

NO. _____

In The
Supreme Court of the United States

SACHIN AJI BHASKAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPENDIX

Sarah Kunstler, Esq.
Counsel of Record
Beena Ahmad, Esq. (on Brief)
Law Offices of Sarah Kunstler
315 Flatbush Avenue #103
Brooklyn, NY 11217
sarah@kunstlerlaw.net
718-783-3682 (office)
347-402-2014 (fax)
917-450-0053 (mobile)

Counsel for Petitioner

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20-3537-cr

United States v. Bhaskar

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of June, two thousand twenty-two.

PRESENT: Pierre N. Leval,
Denny Chin,
Steven J. Menashi,
Circuit Judges.

United States of America,

Appellee,

v.

No. 20-3537-cr

Sachin Aji Bhaskar,

Defendant-Appellant.

For Appellee:

TIFFANY H. LEE, Assistant United States Attorney, *for* Trini E. Ross, United States Attorney for the Western District of New York, Buffalo, NY.

For Defendant-Appellant:

SARAH KUNSTLER, Law Office of Sarah Kunstler, Brooklyn, NY.

Appeal from a judgment of the United States District Court for the Western District of New York (Skretny, J.).

Upon due consideration, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that the judgment of the district court is **AFFIRMED IN PART** and **VACATED IN PART.**

Defendant-Appellant Sachin Aji Bhaskar appeals from a judgment of conviction following his guilty plea to one count of enticement of a minor in violation of 18 U.S.C. § 2422(b). The charge arose out of Bhaskar's sexual contact with an 11-year-old girl, whom Bhaskar apparently believed to be 15. Bhaskar's sentencing hearing proceeded remotely, and the district court sentenced Bhaskar to twenty years' imprisonment. He argues that the district court erred in sentencing him remotely, that the remote proceedings violated his right to effective assistance of counsel, and that the sentence was procedurally and

substantively unreasonable. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

I

The Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, created a statutory exception to the physical presence requirement of Federal Rule of Criminal Procedure 43. It allows a district court to conduct a felony sentencing hearing by videoconference if four conditions are met: (1) the Judicial Conference of the United States finds that the COVID-19 pandemic will materially affect the functioning of the federal courts; (2) the chief judge of the district court finds that felony sentencings cannot be held in person without seriously jeopardizing public health and safety; (3) the sentencing court "finds for specific reasons" that "the sentencing cannot be further delayed without serious harm to the interests of justice"; and (4) there is "consent of the defendant ... after consultation with counsel." Pub. L. No. 116-136, § 15002(b)(2)(A) & 4.

Bhaskar does not dispute that the first two conditions are satisfied here. Rather, the questions on appeal are whether the remote sentencing proceeding took place "with the consent of the defendant," *id.* § 15002(b)(4), and whether the sentencing judge adequately found "for specific reasons that the ... sentencing ...

[could not] be further delayed without serious harm to the interests of justice,” *id.* § 15002(b)(2)(A). Because Bhaskar made no objection, these issues are judged under a plain error standard. Apart from the fact that we find that these two requirements were satisfied, Bhaskar’s challenge on appeal clearly does not meet the plain error standard.

A

A defendant’s consent to be sentenced by videoconference under the CARES act “requires evidence of the defendant’s knowing and voluntary consent after conferring with counsel.” *United States v. Howell*, 24 F.4th 1138, 1145 (7th Cir. 2022). The CARES Act “imposes no ‘specific procedural or evidentiary requirements to prove ... consent.’” *United States v. Leroux*, No. 20-CR-2184, 2022 WL 1815164, at *5 (2d Cir. June 3, 2022) (quoting *Howell*, 24 F.4th at 1145). In this case, the record shows that Bhaskar knowingly and voluntarily consented to be sentenced by videoconference.

