 exports to the western hemisphere excluding Cuba.

16           THE COURT: I'm sorry, but I mean, that is where I was  
17 coming from, but Mr. Del Toro is telling me that you need OFAC  
18 licenses to export anywhere, even if they are not rogue  
19 regimes, my word.

20           MR. DEL TORO: Not OFAC licenses, Judge. There are  
21 different licensing regimes.

22           So if it's military items you need a State Department  
23 license. If they are commerce controlled, they are commerce  
24 licenses or licenses through them. And if it is OFAC, then,  
25 through Treasury.

1           So there are multiple things. And it depends on what  
2 you are sending, but just because an entity is not OFAC listed,  
3 it does not mean that you can ship things to them. If you are  
4 trying to ship military items, they are controlled by State  
5 Department and you have to get a license.

6           And the issue is not only get a license. For some  
7 places you just can't send certain things unless you are, you  
8 know, a licensed military vendor who is registered with the  
9 U.S. Government, which AW Tronics is not with respect to  
10 military items.

11           I just want to clarify one thing. We are talking only  
12 about OFAC here and that is Count One of the indictment, the  
13 Syrian Air transactions. And that's a very, very serious  
14 conspiracy, over a year long multiple transactions, dozens and  
15 dozens of overt acts.

16           There is also the China transaction. China is a  
17 country we trade with constantly, but the Defendant is charged  
18 in the conspiracy with defrauding the U.S. Government by  
19 shipping military items, air navigation equipment to China,  
20 which was listed on the United States munitions list a military  
21 item.

22           So, you know, whether the country is OFAC designated  
23 or not is not the issue here. It is whether the company and  
24 the Defendant follow the law and whether they create false  
25 documents and whether they lie to the U.S. Government. That's

1 the issue.

2 THE COURT: So what I am hearing Mr. Del Toro say is  
3 the very business that AW Tronics is engaged in requires  
4 licensing whether it be OFAC, Treasury, or -- OFAC is  
5 Treasury --

6 MR. DEL TORO: Or commerce.

7 THE COURT: State Department or commerce. That is  
8 what I am hearing him say.

9 You know, I worked on a case a long time ago involving  
10 that and I have some familiarity with what he is talking about,  
11 but let me ask you, Mr. Seitles --

12 MR. SEITLES: Yes, Your Honor.

13 THE COURT: And maybe it would be best to have Mr.  
14 Giverson either make a proffer or, you know, take the stand.

15 I don't think anybody is indispensable in this world  
16 because at some point in time we are not going to be here.

17 MR. SEITLES: Understood.

18 THE COURT: That's a fact of life.

19 MR. SEITLES: Understood.

20 THE COURT: And you know, someone could take sick.  
21 You know, anything could happen. So I don't know and maybe,  
22 again, the corporate counsel is in a better position.

23 MR. SEITLES: Sure.

24 THE COURT: I do not know if there is a plant manager  
25 or someone. You are saying that you have looked --



1 MR. SEITLES: We have.

2 THE COURT: -- high and low and you have not found  
3 anybody. Maybe there is nobody within the company. Maybe  
4 there is somebody that could be hired. And I think maybe Mr.  
5 Giverson can address those issues for me --

6 MR. SEITLES: Sure.

7 THE COURT: -- a lot better.

8 MR. SEITLES: Sure. May he proffer, Your Honor?

9 THE COURT: Yes. Come on up, sir, and give us a  
10 little more background since you are so familiar with the  
11 company.

12 MR. GIVERSON: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. GIVERSON: The short answer is that the reason  
15 that Mr. Caby is indispensable is because his knowledge about  
16 the inner workings of the company from the logistics, from the  
17 basic level all the way up to how they deal with their vendors,  
18 the people that they buy things from, is he's the only person  
19 that can connect all of things together.

20 Including, and this is really important and has become  
21 important over the past several weeks, the ability of the  
22 company to have an IT system that actually assists the people  
23 that work there.

24 The company runs on a computer system that was  
25 developed by Mr. Caby with the help of certain software

1 developers. And they did that together and they have been  
2 developing it ever since together making changes to it in order  
3 for the people in the company to be able to talk to each other  
4 and to be able to keep track of the transactions that they keep  
5 track of.

