

XI. APPENDIX

APPENDIX A: *United States v. Belcher and Ganesh*, 857 Fed. Appx. 390 (9th Cir. May 24, 2021)(unpublished),
Memorandum affirming convictions and sentence

APPENDIX B: *United States v. Ganesh*, No. CR-16-00211-001 LHK, (August 31, 2018)(unpublished), Judgment in a Criminal Case

APPENDIX C: *United States v. Ganesh*, No. 18-10133, (July 30, 2021)(unpublished), Order denying rehearing

APPENDIX A

FILED

MAY 24 2021

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GREGORY LAMONT BELCHER,

Defendant-Appellant.

No. 18-10133

D.C. No.

5:16-cr-00211-LHK-2

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VILASINI GANESH,

Defendant-Appellant.

No. 18-10333

D.C. No.

5:16-cr-00211-LHK-1

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

Argued and Submitted April 16, 2021
San Francisco, California

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

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

Gregory Belcher and Vilasini Ganesh appeal their jury convictions and sentences for crimes related to their submission of false medical insurance claims. Belcher was convicted of one count of making a false statement relating to health care matters in violation of 18 U.S.C. § 1035; Ganesh was convicted of five counts of health care fraud in violation of 18 U.S.C. § 1347 and five counts of making a false statement in violation of § 1035. The two were medical doctors who lived together as a married couple and practiced medicine in the same office building. Belcher was sentenced to one year and a day, and Ganesh to sixty-three months. We affirm.

Belcher contends there was a constructive amendment to the indictment that may have allowed the jury to convict him without finding that he acted with intent to defraud. Yet making a false statement in violation of § 1035—the only crime of which Belcher was convicted—does not require intent to defraud. *See* 18 U.S.C. § 1035. Whether or not Belcher believed he was actually entitled to payment from Cigna is therefore immaterial to his conviction for making a false statement. In a belated filing, Belcher cites *United States v. Shipsey*, 190 F.3d 1081 (9th Cir. 1999). In that case, the indictment alleged that the defendant obtained money from a certain pension fund “by false pretenses,” but the jury instructions permitted

conviction as long as he had obtained the money by a “wrongful act.” *Id.* at 1084–86. Because the facts alleged in the indictment therefore differed from the facts presented and argued to the jury as sufficient to convict, we reversed. This, however, is not such a case. Belcher was indicted for knowingly and willfully submitting a claim for patient “M.H.” to Cigna on November 26, 2013 for “[s]ervice not rendered on [the] dates and for [the] duration claimed,” and he was convicted of the same factual charge.

The principal argument Belcher presents to challenge his conviction is insufficiency of the evidence. The jury was properly instructed that, to convict Belcher for violating § 1035, it was required to find that he knowingly made a materially false statement. The evidence was more than sufficient to show that Belcher, on November 26, 2013, knowingly submitted a claim for reimbursement for physical therapy that did not occur on the date stated. As the government’s evidence demonstrated, the claim sought compensation for massage therapy that had been actually provided on the same day as physical therapy, and Belcher admitted he knew that the insurer would be less likely to pay for two similar treatments received on the same day. Belcher thus knew that he was unlawfully submitting materially false claim information when he engaged in this “split billing.” Belcher also used billing codes meant for physical therapy when

requesting reimbursement for massage therapy sessions. As Belcher admitted at trial, he knew that massage therapy—unlike physical therapy—is often not reimbursable.

There was no abuse of discretion in the district court’s refusal to give the defendants’ requested instructions on good faith, because the jury instructions adequately laid out the crimes’ intent requirements. *United States v. Shipsey*, 363 F.3d 962, 967 (9th Cir. 2004), *overruled on other grounds by United States v. Miller*, 953 F.3d 1095 (9th Cir. 2020).

Belcher and Ganesh also claim that the district court reversibly erred when it instructed the jury **that** “scheme to defraud” meant a plan intended to “deceive or cheat,” when our circuit law has established it must be a plan intended to “deceive *and* cheat.” *Miller*, 953 F.3d at 1102–03 (citing *Shaw v. United States*, 137 S. Ct. 462, 469 (2016)). The problem in *Miller* and *Shaw* was that the instructions provided could have been understood to encompass mere intent to deceive, without any intent to gain money or property. *Shaw*, 137 S. Ct. at 469 (requiring “inten[t] to deceive, cheat, or deprive a financial institution of something of value”); *Miller*, 953 F.3d at 1102 (requiring intent to “deceive or cheat”).