At the sentencing hearing, the district court asked Bhaskar, “are you voluntarily consenting to go forward with sentencing remotely using this Zoom platform?” App’x 295. Bhaskar answered “Yes.” *Id.* The district court then asked Bhaskar whether he “had any drugs, alcohol or medicine this or morning that

interferes in any way with your clear thinking in your opinion, as far as this sentencing is concerned?” App’x 295. Bhaskar answered “No.” *Id.* The district court turned to Bhaskar’s counsel and asked “are there any issues that you see with respect to the competency of your client today, in terms of his ability to communicate with you and [his other counsel], as far as what he needs to do in connection with sentencing?,” and Bhaskar’s counsel answered “No.” *Id.* The district court then said that, “[w]ith respect to proceeding by Zoom, I do find that there is voluntariness here” and that “[c]ounsel had discussed this with Mr. Bhaskar.” *Id.* To be certain, the district court turned again to Bhaskar’s counsel: “If that’s not accurate, let me know. ... [H]as that discussion taken place?” *Id.* Bhaskar’s counsel answered “Yes.” *Id.* Based on this record, the district court properly found that Bhaskar had knowingly and voluntarily consented to move forward with the sentencing by videoconference.

Bhaskar argues that district court coerced the consent by indicating that it would not grant any further adjournments. This argument is unpersuasive. Before the sentencing date, the district court twice notified the parties that if Bhaskar did not consent to proceed with his sentence by video conference, then all parties would be required to attend in person on the scheduled sentencing date. And at

sentencing, the district court again noted that Bhaskar had the choice to proceed in person if he so requested or demanded.

B

For sentencing to proceeding remotely, the CARES Act provides that the district court must “find[] for specific reasons” that “the sentencing cannot be further delayed without serious harm to the interests of justice.” Pub. L. No. 116-136, § 15002(b)(2)(A). Bhaskar contends that the district court failed to make these findings. We disagree.

At the sentencing hearing, the district court stated that appearing remotely was “probably the most efficient and effective way to proceed” and that “the interests of justice will be well of served by this proceeding.” App’x 293. The district court further explained in a published order that the sentencing proceeding should not be delayed because of Bhaskar’s “interest in finality” and because “the public interest in health, safety and in an efficient resolution to this matter, outweigh any harm that could result from proceeding by videoconference.” App’x 287. Given these findings, we conclude that “[t]he record as a whole ... satisfies the requirements of § 15002(b)(2)(A).” *Leroux*, 2022 WL 1815164, at *6.

II

Bhaskar suggests that he was denied effective representation by counsel because the proceeding took place by videoconference. Claims of ineffective assistance are typically based on the competence of defense counsel, but the Supreme Court has also stated that “Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

The record does not support Bhaskar’s ineffective assistance of counsel claim. The district court granted Bhaskar an additional adjournment to facilitate discussions with his attorneys before sentencing and provided a private “breakout” room at the outset of the sentencing proceeding. Moreover, Bhaskar never indicated to the district court that there were any issues communicating with his attorneys during his sentencing hearing, and Bhaskar and his counsel had the opportunity to address the district court. To the extent that Bhaskar relies on a moment at the sentencing hearing when he became emotional and his counsel asked for “just a minute” to confer with him, it was Bhaskar himself who said he did not want to confer and preferred to conclude his sentencing statement.

III

Bhaskar also challenges his sentence as both procedurally and substantively unreasonable. Neither challenge is successful.

A district court commits “procedural error” when it (1) “fails to calculate the Guidelines range (unless omission of the calculation is justified),” (2) “makes a mistake in its Guidelines calculation,” (3) “treats the Guidelines as mandatory,” (4) “does not consider the § 3553(a) factors,” (5) “rests its sentence on a clearly erroneous finding of fact,” or (6) “fails adequately to explain its chosen sentence.” *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc).

Bhaskar argues that the district court committed procedural error because it failed to articulate the reasons for the particular sentence imposed. The record does not support this argument. The district court explained it based the sentence on its determinations that Bhaskar’s expression of remorse was “not genuine” and was “replete with excuses” and that Bhaskar was “a child sexual predator and a danger to the community.” App’x 346. The district court further explained that Bhaskar’s victimization of a minor was a “nightmare” that required deterrence lest “society ... open itself up to conduct like this” and that a sentence of twenty years would give him the opportunity for a life without diminishing the seriousness of

his actions. App'x 347-48. Accordingly, the district court did not procedurally err when imposing the sentence.

