

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT OWENSBORO

UNITED STATES OF AMERICA ) CASE NO. 4:17-CR-00012-GNS-CHL  
)  
Plaintiff ) *Electronically Filed*  
)  
v. )  
)  
FARADAY HOSSEINIPOUR )  
)  
Defendant. )

**FARADAY HOSSEINIPOUR’S REPLY IN SUPPORT OF HER MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE**

The Court should hold a hearing so that the issues raised in Faraday Hosseinipour’s motion for a new trial based on newly discovered evidence can be fully considered. This is particularly true in light of the attempts by the Government in its response to misdirect the Court from the central issues. The response fails to acknowledge or address the critical post-trial discovery: the Government created a false gain-loss percentage by excluding commissions used for the purchase of products from the “gain” column of 101-i but also including purchases by the excluded commissions in the “loss” column.

101-i falsely indicated that a significant percentage of I2G participants were net losers who were not net losers. 101-i’s falsity resulted from the exclusion of commissions used for the purchase of packages but also the inclusion of the purchases made by the same commissions. A simple example demonstrates the problem with 101-i. If an i2g participant bought two Emperor packages for \$10,000 and also earned \$10,000 in commissions and, rather than opt to receive payment of the \$10,000, he used those earnings to buy two additional Emperor packages, the combination of these events would be reflected on 101-i as a net loss of \$20,000. But in reality, he only ever paid \$10,000 in i2g. This is because, under 101-i’s methodology, the Government counts

the \$10,000 in commissions used to purchase i2g packages as a loss but omits the commissions as a gain, resulting in the Government creating fictitious losses. 101-i only included “Value Checks Requested And Paid,” and the Government concedes this only includes commissions that were distributed by ACH checks to participants. But at the same time, the other column on 101-i was “Value All Purchases,” which included all purchases that were made by the very same commissions that had been excluded. This resulted in a massive misrepresentation of the numbers of net losers versus net-gainers. And the falsity of 101-i resulted directly because of the Government’s directive to Jerry Reynolds which was never disclosed by the Government and was not discovered until after trial.

The Government directed Reynolds to filter out more than \$28 million in commissions from his system when creating 101-i but to include all of the purchases made with these commissions as if the participants were using additional money out of their pockets. In other words, the Government caused the inclusion on 101-i of all purchases as “losses” regardless of whether paid by cash, check, commissions, or an internal transfer from one participant to another:

## 101-i artificially creates \$20 million in losses

### **101-i losses**

- Purchases - \$40,500,000
- Counts approximately \$20,000,000 of purchases paid with commissions

### **101-i gains**

- ACH Checks - \$9,500,000
- Excludes approximately \$20,000,000 of commissions used to purchase packages and products

The Government, however, never disclosed that it had given these instructions to Reynolds. These instructions were exculpatory, material, and constituted *Brady* information. The

Government then used this evidence as part of the testimony of Reynolds, Keep, and Sauber. This resulted in the Government eliciting false testimony that more than 96% of participants were net losers. After trial, Hosseinipour discovered that the Government knew that Reynolds' system showed that 37% of i2g participants were net-gainers, but it failed to disclose this *Brady* material to Hosseinipour.

In response to Hosseinipour's motion, the Government states that it "stands [by] Dr. Keep's analysis presented at trial: the evidence shows that some 96% of the participants lost money." (DN 859, #12432). This statement is in direct conflict with the Government's duty to seek the truth, not convictions.

Agent McClelland testified that there were \$17,688,159 in customer deposits to i2g. Yet 101-i shows over \$40,000,000 in purchases. There is an approximately \$23 million difference in the customer deposits and the purchases shown on 101-i. In closing, Mr. Sewell argued this very point to support the culpability of the Defendants: "David McClelland shows 17 million of money that he traced in accounts. Jerry Reynolds' records show that there was 34 million in sales. So there's a lot of unaccounted for money." (DN 671, #7702). However, the evidence discovered after trial revealed that this "unaccounted for money" was explained in data in Reynolds' database the Government caused to be omitted from 101-i. The difference between the customer deposits and the purchases is the purchases through the use of commissions. The Government's failure to produce its instructions to Reynolds on how to create his spreadsheets hid the fact that \$28 million in commissions were removed from the "gain" column but the use of those same commissions were included in the "loss" column..