However, to the extent there was instructional error, neither Belcher nor Ganesh objected to this error, and they failed to establish plain error. *See United*

States v. Olano, 507 U.S. 725, 734–35 (1993). Belcher was convicted only under § 1035, which does not require a finding that the defendant committed a **scheme** to defraud, nor did the district court’s instruction as to § 1035 incorporate or reference the purported erroneous instruction as to the charges for health care fraud under § 1347. *See United States v. Marsh*, 26 F.3d 1496, 1502 (9th Cir. 1994). Ganesh failed to develop any argument establishing why any error under *Shaw* or *Miller* prejudiced her. Thus, Belcher and Ganesh failed to demonstrate plain error entitling them to reversal.

We also affirm the district court’s denials of the defendants’ motions for acquittal and new trial. These motions involve spreadsheets of claim information pulled from insurers’ databases and presented at trial without objection. Ganesh now contends prosecutors misrepresented some legitimately billed claims in the spreadsheets as false. Ganesh specifically points to a spreadsheet that contained some legitimate entries representing work done by Edward DeWees, a former colleague. After his departure, she falsely submitted other claims under his name, many of which also appear on the spreadsheet. Counsel for the government displayed parts of this spreadsheet during its closing argument and called attention to how often DeWees’s name appeared. The record goes on to show, however, that counsel used these observations only to argue that, given how many claims were

consistently billed under DeWees's name, Belcher and Ganesh must have entered into a conspiratorial agreement to engage in such billing. Since the jury ultimately acquitted Ganesh and Belcher of all conspiracy charges, Ganesh cannot show, as she must, that the government's alleged misuse of the spreadsheet was material. *See United States v. Renzi*, 769 F.3d 731, 751 (9th Cir. 2014) (citing *Napue v. Illinois*, 360 U.S. 264 (1959)).

Moreover, later in closing argument, counsel for the government examined the individual false claims that were actually charged in the indictment under § 1347 and § 1035 and demonstrated their falsity by cross-referencing the spreadsheet's contents against matching explanation of benefit ("EOB") forms. Even assuming *arguendo* that the government's use of the spreadsheets may have been misinterpreted by the jury, the district court correctly concluded that the defendants' motions based on newly discovered evidence in the spreadsheets, not filed until after trial, would fail for lack of diligence. Although the district court characterized its denial of one of these motions as "for lack of jurisdiction," denying the motion was warranted on its merits. *See Fed. R. Crim. P. 37(a)* (allowing a district court to deny a motion on the merits while an appeal is pending).

Belcher contends there was sentencing error in the district court's loss calculation. He argues that the loss to the insurance companies from compensating for massage services should have been offset by the fair market value of such services. But the district court reasonably concluded that no offset was appropriate because insurers do not ordinarily reimburse any amount for massage therapy. In addition, as the district court noted, calculating offsets or credits would have been very difficult in this case because, per Belcher's instructions, the therapists involved did not keep any patient charts, documentation, or other records of what services they had provided. The district court carefully laid out the legal and factual bases for the loss calculations it made, and it correctly applied the "clear and convincing" standard.

As for Ganesh's convictions, the evidence showed that she submitted bills for patient visits that never happened, consistently used the highest-tier medical billing codes regardless of the nature or amount of care actually provided, and submitted bills identifying former colleague DeWees as the care provider long after he had stopped working with her. The government's evidence against Ganesh included claim spreadsheets, EOB forms, and testimony from patients, former employees, and insurance investigators. There is no serious question that this evidence was sufficient to convict Ganesh.

Ganesh contends the magistrate judge erred by denying two of her motions for substitution of counsel. With respect to the first such motion, she argues the court failed to make an “adequate inquiry” into the nature of a conflict. *See United States v. McClendon*, 782 F.2d 785, 789 (9th Cir. 1986). Ganesh made this request less than a week before trial was scheduled to commence. She was represented at the time by appointed counsel she had originally chosen and retained, and the lawyer she wanted substituted told the court that he was not prepared to “substitute in at this point in time.” The court asked current and proposed substitute counsel about the reasons for the change in counsel, instructed Ganesh to consult with her counsel and with her family, and gave Ganesh an opportunity to address the court. Ganesh has never explained what further inquiry should have been made. Under these circumstances, the court did not abuse its discretion.

Ganesh made another motion for substitution of counsel about three weeks before the start of sentencing, which already had been delayed by over a month. The two lawyers she wanted to be substituted refused to commit to the established sentencing schedule. And although the court repeatedly asked for an explanation of why keeping her current counsel would be unfair, it received only vague answers in response. Again, there was no abuse of discretion in denying the motion.

Ganesh points to a chart in the superseding indictment that described certain claim submissions as being false with respect to date and duration. She contends that the government was required to proceed on the theory that each such claim was false as to both and that the district court's denial of her request to instruct the jury accordingly resulted in a constructive amendment. But the district court correctly ruled that evidence as to falsity on either ground was sufficient. *United States v. Miller*, 471 U.S. 130, 136 (1985) (“[A]n indictment may charge . . . the commission of any one offense in several ways,” “[a]s long as the crime and the elements of the offense that sustain the conviction are fully and clearly set out in the indictment.”).