6 Over time that program needs to be debugged and  
7 tweaked and changed in order to meet changing conditions.  
8 Whether it be adding a vendor or adding a category of parts or  
9 something like that. So he's the only person at the company  
10 that has that level of understanding that is able to work with  
11 a programmer in order to make that happen.

12 Right now there is no IT expert at all at the company.  
13 They are all people working there basically using a computer  
14 and if something goes wrong they don't have anybody to call.

15 And in order for somebody to be appointed for them to  
16 call, Mr. Caby would have to be very involved in the process so  
17 that he could explain to that person how the entire system  
18 works and, you know, where to be able to find problems or find  
19 a bug and debug it. And be able to make the sort of tweaks and  
20 modifications that are necessary to develop an IT system that  
21 really is the sort of lifeblood of the company. It's really  
22 the circulatory system of the company.

23 THE COURT: All right. Let me ask Mr. DeI Toro.

24 Would you have objections to Mr. Caby working through  
25 a programmer to maintain the IT system of the company?

1 MR. DEL TORO: No, Judge.

2 And that's exactly what I think the Court suggested  
3 and what I also mentioned to the Court. There is no problem  
4 with him appointing somebody, meeting with somebody and having,  
5 you know, discussions with somebody about the IT issues about,  
6 for example, obtaining lines of credit and doing the financial  
7 transactions and doing all that and sharing all of his  
8 knowledge.

9 Mr. Giverson just proffered that he used software  
10 developers to create this program.

11 THE COURT: Right.

12 MR. DEL TORO: So, certainly, those people could be  
13 consultants that could be tapped to help with IT experts who  
14 would need to then, you know, convey the information to the  
15 employees.

16 As the Court said, the issue is not whether he can  
17 appoint somebody to run different parts of the business. We  
18 know that he certainly traveled. He traveled for work. He  
19 traveled for personal business.

20 And so, the business was running while he was not  
21 there. Nobody is indispensable, as the Court said. And I  
22 think that if he appoints somebody who is an IT consultant who  
23 has familiarity with the software and who has worked with him  
24 in the past to be the conduit with the employees, I have no  
25 objection to that.

1 THE COURT: For the IT area and it may have to be  
2 different people.

3 Now, are any of these software developers available or  
4 is there anyone? Because as I heard you, he did not actually  
5 do the coding.

6 MR. SEITLES: He was involved in the coding, but he is  
7 not a computer programmer.

8 THE COURT: Right.

9 MR. SEITLES: But he actually did have a deep  
10 understanding of what the abilities were with respect to  
11 coding.

12 With a coder that actually does a good job, there has  
13 to be somebody there that could kind of work hand-and-glove  
14 with the coder to make sure that the code that they are putting  
15 into the machine is going to be able to meet the needs of the  
16 company.

17 THE COURT: And it sounds to me like Mr. Del Toro does  
18 not have an objection to him working with a coder to maintain  
19 the IT system.

20 Am I saying that correctly?

21 MR. DEL TORO: That is correct, Judge.

22 Now what I have a problem with is him being in the  
23 office and dealing with other employees and dealing with them  
24 indirectly because of potential witnesses.

25 THE COURT: He could do this remotely, right? I work

1 from home remotely.

2 MR. SEITLES: I understand.

3 The problem with trying to do it remotely is that part  
4 of what you're doing when you are coding is, you are gathering  
5 information about what the needs are of each employee,  
6 digesting it. And then sort of putting it in the terminology  
7 that a coder can understand with the background knowledge about  
8 what the program, as it is exists now, does.

9 And in answer to your question, Your Honor, before  
10 because I think he said he was working with coders in the past.  
11 The developer, his permanent developer is no longer with the  
12 company. So that is actually one task that needs to be done.

13 And there is nobody at the company who is able to make  
14 that call, except for Mr. Caby. He would need to be the person  
15 to make that call and that's why they are kind of frozen in  
16 amber right now with respect to their computer system because  
17 Mr. Caby doesn't want to take a chance to get involved in any  
18 aspect of the business where he is making any decisions. So he  
19 has not been able to be involved in that process and that's  
20 kind of why they are stuck with respect to that one issue.