Based on the information Hosseinipour received after trial, it has become clear that the Government withheld information and elicited false testimony regarding the loss rate, the missing

money, the commissions that were used to fund purchases, and what was actually contained in Reynolds' database. Over half the of the purchases listed in 101-i were funded by commissions. No money was being paid into i2g, and no money was being transferred out of i2g as part of these internal transfers. Thus, in the aggregate, there were not gains or losses based on these payments as money earned from commissions funded these transactions.

Despite the fact that there was not actual gain or loss from these transactions, the Government made the decision to count the approximately \$20 million of commissions used to make purchases in the "loss" column. Yet it chose to omit \$20 million of commissions used to fund these purchases from the "gain" column. Thus, the Government created \$20 million in losses that never occurred. This was inconsistent with what Reynolds' data actually showed. There was no factual basis for the Government to do this. Instead, the only purpose was to artificially increase the loss rate, and Keep was then able to analyze this data that the Government created, not the data stored in Reynolds' system.

As will be explained below, neither the Sixth Circuit nor this Court has addressed this error. Rather, at the restitution hearing, the Court recognized the fallacy of the Government's position:

MR. MEYER: That's a concept I think the Court should address. If a person uses commissions earned to purchase another spot and, therefore, rather than 5,000 they pay -- what?

THE COURT: 3,400 for that.

MR. MEYER: Correct.

THE COURT: Right.

MR. MEYER: Should it be 3,400, or should it be 500 [sic]? So that's --

THE COURT: Well, you've done an excellent job throughout this whole case, Mr. Meyer. ***But, yeah, that seems so simple, I can't imagine there would be an argument about it, frankly. Yeah, that person didn't really pay 5,000 for that last spot. They paid 3,400. So that's their loss. You wouldn't pay them back \$5,000 when they only paid 3,400. That makes perfect sense. An argument to the contrary would not seem reasonable to me...***<sup>1</sup>

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<sup>1</sup> The Government attempts to suggest that the Court rejected this argument at restitution. However, the transcript makes clear that the Court agrees with Hosseinipour on this issue.

(DN 718, #11329 (emphasis added)). The Government is now admitting that it intentionally counted all purchases—no matter what was actually paid—as losses. This is exactly what the Court has found “would not be reasonable.” (*Id.*).

### ARGUMENT

Each of the arguments raised by the Government in its response fails.

**I. Hosseinipour’s evidence is new and could not have been discovered with due diligence.**

Reynolds recently revealed that his system indicates that over 37% of i2g participants made money. This contradicted the less than 4% the Government claimed at trial his system showed. The Government argues that this is not new evidence because it produced spreadsheets in 2017 that contained all of the commissions of each participant during certain periods. First, the Government’s suggestion that Hosseinipour should have understood or relied on USA-007240 or 7241 is directly contrary to statements it made to the Court regarding those spreadsheets. The Government has specifically argued that only Reynolds could understand his spreadsheets: “If there's anything we learned from the trial is that Jerry Reynolds' spreadsheets are not for, you know, the layperson to come in and say, ‘Well, I think it means this.’” (DN 718, #11354).

In any event, Reynolds determined that more than 37% of participants made money by running a query on his database. This is new; Hosseinipour certainly never had the ability to do this. On the other hand, the Government had the ability to run this query and withheld this evidence from the Defendants. This deprived the Defendants of the ability to debunk the Government’s theory of the case that everyone lost money besides the people at the top of i2g. As the Government notes in its response, no Defendant even attempted to cross-examine Reynolds on 101-i. This is because each Defendants relied on the representation of the Government that 101-i accurately

reflected the net gains and losses of the participants. The Government deprived Hosseinipour of the ability to defend against 101-i by failing to produce material, exculpatory evidence.