The district court did not err at Ganesh's sentencing by imposing enhancements for abuse of a position of trust, U.S.S.G. § 3B1.3, and for committing an offense involving ten or more victims, *id.* § 2B1.1(b)(2)(A)(i), and the court appropriately calculated a loss in excess of \$550,000, *id.* § 2B1.1(b)(1)(H). Insurers are in a position of having to trust physicians who make claims for reimbursement. *United States v. Rutgard*, 116 F.3d 1270, 1293 (9th Cir. 1997). Four insurers billed by Ganesh were the financial victims of her crimes, and, under the Guidelines, dozens of her patients were also “victims” for sentencing enhancement purposes because their names and identifications were

used to make false claims. U.S.S.G. § 2B1.1 cmt. n.4(E). The district court sufficiently explained and fairly made its loss calculations, which conservatively relied only on payments Ganesh received for claims falsely made under DeWees's name. The fact that Ganesh was not reimbursed for many of her other false claims is irrelevant. Ganesh, like Belcher, argues that she should have obtained fair market value offsets for services she rendered. We reject this argument. Ganesh has not explained—below or before us—why she should be credited for services that she fraudulently claimed under another doctor's name. *See United States v. Popov*, 742 F.3d 911, 916 (9th Cir. 2014). The insurers bore no obligation to pay these falsified claims.

AFFIRMED.

APPENDIX B

FILED

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

AUG 31 2018

UNITED STATES DISTRICT COURT
Northern District of California

SUSAN Y. SOONG
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

UNITED STATES OF AMERICA**v.****Vilasini Ganesh****) JUDGMENT IN A CRIMINAL CASE****) USDC Case Number: CR-16-00211-001 LHK****) BOP Case Number: DCAN516CR00211-001****) USM Number: 23490-111****) Defendant's Attorney: Wm Michael Whelan Jr. (Appointed)****THE DEFENDANT:**☐ pleaded guilty to count(s):☐ pleaded nolo contendere to count(s): which was accepted by the court.☒ was found guilty on: Counts 2 through 6 and 11 through 15 of the Superseding Indictment, ECF No. 52, after a plea of not guilty.The defendant is adjudicated guilty of these offenses:

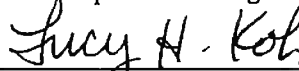
Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1347	Health Care Fraud	06/17/2013	2
18 U.S.C. § 1347	Health Care Fraud	04/19/2013	3
18 U.S.C. § 1347	Health Care Fraud	07/08/2013	4
18 U.S.C. § 1347	Health Care Fraud	05/20/2014	5
18 U.S.C. § 1347	Health Care Fraud	01/02/2013	6
18 U.S.C. § 1035	False Statements Relating to Health Care Matters	12/23/2013	11
18 U.S.C. § 1035	False Statements Relating to Health Care Matters	08/10/2013	12
18 U.S.C. § 1035	False Statements Relating to Health Care Matters	03/29/2013	13
18 U.S.C. § 1035	False Statements Relating to Health Care Matters	05/12/2014	14
18 U.S.C. § 1035	False Statements Relating to Health Care Matters	12/10/2012	15

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☒ The defendant has been found not guilty on count(s): 1 and 18 through 24.☐ Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2018

Date of Imposition of Judgment



Signature of Judge

The Honorable Lucy H. Koh

United States District Judge

Name & Title of Judge

8/31/2018

Date

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 2 of 8

CASE NUMBER: CR-16-00211-001 LHK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 63 months. This term consists of terms of 63 months on each of Counts 2 through 6, and 60 months on Counts 11 through 15, all counts to be served concurrently.

The appearance bond is hereby exonerated, or upon surrender of the defendant as noted below. Any cash bail plus interest shall be returned to the owner(s) listed on the Affidavit of Owner of Cash Security form on file in the Clerk's Office.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
- 1) The defendant undergo a mental, physical, and medication evaluation as soon as possible
 - 2) The defendant be housed as close as possible to Santa Clara County, California, as possible, to facilitate family visits.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at on (no later than 2:00 pm).
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☒ on 11/1/2018 (no later than 2:00 pm).
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 3 of 8

CASE NUMBER: CR-16-00211-001 LHK

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Three (3) Years. This term consists of terms of three years on each of Counts 2 through 6 and 11 through 15, to be served concurrently.