21 There are a number of others but --

22 THE COURT: All right. But it seems like the IT  
23 issue, you know, would be the easiest to be resolved because  
24 there has to be programmers available even if the original one  
25 is no longer available somebody with expertise in whatever

1 language is being used to do that.

2           So this is something that can be resolved. You know,  
3 obviously, if he has to hire somebody and pay them to do this  
4 that is sort of like, you know, the preferable outcome than  
5 having the company go down in flames.

6           So I would say that we can modify it. Just taking the  
7 ITs, we can modify it so he can work with a programmer as the  
8 person who will, you know, implement the changes.

9           And you know, maybe it has to be a hybrid kind of  
10 person that can, you know, isn't just like, you know, one of  
11 those coders that, you know, that is all they can do is code,  
12 but somebody, maybe an assistant analyst. Somebody along those  
13 lines.

14           So that I see and you are telling me that, you know,  
15 things are frozen. It sounds to me like that has to be first  
16 priority to get that thing going again.

17           MR. SEITLES: Great.

18           THE COURT: All right. So that can be done. I would  
19 say work with a programmer/analyst to maintain the IT system.

20           Is that --

21           MR. SEITLES: Remotely, Your Honor?

22           THE COURT: Remotely, of course.

23           You don't want him to go to the company, right, Mr.  
24 Del Toro because of the chance of meeting with witnesses?

25           MR. DEL TORO: I mean, I think that's the problem.

1           The problem is if he is going to be having  
2 interactions with how is it possible that he can go into the  
3 office and not have interactions with the employees or  
4 potential witnesses. I don't know how that is possible, unless  
5 he locks himself in the office with a programmer and that's  
6 what he does.

7           MR. SEITLES: May I be heard on that point?

8           THE COURT: Yes.

9           MR. SEITLES: This is a big issue. This is one of the  
10 fundamental issues of why we are here today. So let me explain  
11 the background. The surprise that we had when we received the  
12 list.

13           So is one of the conditions of the bond, Your Honor  
14 put in, you know, no contact with witnesses, potential  
15 Government witnesses, which is a normal standard condition.

16           So, unbeknownst to us, there was a list that was sent  
17 over to Probation. So what happened, Mr. Del Toro and I were  
18 in continual communication, so I would make sure that Mr. Caby  
19 had complied with all his conditions of bond, he advised me  
20 that there was a list of employees.

21           So I said I don't understand. Actually, let me take a  
22 step back. I said Mr. Caby was going to work and one of the  
23 conditions of bond was employment.

24           Mr. Del Toro seemed surprised by that. He didn't  
25 realize that Mr. Caby had gone to work. And I said Mr. Del

1 Toro, take a look at the bond conditions. Of course he's  
2 allowed to go to work. The Court allowed employment.

3 And again, because we have a good level of  
4 communication, he said, listen, I sent over to Probation a list  
5 of Government witnesses, many of whom are employees, or former  
6 employees. I said, well, send me over that list because this  
7 is news to us. Probation has not contacted Mr. Caby with this  
8 information.

9 So, at that point, it took a few days and Probation  
10 ultimately sent us a list of about fifty people, which I had  
11 never seen before, to be perfectly candid with you.

12 So it could completely restrict his ability to manage  
13 the company if he could not be in touch with his employees.  
14 Now, I would argue, and this is one of the reasons why we are  
15 here, is certainly he can engage his employees and give them  
16 the direction relating to their ongoing business activities and  
17 not discuss the criminal prosecution.

18 If he discusses the criminal prosecution, he may be in  
19 violation of his bond, but he should be allowed to continue to  
20 run his company.

21 This is no different, Your Honor, than British  
22 Petroleum or any large corporation where a corporate executive  
23 continues to work during the pendency of a prosecution and  
24 continues to engage and deal with their employees. Why should  
25 Mr. Caby be treated any differently?



1           And I think the Court can very easily make a ruling  
2 saying, look, you cannot have contact with your employees to  
3 discuss the criminal prosecution or anything related to the  
4 indictment.