We review the substantive reasonableness of a sentence “under a ‘deferential abuse-of-discretion standard,’” *Cavera*, 550 F.3d at 189 (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)), recognizing that such review “provide[s] a backstop for those few cases that, although procedurally correct, would nonetheless damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law,” *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009). Unsurprisingly, “it is ‘difficult to find that a below-Guidelines sentence is [substantively] unreasonable.’” *United States v. Rivernider*, 828 F.3d 91, 111 (2d Cir. 2016) (quoting *United States v. Perez-Frias*, 636 F.3d 39, 43 (2d Cir. 2011)). Here, given the gravity of the offense, we conclude that Bhaskar’s below-Guidelines sentence of 240 months in prison was “within the range of permissible decisions available to the district court.” *Id.*

Bhaskar argues that his sentence creates an unwarranted disparity when compared with sentences provided in other similar cases. But “concern about unwarranted disparities is at a minimum when a sentence is within the Guidelines

range,” let alone below it. *United States v. Irving*, 554 F.3d 64, 76 (2d Cir. 2009) (citation omitted). We therefore will not disturb Bhaskar’s sentence on the basis of his having identified other defendants in other circumstances who received different sentences.

IV

Lastly, Bhaskar argues that the district court failed to make the requisite findings to impose a \$5,000 assessment under the Justice for Victims of Trafficking Act (“JVTA”). The JVTA provides that “the court shall assess an amount of \$5,000 on any non-indigent person or entity convicted of an offense under chapter 117 (relating to transportation for illegal sexual activity and related crimes).” 18 U.S.C. § 3014(a)(4).

In *United States v. Rosario*, 785 F. App’x 22 (2d Cir. 2019), we remanded for further proceedings because it was unclear from the record how the district court arrived at its finding that the defendant was “non-indigent” and subject to the JVTA assessment. We noted that “[w]hile the district court explicitly adopted the Presentence Investigation Report (PSR), which had recommended the JVTA assessment, the PSR contained no specific finding with respect to Rosario’s indigency.” *Id.* at 23. We further observed that “the non-imposition of fines may

not be determinative in establishing indigency under Section 3014(a),” and we advised the district court, if it saw fit, to “further develop the record with regard to Rosario’s present financial condition and his predicted earnings capacity.” *Id.*¹

The government agrees that “[t]his case is indistinguishable from *Rosario*.” Appellee’s Br. 27. Here, the PSR noted that Bhaskar did not have the ability to pay a fine and did not make any finding in terms of non-indigency. Based on the current record, it is unclear how the district court determined Bhaskar to be non-indigent for purposes of the JVT A. Accordingly, the portion of the sentencing order imposing the \$5,000 fine is vacated, and we remand for the district court, if it decides to do so, to re-impose the assessment under the JVT A upon a proper finding of non-indigency. *See Rosario*, 785 F. App’x at 23. We affirm the remainder of Bhaskar’s sentence.


¹ On remand, the district court received new sentencing submissions from the parties and held a resentencing hearing, finding again that the defendant was “non-indigent” and imposing the \$5,000 fine. When the case returned to this court, we held that “when determining whether a defendant is indigent pursuant to § 3014(a), a court may consider both the resources available to the defendant at the time of sentencing and the defendant’s future earning potential.” *United States v. Rosario*, 7 F.4th 65, 70 (2d Cir. 2021). We further held that the district court “did not clearly err in finding, after careful consideration of Rosario’s present financial position and likely future earnings, that Rosario is ‘non-indigent’ under section 3014(a).” *Id.* at 73.

* * *

We have considered Bhaskar's remaining arguments, which we conclude are without merit. For the foregoing reasons, we **AFFIRM IN PART** and **VACATE IN PART** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal is divided into two horizontal sections: the top half is red and the bottom half is blue. The text "UNITED STATES" is written in white along the top arc of the seal, and "SECOND CIRCUIT" is written in white along the bottom arc. Two small white stars are positioned on the left and right sides of the seal, separating the top and bottom text.