In response, the Government simply seeks to distract from its serious *Brady* violation by speculating that Reynolds' system concluded that over 37% of i2g participants made money because of something reflected in USA-007240 and 7241. This is not what Reynolds' declaration says. He swears that his system reflects that that over 37% of i2g participants made money, which contradicts what the Government presented at trial. While the Government had the ability to run a query on Reynolds' system before and during trial, Hosseinipour had no such ability. While the Government does not challenge the accuracy of the 37% figure, if there is a question about how Reynolds' system made this calculation, that would be for an evidentiary hearing. The suggestion that Hosseinipour should have somehow figured out how to reach the conclusions of Reynolds' system on her own is ludicrous. The Government does not offer any insight on how she could have reached these conclusions. Instead, the evidence shows that such information was available to the Government through a searchable database of Reynolds' system, which it did not disclose to Hosseinipour. Thus, the fact that Reynolds' system shows 37% of i2g participants gained money is new evidence.

The Government's argument that the all commissions spreadsheet is not new evidence misses the mark. Hosseinipour's new evidence is that the Government instructed Reynolds to filter out more than \$28 million in commissions, including \$20 million in commissions that were used for internal transfers for purchases. At the same time, the Government instructed Reynolds to include all the purchases made by internal transfers as losses. This evidence was not disclosed to

Hosseini-pour.<sup>2</sup> Hosseini-pour did not discover any of that until after trial. In fact, before trial, the Government affirmatively represented that it was disclosing all *Brady* evidence shows that Hosseini-pour could not have discovered it with due diligence. *Banks v. Dretke*, 540 U.S. 668, 693 (2004) (When the Government asserts “it would disclose all *Brady* material,” a defendant “cannot be faulted for relying on that representation.”). A defendant “does not have a burden to investigate whether there exists evidence that the government had a constitutional obligation to disclose, but did not.” *Jefferson v. United States*, 730 F.3d 537, 546 (6th Cir. 2013). The Government’s argument that the information it withheld is not new or could have been discovered with due diligence is contrary to controlling precedent and must be rejected.

Moreover, Hosseini-pour could not obtain the information from Reynolds. Hosseini-pour’s counsel could not interview him. Because Reynolds would not meet with the Defendants, Hosseini-pour could not have discovered this information. *See Strickler v. Greene*, 527 U.S. 263, 285 (1999) (“defense could not discover copies of these notes from Stoltzfus herself, because she refused to speak with defense counsel before trial”); *United States v. Frost*, 125 F.3d 346, 383 (6th Cir. 1997) (recognizing an attempt to interview a witness as sufficient for exercising diligence); *see also United States v. Garland*, 991 F.2d 328, 336 (6th Cir. 1993). Thus, this information could not have been discovered with due diligence.<sup>3</sup>

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<sup>2</sup> Interestingly, the Government attached to its response a subpoena for initial spreadsheets from Mr. Reynolds. However, the Government has not produced the instructions it provided Mr. Reynolds to create 101-i.

<sup>3</sup> To the extent the Court finds that Hosseini-pour should have discovered what the Government was withholding from her and its failure to correct false evidence, which it should not do, such a finding would bolster the fact that Mr. Manning provided ineffective assistance of counsel at trial, which would similarly warrant a new trial. Ms. Hosseini-pour’s motion for a new trial remains pending before this Court, along with her request for an evidentiary hearing on both of her motions for a new trial. As is explained in more detail below, the evidence was material, and it would have impacted the jury’s verdict.

**II. The evidence Hosseinipour relies on is not merely impeaching or cumulative.**

The Government next argues that Hosseinipour's new evidence is merely impeaching, but the Government only addresses a strawman argument and fails to actually respond to Hosseinipour's argument. Hosseinipour is arguing that the Government intentionally misled the jury into believing that there were more than \$20 million in additional purchases that resulted in losses based on information from Reynolds' system. The Government created data that it had Keep rely on to say that the loss rate was over 96%. However, the Government knew that the more than \$20 million in additional purchases were covered by internal funds transfer. Thus, no cash exchanged hands for these transactions, and, in the aggregate, none of the transactions resulted in additional gains or losses. The Government withheld the evidence of its instructions to Reynolds to filter out more than \$20 million in commissions used for internal funds transfer while counting the same internal funds transfers as losses. The withholding of such information is material, not merely impeaching. As the Sixth Circuit has explained:

It makes little sense to argue that because [the defendant] tried to impeach [the key witness] and failed, any further impeachment evidence would be useless. It is more likely that [the defendant] may have failed to impeach [the key witness] because the most damning impeachment evidence in fact was withheld by the government.