5           However, since the allegations stopped in 2014,  
6 relating to any illegal activity involving the corporation or  
7 its employees, or owners, that he should be allowed to discuss  
8 with them what their tasks are from this point forward.

9           And I think the Court can make that limitation because  
10 if it doesn't it's really -- in all honesty, Your Honor, the  
11 company is going to go under.

12           So, to not have the owner have the ability to at least  
13 talk to his employees about the ongoing activities of his  
14 company, it is just bordering on the absurd, Your Honor.

15           There is no way the company will be able to exist and  
16 I think that is the point. And in all candor, what Mr.  
17 Giverson is usually the voice and I am sort of like the judge  
18 and, I am like, well, Mr. Giverson, I don't think the Court is  
19 going to allow that. What do you mean? How is the company  
20 going to exist?

21           So that's what precipitated this motion to say, look,  
22 Your Honor, there has to be a practical way to deal with this  
23 situation. The company wasn't indicted. One of the owners  
24 was. Another owner sits in jail.

25           How can we allow this corporation to exist and at the

1 same time not have an issue with potential Government  
2 witnesses?

3           And I think there is a way to alleviate the  
4 Government's concern and at the same time, allow the company to  
5 continue to operate and there has to be some lines of  
6 communication between the owner and its employees.

7           MR. DEL TORO: And Judge, I just take issue with the  
8 false choice of the company goes under or else Mr. Caby runs  
9 the day-to-day activities.

10           I think as the Court pointed out that can't be. It's  
11 a company that used to be 100 employees. They said eleven  
12 employees. Certainly you can hire somebody or you can promote  
13 somebody who was doing much of the work of the office who can  
14 do most of it and who can be a conduit. Preferably somebody  
15 new who has not been in the company during the time of the  
16 indictment or before.

17           I want to correct a couple of things. First of all,  
18 the conspiracies go into 2015. And I don't know if that's  
19 really all that significant anyway because it is really not  
20 that long ago. The point is that it was extensive conduct that  
21 is charged, including fraudulent activity, creating false  
22 documents and lying to the Government, et cetera.

23           With respect to the direction of the business  
24 activities, well, that's engaging in the business of export and  
25 import. And you know, the Court imposed two conditions; no

1 contact with victim witnesses and not to work in the  
2 import/export business and those do conflict with employment.

3           The only way to resolve that conflict is that the  
4 employment is in some other area and not in export/import.  
5 That's how I read the Court's order. It made a lot of sense to  
6 me and I think that that was the Court's intent.

7           And certainly, the Defendant is a very wealthy  
8 individual. He could certainly engage in financial investments  
9 and do other things that have nothing to do with export and  
10 import and delegate somebody who is capable of running the  
11 day-to-day activities of the business.

12           The former U.S. Attorney William Ferrer has just left  
13 the office. You know, he was a fantastic U.S. Attorney, but I  
14 guarantee you the current acting U.S. Attorney Ben Greenberg is  
15 doing a fantastic job.

16           As the Court said, nobody is indispensable. Even the  
17 best and most competent people in the world, everybody can be  
18 replaced and you can always hire somebody who can do a good  
19 job.

20           So my position and the Government's position is that  
21 he can't possibly work in the import/export business of  
22 AW Tronics and not have contact with victim witnesses if he is  
23 going in day-to-day into the office.

24           And certainly I work remotely. As the Court said, you  
25 work remotely and those things can be done. You can have

1 meetings at separate places. You can have a person who is the  
2 conduit for IT matters. You can have a person who is a conduit  
3 for accounting matters. You can have a person who is the  
4 conduit for day-to-day export activities. And actually that is  
5 someone who he shouldn't really have contact with, the export  
6 activities.

7 I take issue with the minimization of the significance  
8 of the criminal activity in this case. It took place over a  
9 year and-a-half, two years. It is extensive. There are  
10 multiple acts. There are dozens of overt acts. Over two  
11 conspiracies involving shipments to Syria and China, military  
12 equipment and dual use equipment.

13 It's a very extensive criminal export control criminal  
14 scheme. And so to allow him to go back to the business that  
15 does import/export I think would violate the spirit of the  
16 Court's bond conditions.