MANDATORY CONDITIONS OF SUPERVISION

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4) ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5) ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 6) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 7) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 4 of 8

CASE NUMBER: CR-16-00211-001 LHK

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of RELEASE, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must follow the instructions of the probation officer related to the conditions of supervision.
- 5) You must answer truthfully the questions asked by your probation officer.
- 6) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with, for example), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 7) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by these and the special conditions of your supervision that he or she observes in plain view.
- 8) You must work at least part-time (defined as 20 hours per week) at a lawful type of employment unless excused from doing so by the probation officer for schooling, training, community service or other acceptable activities. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 9) You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.
- 10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

☐ If the probation officer determines that you pose a risk to a third party, the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk. *(check if applicable)*

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision upon a finding of a violation of probation or supervised release.

(Signed)

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 5 of 8

CASE NUMBER: CR-16-00211-001 LHK

SPECIAL CONDITIONS OF SUPERVISION

1. You must pay any restitution and special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.
2. You must not open any new lines of credit and/or incur new debt without the prior permission of the probation officer.
3. You must provide the probation officer with access to any financial information, including tax returns, and shall authorize the probation officer to conduct credit checks and obtain copies of income tax returns.
4. You must participate in a mental health treatment program, as directed by the probation officer. You are to pay part or all cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. Payments shall never exceed the total cost of mental health counseling. The actual co-payment schedule shall be determined by the probation officer.
5. You must not own or possess any firearms, ammunition, destructive devices, or other dangerous weapons.
6. You must submit your person, residence, office, vehicle, or any property under your control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; you must warn any residents that the premises may be subject to searches.

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 6 of 8

CASE NUMBER: CR-16-00211-001 LHK

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$1,000	N/A	Waived	\$344,916.20

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Anthem Blue Cross Payable to: Blue Cross of California, dba Anthem Blue Cross Attn: Steve Cohen Esq, Senior Associate General Counsel 21555 Oxnard Street, 1 st Floor, Mailstop: CAAC01-001B Woodland Hills, CA 91367-4943	\$327,483	\$327,483	100%
Blue Shield of California Attn: Special Investigations Unit 3300 Zinfandel Drive Rancho Cordova, CA 95670	\$15,582	\$15,582	100%
Cigna Special Investigations Unit Attn: Recovery Check Specialist – W3SIU 900 Cottage Grove Road Hartford, CT 06152	\$196	\$196	100%
Aetna –SIU Overpayments P.O. Box 981105 El Paso, TX 79998-1105	\$1,150	\$1,150	100%
Chris Seitz (Address on File with Clerk's Office)	\$505.20	\$505.20	100%
TOTALS	\$ 344,916.20	\$344,916.20	

☐ Restitution amount ordered pursuant to plea agreement \$

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 7 of 8

CASE NUMBER: CR-16-00211-001 LHK

subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the restitution.

☐ the interest requirement is waived for the is modified as follows:

AO 245B (Rev. AO 11/16-CAN 04/18) Judgment in Criminal Case

DEFENDANT: Vilasini Ganesh

Judgment - Page 8 of 8

CASE NUMBER: CR-16-00211-001 LHK

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows*:

- A** ☒ Lump sum payment of \$1,000 due immediately, balance due
☐ not later than , or
☒ in accordance with ☐ C, ☐ D, or ☐ E, and/or ☒ F below); or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal (e.g., weekly, monthly, quarterly) installments of _ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal (e.g., weekly, monthly, quarterly) installments of _ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
When incarcerated, payment of criminal monetary penalties are due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

The defendant is ordered to pay restitution totaling \$344,916.20. During imprisonment, payment of the restitution is due at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Once the defendant is on supervised release, restitution must be paid in monthly payments of not less than \$300 or at least 10 percent of earnings, whichever is greater, to commence no later than 60 days from placement on supervision. Any established payment plan does not preclude enforcement efforts by the US Attorney's Office if the defendant has the ability to pay more than the minimum due. The restitution payments shall be made to the Clerk of U.S. District Court, Attention: Financial Unit, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, but such future orders do not affect the defendant's responsibility for the full amount of the restitution ordered.

* Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 30 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GREGORY LAMONT BELCHER,

Defendant-Appellant.

No. 18-10133

D.C. No.

5:16-cr-00211-LHK-2

Northern District of California,
San Jose

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VILASINI GANESH,

Defendant-Appellant.

No. 18-10333

D.C. No.

5:16-cr-00211-LHK-1

Northern District of California,
San Jose

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

The panel has voted to deny the petitions for panel rehearing for Appellant Belcher and Appellant Ganesh. Judges Rawlinson and Bade have voted to deny the petitions for rehearing en banc for Appellant Belcher and Appellant Ganesh, and Judge Schroeder has so recommended.

The full court has been advised of the petitions for rehearing en banc and no judge has requested a vote on whether to rehear the matters en banc. Fed. R. App. P. 35.

The petitions for panel rehearing and petitions for rehearing en banc, Dockets No. 121 and 122, are **DENIED**.