*Robinson v. Mills*, 592 F.3d 730, 737 (6th Cir. 2010) (quoting *United States v. Serv. Deli Inc.*, 151 F.3d 938, 944 (9th Cir.1998)).

The ability to show that the Government intentionally attempted to mislead the jury into believing that almost everyone at i2g lost money based on data the Government had Reynolds create would have been devastating to the prosecution's case. The jury would no longer have trusted the Government, and it would have rendered a verdict in Hosseinipour's favor. The fact that the Government withheld this evidence from Hosseinipour and knowingly presented false evidence was material and requires a new trial.

In addition to the Government's instructions to filter out \$20 million of commissions that paid for internal purchases that the Government did not disclose to Hosseinipour in violation of *Brady*, the Government also possessed a searchable database which would have allowed it to query the percentage of i2g participants who actually lost money with i2g. The evidence shows that less than 63% of i2g participants lost money, which would have shown Keep's opinion that i2g was a pyramid scheme was baseless. Thus, this new evidence is also material.

The Government attempts to suggest that there is a big difference between commissions used for purchases of i2g packages and commissions paid. Hosseinipour's motion focuses on the more than \$20 million in commissions that were used to fund internal purchases. The Government's omission of these commissions dramatically distorted the loss rate and materially impacted Keep's opinion that i2g was a pyramid scheme. The fact that there were certain commissions earned and not paid out by check is immaterial to what Hosseinipour is arguing and represents a much smaller figure.<sup>4</sup> The Government also suggests that the all commissions spreadsheets lacks reliability because it contains commissions after the indictment period. Ironically, the primary spreadsheets that the Government relied on at trial had this same flaw, and those spreadsheets even included data from a separate company. For purposes of this motion, the additional years are immaterial to the issue at hand.

The Government further claims that comparing Global Payroll records to 101i and the all commissions spreadsheet show that Exhibits 2 and 3 to her affidavit were impeaching and cumulative. This argument again misses the mark. Hosseinipour's primary argument is that the

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<sup>4</sup> In the event that i2g was depriving its distributors of their commissions, there is no evidence that Hosseinipour was participating in this fraud. Rather, the evidence would show that the only individual that would have benefited would have been Maiké, and Hosseinipour would have been defrauded. Thus, this argument by the Government actually supports Hosseinipour's innocence.

Government intentionally misled the jury about what Reynolds' database shows, withheld the instructions it provided Reynolds in creating 101-i, and instructed Keep to use 101-i to opine that almost everyone at i2g lost money. All this testimony and evidence was based on data the Government created and did not accurately reflect what Reynolds' database shows. This would have directly affected the testimony of Reynolds, Keep, Sauber, and McClelland—the Government's key witnesses in this case. While the Global Payroll records may offer insight into why the Government created data to be used to prosecute Hosseinipour, they are irrelevant to the *Brady* and false evidence claims that Hosseinipour raised. The materiality of creating data, withholding the instructions the Government provided to create the data, and having its key witnesses use the data to testify to the fraudulent nature of the scheme cannot seriously be disputed.

Again, the issue is that the Government knew there were internal funds transfers to make purchases. The Government chose to count all purchases as losses regardless of whether money/checks were paid (thus, including all internal transfers as losses), and the Government chose to include only checks paid out to customers through the Automatic Clearing House network as gains (thus, excluding all internal transfers from gains). The Government then failed to disclose the evidence of what it did and elicited false testimony regarding i2g's gains and losses. The Global Payroll records are immaterial to the key issue.