17 THE COURT: All right. Well, Mr. Seitles, before Mr.  
18 Del Toro started his remarks, I circled here the restriction is  
19 not to work in the import/export business.

20 I think what you are arguing, respectfully, is to  
21 change that condition, which I am not willing to do. That was  
22 a condition of bond.

23 As I said, you know, those conditions I am not  
24 changing. I am not changing that one. I am not changing the  
25 no contact with witnesses. Those are standard conditions.

1           You keep alluding to the big corporations, you know,  
2 whatever they are, BP, Volkswagon, those corporations. I am  
3 sure, you know, we have no idea what those people's bond  
4 restrictions were, but I am sure if those people could not go  
5 into the premises, somebody else was picking up the slack.  
6 They are huge corporations. They have people.

7           I think where the problems are coming up here is that  
8 maybe Mr. Caby has not been able to, you know, maybe among the  
9 eleven employees that are left there isn't anybody that could  
10 really take over.

11           Maybe the good ones left. Not to demean the ones who  
12 stayed, but maybe the ones who are marketable left, but that  
13 does not mean that he cannot hire somebody or some bodies to be  
14 the actual people who, you know, run the business.

15           And you know, I would not want the outcome of having  
16 the business fall, you know, through inaction on my part, but  
17 at the same time, I do not see an intellectually honest way of  
18 doing what you are asking me to do, Mr. Seitles, of letting Mr.  
19 Caby go into the office and, you know, putz around with the IT  
20 and do all this without violating this.

21           So, you know, we need to be creative. There has to be  
22 a solution. There has to be a way to keep the business afloat.  
23 It seems to me that the best way is to hire somebody or, again,  
24 you know, I picked on IT because that seemed to me to be the,  
25 you know, the easiest. The most doable but, you know,

1 obviously, you also would need businesspeople to do this other  
2 decision-making.

3           It was expected when the bond condition was imposed  
4 that Mr. Caby could not work in the import/export business,  
5 AW Tronics being an import/export business, that he could not  
6 work there. I mean, that was a condition.

7           And I just do not see a way to get around it, other  
8 than to, you know, almost like the equivalent of hiring a  
9 receiver, except it is not a receiver. It is somebody who, you  
10 know, really keeps the thing going and does not wind it down.

11           And I think I butchered your name as Mr. Giverson.

12           MR. GIVERSON: That's fine.

13           THE COURT: My apologies, Mr. Giverson.

14           MR. GIVERSON: You have identified all of the issues.

15           THE COURT: Yes.

16           MR. GIVERSON: Perfectly. I think that summed  
17 everything up perfectly.

18           THE COURT: Yes.

19           MR. GIVERSON: And I can tell you that the company has  
20 tried to find somebody. I will call it an apex person to put  
21 there.

22           THE COURT: Yes.

23           MR. GIVERSON: To plug in there.

24           THE COURT: Yes.

25           MR. GIVERSON: But it seems like the only people that

1 have the wherewithal, the ability to do that and the lack of  
2 opportunity costs to do other things would be somebody who just  
3 wants to buy the business.

4           They would just say, well, so are you asking me I'll  
5 buy the business? Because, essentially, they would be taking  
6 on an apex role at the company. And somebody with that level  
7 of experience and that level of knowledge about the business  
8 generally, where opportunity costs are so high that essentially  
9 we would be selling the business to the person.

10           We would have to give them enough of a stake as an  
11 incentive in order to -- as an incentive to work there that it  
12 would really just be the business, if it is going to exist, is  
13 going to exist somewhere else run by somebody else.

14           THE COURT: Sort of like Shark Tank, right?

15           MR. GIVERSON: Yeah, except that it would just --  
16 that's right. It might change names. It might --

17           THE COURT: They put in their money, but they want the  
18 equity?

19           MR. GIVERSON: That's basically right.

20           Because people that have that level of experience it  
21 would be necessary to fill that role. They have a lot of  
22 opportunity costs.