Other Orders/Judgments

1:19-cr-00007-WMS-HKS USA v.
Bhaskar

CASREF

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 10/13/2020 at 2:43 PM EDT and filed on 10/13/2020

Case Name: USA v. Bhaskar

Case Number: 1:19-cr-00007-WMS-HKS

Filer:

Document Number: 73

Docket Text:

JUDGMENT as to Sachin Aji Bhaskar (1). Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department. Signed by Hon. William M. Skretny on 10/13/2020. (JLV)

1:19-cr-00007-WMS-HKS-1 Notice has been electronically mailed to:

Russell T. Ippolito, Jr russell.ippolito@usdoj.gov, jennifer.atkins@usdoj.gov

Jeffrey G. Pittell jp@jpittell.com

Julie Rendelman julie@rendelmanlaw.com, juliebspring@gmail.com

1:19-cr-00007-WMS-HKS-1 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1042579058 [Date=10/13/2020] [FileNumber=4629424-0] [c6cf89d74748217ea8b531c3de9da95d17ef396558b9fc808af12f9be5e22528df7e102391154615904b98670459a178ae0986840b88d641c8514efaa6f397ca]]

AO 245B

(Rev. 10/19) Judgment in a Criminal Case
Sheet 1

LBF/tmh (5659923)

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA

v.

Sachin Aji Bhaskar

JUDGMENT IN A CRIMINAL CASE

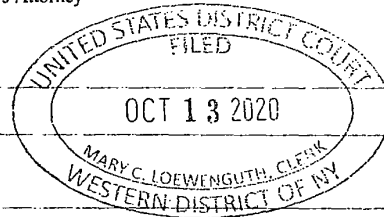
Case Number: 1:19CR00007-001

USM Number: 28400-055

Jeffrey G. Pittell and Julie Rendelman

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count 1 of the Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §2422(b)	Sexual Enticement of Minor	08/11/18	1

The defendant is sentenced as provided in pages 2 through 7 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) _____☐ Count(s) _____ ☐ is ☐ are 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.

October 7, 2020

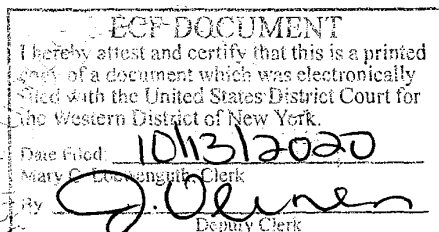
Date of Imposition of Judgment

Signature of Judge

William M. Skretny, Senior United States District Judge

Name and Title of Judge

Date



DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
240 months

The cost of incarceration fee is waived.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ 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 _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ 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

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Ten (10) years

MANDATORY CONDITIONS

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 and will be deported from the United States.
(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.

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007-001

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 about, 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 your release from imprisonment, 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 answer truthfully the questions asked by your probation officer.
5. 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), 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.
6. 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 the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. 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.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. 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).
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. If the court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against another person (including an organization), 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.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. 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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

U.S. Probation Officer's Signature _____

Date _____

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not use or possess any computer, data storage device, or any internet capable device unless the defendant participates in the Computer and Internet Monitoring Program (CIMP), or unless authorized by the Court or the U.S. Probation Office. The defendant must provide the U.S. Probation Office advance notification of any computer(s), automated service(s), or connected device(s) that will be used during the term of supervision. The U.S. Probation Office is authorized to install any application as necessary to surveil all activity on computer(s) or connected device(s) owned or operated by the defendant. The defendant will be required to pay the cost of monitoring services. The U.S. Probation Office shall be notified via electronic transmission of impermissible/suspicious activity or communications occurring on such computer or connected device, consistent with the computer monitoring policy in effect by the probation office. As triggered by impermissible/suspicious activity, the defendant shall consent to and cooperate with unannounced examinations of any computer equipment owned or used by the defendant. This examination shall include but is not limited to retrieval and copying of all data from the computer(s), connected device(s), storage media, and any internal or external peripherals, and may involve removal of such equipment for the purpose of conducting a more thorough inspection. Any such monitoring or examinations shall be designed to avoid, as much as possible, reading any privileged information or any private material that is not illegal or reasonably likely to lead to illegal material or evidence related to illegal activity.