**III. The Government's reliance on the Sixth Circuit opinion and the Court's restitution order is misplaced.**

The Government argues that the Sixth Circuit's opinion considered the issues that Hosseinipour raised in her motion for a new trial. However, the Sixth Circuit's decision related to payments that were made outside of Reynolds' system and not tracked by his system:

Specifically, Reynolds testified about the very deficiency to which the defendants point: that the spreadsheet might not have included every payment that I2G made to participants, so it might overstate how many participants lost money. Moreover,

the defendants had ample opportunity to cross-examine both Keep and Reynolds about anything that the spreadsheets contained.

*United States v. Maiké*, No. 22-6114, 2025 WL 1770555, at \*6 (6th Cir. June 26, 2025). Hosseinipour's motion for a new trial has nothing to do with payments made outside of i2g or how Reynolds' system failed to track such payments. Instead, it involves the fact that the Government instructed Reynolds to omit \$28 million in commissions from 101-i while keeping the more than \$20 million in purchases made through internal funds transfers as losses. This issue was not decided by the Sixth Circuit. Indeed, Hosseinipour did not raise the *Brady* violation to the Sixth Circuit. Hosseinipour also did not know that the Government had in its possession the fact that more than 37% of i2g participants gained money and did not disclose this exculpatory evidence before or during trial. Additionally, the U.S. Supreme Court clarified this year that the presentation of false evidence by the Government cannot be cured by cross-examination. *Glossip v. Oklahoma*, 145 S.Ct. 612, 631 n.10 (2025). Thus, the Sixth Circuit opinion does not address the arguments raised, and *Glossip* supports that the Government's reliance on Defendants' ability to cross-examine is misplaced.

As for the restitution order, the Court was not asked to decide whether the Government overinflated i2g participants' losses. (DN 744, PageID #11538). The Court did not decide whether 101-i accurately reflected losses and gains. The Court did not make a finding regarding whether 101-i properly or improperly treated packages purchased with commissions as losses. (*Id.*).

The Government told the Court that it would need to hear from Reynolds and perfunctorily asserted that the all commissions data was unreliable. The Court should hold a hearing to address

whether the Government artificially manipulated the loss rate based on its inclusion of all purchases and exclusion of commissions used to purchase i2g packages.<sup>5</sup>

**V. The Government’s admission of false evidence requires a new trial.**

An “exception [to the newly discovered evidence test] exists, however, where it is shown that the Government's case included false testimony and the prosecution knew or should have known of the falsehood.... [A] new trial must be held if there was any reasonable likelihood that the false testimony would have affected the judgment of the jury.” *United States v. Stoddard*, 875 F.2d 1233, 1237 (6th Cir. 1989) (quoting *United States v. Antone*, 603 F.2d 566, 569 (5th Cir.1979)). The Government does not contest that this standard applies.

Under *Stoddard*, the newly discovered evidence shows that the Government had access to Reynolds’ database and could run searchable queries. Reynolds has also confirmed that he filtered out \$28 million in commissions from 101-i and that 101-i does not reflect the gains and losses as shown by Reynolds’ system. Multiple witnesses falsely testified to what 101-i showed. Reynolds has also presented evidence that the Government could run queries of his database and that his database showed less than 63% of i2g participants lost money. At trial, the Government conceded that showing the amount of individuals that lost money was a necessary part to show that i2g was a pyramid scheme. Under *Stoddard*, a new trial is warranted.

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<sup>5</sup> At restitution, the Government argued that Reynolds “not here, but, I mean, if we need to get an affidavit from him and get him through....7240 was going to be an exhibit, and Jerry Reynolds noted again and again that his staff had prepared the document without his involvement. That was an early subpoena that was issued. And he said, “This document needs to be corrected. This document has problems.” And so we didn't get into all the details. He produced the corrected version that was much, much more helpful, and that was 101-F that was used at trial.” (DN 718, #11345). The Court should hold a hearing to allow Reynolds to testify regarding these representations made by the Government and the other issues raised in Hosseinipour’s motion for a new trial.

## CONCLUSION

Based on the foregoing, the Court should grant Hosseinipour a new trial. The Court should hold a hearing regarding her motions for a new trial.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed with the Court by using the CM/ECF system on December 3, 2025, which automatically provided notice to all counsel of record.

/s/ Philip E. Cecil  
*Counsel for Defendant Faraday Hosseinipour*