23           THE COURT: Yes.

24           MR. DEL TORO: And Judge, I mean I have just heard two  
25 choices, right, what the Court suggested which is what the

1 Government suggested and Mr. Giverson's suggestion, which is  
2 the sale of the business.

3           And we know that from the investigation, the Defendant  
4 and his co-defendants and his co-owners are very adept at  
5 opening new companies and changing names of companies and all  
6 of that. They've done that. They run their receiving through  
7 a company called Dixie Air.

8           So a lot of that is something that they are very savvy  
9 at and I do not see that as a problematical alternative either.  
10 So there are choices. It is just the only choice that they are  
11 suggesting, as the Court mentioned, violates the bond  
12 conditions.

13           MR. GIVERSON: Well, just to be clear, I was not  
14 suggesting that that is what should be done because in this  
15 case if the business was sold, it really wouldn't exist  
16 anymore. It would just end up getting absorbed into some other  
17 company and it would go away and I don't know that would happen  
18 to the employees that work there now.

19           THE COURT: Well, again, Mr. Seitles, you know, you  
20 argue very eloquently, but you are asking me to change the bond  
21 condition. That is the bottom line and I don't think that it  
22 is appropriate for me to do that.

23           MR. SEITLES: May I approach one more time, Your  
24 Honor?

25           THE COURT: Yes.



1 MR. SEITLES: Along the Court's ruling, I think the  
2 fact that it is going to deny my recommendation or my motion  
3 with respect to modifying the bond concerning the exporting to  
4 the western hemisphere, I would like to go sort of push forward  
5 on what the Court has been willing to do, which is at least  
6 tweaking the bond to allow certain things that Mr. Caby can do.

7 And I think, at least in my conversations with Mr.  
8 Del Toro, there were certain things outlined in Paragraph 3  
9 that the Government did not have an issue with. And certainly,  
10 I think we can go through that.

11 Your Honor has already said that Mr. Caby, dealing  
12 with an IT person, hiring an IT person, working with an IT  
13 person would not be in violation of the bond and we would have  
14 an order that would allow for that.

15 The other executive decision-making function that I  
16 would request clarification on, which I don't think would be  
17 engaging in the business of importing and exporting, would be  
18 specifically dealing with vendors that having nothing to do  
19 with import and export.

20 So the buying of paper, the buying of supplies for the  
21 corporation, dealing with financial institutions are not  
22 engaging in import and export.

23 If he needs to get a loan for the company or for  
24 himself, well, I guess that would be in violation, but a loan  
25 for the corporation of some sort. A line of credit for the

1 corporation.

2           It seems to me that those, arguably, I would say I  
3 wouldn't even need to go to the Court because I would advise  
4 Mr. Caby, no, I don't believe that that violates the condition  
5 of bond.

6           But, in the abundance of caution, I think since we are  
7 all here if we can outline what the Court believes and the  
8 Court orders that would not violate the condition of bond, I  
9 think we would all be in a much clearer picture where X is a  
10 violation and Y is not a violation.

11           So, again, the last thing I just said were lines of  
12 credit. Dealing with vendors who would have nothing to do with  
13 import or export. Dealing with the accounting department. The  
14 payment of bills.

15           Now, this is where the Government and I have a  
16 differing opinion as to the payment of outstanding bills. Now,  
17 there is no recent allegations within the last year -- again,  
18 we will debate about time here, but the only way the company  
19 can exist if he pays bills relating to import or export.  
20 Anything going forward we understand.

21           That's a restriction the Court has repeated several  
22 times today. He is not to engage in import or export, but to  
23 allow him to pay bills would at least result in the company  
24 getting back on its feet in the sense that there are many, many  
25 bills that are outstanding.

1           The hiring and firing of employees, again, I think  
2 Your Honor has sort of said it, at least suggested it with  
3 respect to IT that that is not an issue, but maybe a point of  
4 clarification, the hiring and firing of employees by Mr. Caby  
5 would be permissible.

6           Obviously, with the context that he not meet and  
7 discuss and, you know, have any oversight of those employees  
8 that the Government believes are potential Government  
9 witnesses.