The defendant must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise the details of the defendant's participation in the program, including the selection of a provider and schedule. The defendant is not to leave treatment until complete or as ordered by the Court. The defendant is required to contribute to the cost of services rendered.

The defendant shall not have deliberate contact with any child under 18 years of age, excluding his biological or adopted children, unless approved by the probation officer or by the Court. The defendant shall not loiter within 100 feet of school yards, playgrounds, arcades or other places primarily used by children under the age of 18. The Probation Office has the discretion to authorize the defendant to pick up his children from school or other functions; however, authorization must be obtained in advance from the Probation Office or alternatively from the Court.

The defendant shall register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, and shall provide proof of registration to the probation officer. The probation office is authorized to release the defendant's presentence report to the New York State Board of Examiners of Sex Offenders. Further disclosure to the county court and to the parties involved in the determination of the defendant's final classification level is also authorized.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall submit to polygraph, computerized voice stress analyzer or other such testing, not to exceed twice in a calendar year, and an additional two re-tests per year, as needed. That testing may include examinations using a polygraph, computerized voice stress analyzer, or other similar device to obtain information necessary for supervision, case monitoring, and treatment. The defendant shall answer the questions posed during the examination, subject to the defendant's right to challenge in a court of law the use of such statements as violations of the defendant's Fifth Amendment rights. In this regard, the defendant shall be deemed not to have waived the defendant's Fifth Amendment rights by making any such statements. The results of any polygraph pre-tests and polygraph examinations may be disclosed to the US Probation office and the Court, but shall not be further disclosed without a court order. The defendant is required to contribute to the cost of services rendered.

If deported, the term of supervised release shall be unsupervised.

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 5,000	\$ 0	\$ 0

- ☐ 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.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS \$ _____ \$ _____

- ☐ 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 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 ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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.

Judgment — Page 7 of 7DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007-001**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 \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, 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:
 The defendant shall pay a special assessment of \$100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court (WD/NY), 2 Niagara Square, Buffalo, New York 14202.

THE COURT FINDS that the defendant IS NOT INDIGENT and can afford to pay the mandatory \$5,000 Justice for Victims of Trafficking Act of 2015 assessment.

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:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007- 001
DISTRICT: Western District Of New York

STATEMENT OF REASONS

(Not for Public Disclosure)

*Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.***I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT**

- A. ☒ The court adopts the presentence investigation report without change.
- B. ☐ The court adopts the presentence investigation report with the following changes: (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report)
1. ☐ Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)
 2. ☐ Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)
 3. ☐ Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)
 4. ☐ Additional Comments or Findings: (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)
- C. ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level) _____

II. COURT FINDINGS ON MANDATORY MINIMUM SENTENCE (Check all that apply)

- A. ☒ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case: (Specify) _____
- ☐ substantial assistance (18 U.S.C. § 3553(e)) _____
- ☐ the statutory safety valve (18 U.S.C. § 3553(f)) _____
- C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: _____ 43 _____

Criminal History Category: _____ I _____

Guideline Range: (after application of §5G1.1 and §5G1.2) _____ Life _____

Supervised Release Range: _____ 5 years _____ to _____ Life _____

Fine Range: \$ _____ 50,000 _____ to \$ _____ 250,000 _____

- ☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007- 001
DISTRICT: Western District Of New York

STATEMENT OF REASONS**IV. GUIDELINE SENTENCING DETERMINATION** *(Check all that apply)*

- A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary).*
- C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(Also complete Section V)
- D. ☒ The court imposed a sentence otherwise outside the sentencing guideline system (*i.e.*, a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)***A. The sentence imposed departs:** *(Check only one)*

- ☐ above the guideline range
- ☐ below the guideline range

B. Motion for departure before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)***1. Plea Agreement**

- ☐ binding plea agreement for departure accepted by the court
- ☐ plea agreement for departure, which the court finds to be reasonable
- ☐ plea agreement that states that the government will not oppose a defense departure motion

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for departure
- ☐ defense motion for departure to which the government did not object
- ☐ defense motion for departure to which the government objected
- ☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for departure

C. Reasons for departure: *(Check all that apply)*

- | | | |
|---|--|--|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| | | <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP) |

- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. State the basis for the departure. *(Use Section VIII if necessary)*