10           And then, finally, in part four the collections of  
11 accounts receivable, monies that are owed to the corporation, I  
12 don't see how that would be engaging in the export or import  
13 business, but at least since he's the owner of the company, the  
14 only way a corporation that knows he has been indicted that may  
15 not want to pay their bills is going to pay that bill if Mr.  
16 Caby says, listen, you know, my corporate counsel potentially  
17 could sue you. You owe us this money.

18           These are things that are not engaging. He is not  
19 dealing with vendors. He is not trying to sell airplane parts.  
20 He is not trying to solicit business. This is just simply  
21 getting monies that are owed to the company so he could pay his  
22 employees.

23           So I think if the Court is willing to go through  
24 Paragraph 3, Sections 1 through 4 and then issue an order to  
25 that respect, I think that would certainly go a long way in

1 clarifying and allowing at least the business to try to exist.

2 Thank you, Your Honor.

3 MR. DEL TORO: And Judge, obviously, I have a problem  
4 with all of that.

5 I mean, arguably, every single one of these things is  
6 engaging in the business of import and export. When we try to  
7 talk about certain things, I said, well, checks, that's a  
8 problem. You are paying for, you know, things that the company  
9 is buying and engaging in export and import.

10 Dealing directly with vendors that are not related to  
11 importing and exporting, well, that can become a really gray  
12 fuzzy line. Hiring and firing employees is clearly  
13 contradictory to contact with employees.

14 Now, hiring perhaps new employees to help run the  
15 business and then not be involved in it, I don't see a problem,  
16 but firing employees, dealing with individuals who are already  
17 part of the company, or prior employees, I think is a problem.

18 Transferring funds, well, the Defendant is charged  
19 with a money laundering conspiracy where he, you know, is  
20 charged with a conspiracy to engage in financial transactions  
21 that laundered money that, you know, concealed and promoted  
22 specified unlawful activities of export control violations.

23 And collection of accounts receivable and directing  
24 others to do that, well, that is engaging in the business as  
25 well because it is financial transactions.

1           So I think the delegation -- the only thing I don't  
2 have a problem with is authorizing signatories to accompany  
3 accounts. And essentially, what the Court suggested,  
4 delegation of duties to other individuals and various paradigms  
5 who can run the company.

6           THE COURT: I think that the best that I can do for  
7 you, Mr. Seitles, is using the same model that I outlined for a  
8 programmer systems analyst. Maybe have a business manager  
9 that, you know, would operate in that same function of.

10           I think those two, a business manager and a  
11 programmer/systems analyst that he would be allowed to hire.  
12 And then, he would work remotely through those people to keep  
13 the company going.

14           I think the business manager should be able to make  
15 all of those, you know, financial, personnel, collection  
16 decisions. If Mrs. Caby is agreeable to signing checks and has  
17 authority as signatory, then, you don't need anybody else.

18           If you need to appoint someone else as a signatory of  
19 the account, maybe that same business manager or some other  
20 person. I don't know. It seems to me if Mrs. Caby is willing  
21 to sign checks that takes care of that.

22           And I think that Mr. Del Toro had said he did not have  
23 problems with Mr. Caby trying to obtain lines of credit. Did I  
24 hear that right at some point in time?

25           MR. DEL TORO: No, Judge.

1 I think these negotiations I don't see that as being  
2 problematic as long as it is done outside of the business and  
3 authorizations and authorizing others to do that.

4 Obtaining lines of credit initially doesn't sound like  
5 it's a problem. Except if those lines of credit are going  
6 towards purchasing inventory for the import and export  
7 business, then, it is engaging in the export business.

8 THE COURT: So when you are talking about lease  
9 negotiations and authorizations, you are talking about the  
10 physical property where the company is housed?

11 MR. DEL TORO: And I think they have multiple  
12 properties.

13 I know because of Dixie Air and I know because of  
14 Bulgaria, et cetera. And I don't know if they have an office  
15 in France still, but those lease negotiations, which don't  
16 really have anything to do with the export business I wouldn't  
17 have a problem with.

18 THE COURT: Lease negotiations even in the property  
19 where AW Tronics is housed?

20 MR. DEL TORO: Yes, Judge.

21 THE COURT: All right. So lease negotiations, he can  
22 engage in that directly. All right. We've got that one.

23 Mr. Giverson?

24 MR. GIVERSON: May I approach, Your Honor?

25 THE COURT: Yes, please.

1 MR. GIVERSON: When Mr. DeI Toro is talking about  
2 communicating with employees or a business manager, we are  
3 actually really in this particular instance we're talking about  
4 one person. And her name is Camille Schnably (phonetic), I  
5 believe is her last name.

6 THE COURT: Schnably?

7 MR. GIVERSON: Yes. She is the person who is the  
8 supervisor with respect to all of the other staff at the  
9 company. The problem is that her name is on the list.

10 So either she is going to have to go because she can't  
11 make -- she can't talk to Mr. Caby about anything in the  
12 company.

13 THE COURT: Okay.

14 MR. GIVERSON: Or perhaps there can be some relaxing  
15 of this list so that he can speak with the business manager of  
16 the company.

17 MR. DEL TORO: And Judge, I am told by the case agent  
18 that she was spoken to. She has only been in the company since  
19 for three months since December of 2016. So we would have no  
20 objection to that person being appointed essentially.

21 THE COURT: Schnably is off the list.

22 MR. GIVERSON: That is correct terrific. So that  
23 helps a lot.

24 THE COURT: Took an hour.

25 MR. SEITLES: We tried, Your Honor.

1 THE COURT: All right. So he can do lease  
2 negotiations and authorizations.

3 He can hire or communicate with a business manager and  
4 a programmer/systems analyst and work remotely. And hopefully,  
5 that will keep the company afloat. All right.

6 MR. SEITLES: The last thing what about the  
7 accountant? Do you have any issues with him dealing with the  
8 accountant and --

9 THE COURT: He's dealing with a corporate lawyer.

10 MR. SEITLES: Right. I mean, well, he is not an  
11 accountant. He is a corporate lawyer, but we just want to make  
12 sure that he can deal with the accountant concerning the  
13 financial aspects of the corporation again.

14 MR. DEL TORO: And Judge, that is a witness and  
15 somebody that --

16 THE COURT: The accountant is a witness?

17 MR. DEL TORO: He's the accountant who is actually, if  
18 I am understanding correctly, if we are talking about Sedrick  
19 Quadro (phonetic), who is an employee of the company, while he  
20 is a potential witness and a significant one.

21 THE COURT: And he is not cleared?

22 MR. DEL TORO: Right.

23 THE COURT: All right. You need to get a new  
24 accountant.

25 MR. SEITLES: Okay, Your Honor.



1 THE COURT: All right.

2 MR. SEITLES: Thank you.

3 THE COURT: All right. So he can hire an accountant,  
4 right?

5 MR. SEITLES: Hold on, Your Honor. I think Mr.  
6 Giverson wants to be heard on the accountant.

7 MR. GIVERSON: There is an inside accountant and an  
8 outside accountant.

9 THE COURT: Right.

10 MR. GIVERSON: There is an accountant that is  
11 permanently employed by the company.

12 THE COURT: Yes.

13 MR. GIVERSON: At least until now.

14 And there is an outside accountant who just has a  
15 bunch of different accounts.

16 THE COURT: Outside accountant all right? Is the  
17 outside accountant a witness?

18 MR. DEL TORO: No objection to that.

19 MR. GIVERSON: Great.

20 He hasn't communicated with him either. So if he can  
21 speak with the outside accountant.

22 THE COURT: Outside accountant.

23 All right. Three buckets; programmer systems analyst,  
24 business manager, and outside accountant.

25 MR. SEITLES: Terrific.

1 THE COURT: Work remotely and do everything through  
2 them. All right.

3 MR. SEITLES: Thank you, Your Honor.

4 THE COURT: All right. I will issue an order. Thank  
5 you.

6 MR. SEITLES: Thank you, Your Honor.

7 THE COURT: And we will back for the 10:00.

8 THE COURTROOM DEPUTY: All rise. Court is in recess.

9 (Thereupon, the proceedings concluded.)

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CERTIFICATE

I hereby certify that the foregoing transcript is an accurate transcript of the audio recorded proceedings in the above-entitled matter.

06/19/17

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