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007- 001
DISTRICT: Western District Of New York

STATEMENT OF REASONS**VI. COURT DETERMINATION FOR A VARIANCE** *(If applicable)***A. The sentence imposed is:** *(Check only one)*

- ☐ above the guideline range
☒ below the guideline range

B. Motion for a variance before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)***1. Plea Agreement**

- ☐ binding plea agreement for a variance accepted by the court
☐ plea agreement for a variance, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for a variance
☐ defense motion for a variance to which the government did not object
☒ defense motion for a variance to which the government objected
☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*

- ☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1):
☐ Mens Rea ☐ Extreme Conduct ☐ Dismissed/Uncharged Conduct
☐ Role in the Offense ☐ Victim Impact
☐ General Aggravating or Mitigating Factors: *(Specify)*

☒ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1):

- | | |
|---|---|
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition |
| <input type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation |
| <input checked="" type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other: <i>(Specify)</i> |

☐ Issues with Criminal History: *(Specify)*

- ☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense *(18 U.S.C. § 3553(a)(2)(A))*
☐ To afford adequate deterrence to criminal conduct *(18 U.S.C. § 3553(a)(2)(B))*
☐ To protect the public from further crimes of the defendant *(18 U.S.C. § 3553(a)(2)(C))*
☐ To provide the defendant with needed educational or vocational training *(18 U.S.C. § 3553(a)(2)(D))*
☐ To provide the defendant with medical care *(18 U.S.C. § 3553(a)(2)(D))*
☐ To provide the defendant with other correctional treatment in the most effective manner *(18 U.S.C. § 3553(a)(2)(D))*
☐ To avoid unwarranted sentencing disparities among defendants *(18 U.S.C. § 3553(a)(6)) (Specify in section D)*
☐ To provide restitution to any victims of the offense *(18 U.S.C. § 3553(a)(7))*
☐ Acceptance of Responsibility ☐ Conduct Pre-trial/On Bond ☐ Cooperation Without Government Motion for Departure
☐ Early Plea Agreement ☐ Global Plea Agreement
☐ Time Served *(not counted in sentence)* ☐ Waiver of Indictment ☐ Waiver of Appeal
☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007): (Specify)*

☐ Other: *(Specify)***D. State the basis for a variance.** *(Use Section VIII if necessary)*

See Part VIII

DEFENDANT: Sachin Aji Bhaskar
CASE NUMBER: 1:19CR00007- 001
DISTRICT: Western District Of New York

STATEMENT OF REASONS**VII. COURT DETERMINATIONS OF RESTITUTION**

A. ☒ Restitution not applicable.

B. Total amount of restitution: \$ _____

C. Restitution not ordered: (Check only one)

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons: (Explain) _____

D. ☐ Partial restitution is ordered for these reasons: (18 U.S.C. § 3553(c)) _____

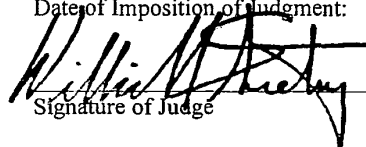
VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

The Court considered the factors pursuant to 18 U.S.C. § 3553(a) and finds a non-guideline sentence is reasonable and appropriate to address the nature and seriousness of the offense, the criminal history and characteristics of the defendant, and to serve the overall objective of punishment, general deterrence, incapacitation and rehabilitation. The defendant has a college education, a history of gainful employment, and has a supportive family. This summary of factors justifies this sentence and is drawn from a full decision delivered by the Court from the bench at sentencing.

Defendant's Soc. Sec. No.: 887-44-6054

Date of Imposition of Judgment: October 7, 2020

Defendant's Date of Birth: July 29, 1996


Signature of Judge

Defendant's Residence Address: Bureau of Prisons

William M. Skretny, Senior United States District Judge
Name and Title of Judge

Date: 10/13/2020

Defendant's Mailing Address: Same as above

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of September, two thousand twenty-two.

United States of America,

Appellee,

v.

Sachin Aji Bhaskar,

Defendant - Appellant.

ORDER

Docket No: 20-3537

Appellant, Sachin Aji Bhaskar, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

A circular official seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.