

No. 26-5272

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

FARADAY HOSSEINIPOUR,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

BRIEF FOR APPELLANT FARADAY HOSSEINIPOUR

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STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument. This is an appeal of the denial of a motion for a new trial based on evidence discovered after trial. The underlying trial was lengthy and included significant evidence that has been undermined by evidence provided post-trial by Jerry Reynolds, a critical Government trial witness. Oral argument will assist the Court in evaluating the significance of the new evidence and the resulting prejudice in light of the unique circumstances of Appellant Hosseinipour.

STATEMENT OF JURISDICTION

The District Court had jurisdiction pursuant to 28 U.S.C. § 3231. This Court has jurisdiction pursuant to 28 U.S.C. § 1291. Appellant timely filed her notice of appeal after the District Court denied her motion for new trial based on newly discovered evidence.

STATEMENT OF ISSUES

1. Did the trial court err in finding that Hosseinipour did not show that the Government violated *Brady* warranting a new trial?
2. Did the trial court err in determining that Hosseinipour did not present a *Napue* violation or meet the general requirements for a new trial based on newly discovered evidence warranting a new trial?
3. Did the trial court err in failing to hold an evidentiary hearing and relying on speculation?

STATEMENT OF THE CASE

I. Hosseinipour is uniquely situated in this appeal.

In 2013, Richard Maike started and became owner and president of Infinity 2 Global (“I2G”), a network marketing company that sold digital products to consumers. *United States v. Maike*, 142 F.4th 367, 371-72 (6th Cir. 2025). Maike created, controlled and operated I2G. Network marketing companies, also called MLMs, depend on independent distributors, called IBOs, to sell their products and recruit other IBOs. Faraday Hosseinipour was not an owner of I2G. She was an “early recruit to the scheme.” *Id.* at 372. The panel of this Court that ordered her release during the pendency of her appeal described her as a “low-level” participant. (See R.769, Sixth Circuit’s Order Granting Release,#11628.) The Government agreed that Hosseinipour “was not in the business from the beginning. [She] join[ed] later[,] and so she’s differently situated...She’s...an individual IBO who’s gonna earn commissions with the other IBOs.” (R.671,Closing Argument,#7704.) In other words, she was recruited and bought her way into I2G like thousands of other IBOs.

At her sentencing, the trial court found that Hosseinipour was different from the owners of I2G:

I understand Ms. Hosseinipour was recruited because she’s a great salesperson. In my view, she wasn’t supervising anybody. She wasn’t managing anybody. Here’s my impression -- and we sat through all of this testimony -- was that she was less of a leader than a cheerleader. I

don't mean that disrespectfully, but these Google chats, whatever they're called, she was touting this product. She was very animated, very -- she exuded personality and enthusiasm. And I guess maybe the enthusiasm is what makes me -- I mean, cheerleaders can be male or female, but it did seem like she was -- it was more of a rah-rah presentation. That didn't make her a leader. It didn't make her a manager.

(R.675, Sentencing TR.#7826) (the court refusing to apply the aggravating role enhancement.) The district court also found that Hosseinipour was less culpable than the organizers of I2G: "I do believe that in a way you [Hosseinipour] were duped, but in terms of Mr. Barnes, who was one of the architects of this whole scheme, I think that your culpability is significantly less." (*Id.* at # 7890.)

Hosseinipour was introduced to I2G in July 2013 by Richard Anzalone, a former MLM CEO. (R.511,#4863.) Hosseinipour was initially skeptical and conditioned her participation on legal compliance. (R.511,#4863-64) She was assured that MLM attorney D. Jack Smith had approved the project. (R.504,#4345). I2G also retained David Koerner—an attorney who helped build Herbalife's compliance department. (R.465,#3579). Anzalone, who pleaded guilty and testified for the government, confirmed Hosseinipour was honest, trustworthy, loyal, a good person, motivated to help others, and "would never try to hurt anybody." (R.511,#4830-31; R.505,#4761; R.465,#3579; R.504,#4406, 4436, 4533). Anzalone testified that Hosseinipour believed in I2G, its products, Rick Maiké, and the lawyers. (R.511,

#4830-31; R.505,#4759, 4761, 4771; R.465,#3579; R.504, #4406, 4436, 4533.) He testified that Hosseinipour “did not believe she was doing anything wrong or improper.” (R.505,#4760-61.)

Hosseinipour demonstrated her belief in I2G by paying \$35,000 for seven Emperor positions. (R.504,#4487). But, Hosseinipour always remained an IBO, and she never had access to I2G company information.

II. Data from Jerry Reynolds’ computer system was critical to the Government’s case.

At I2G’s formation, Maiké developed a binary compensation system, typical for network marketing companies. He turned to Jerry Reynolds, the owner of a software company that specialized in MLMs to manage the financial aspects of the company. (R.497, #4012-14.) Reynolds had worked with over one thousand MLMs, many of which used binary systems. (R.498,#4184.) Reynolds translated his clients’ compensation plans into a computer system and did this for I2G. (*Id.* at #4018.) Specifically, I2G’s commission-tracking software, Firestorm, was developed and maintained by Jerry Reynolds (R.497,#4012-14.) Reynolds’ system tracked all compensation earned by I2G participants. (R.498,#4041.)

Data from Reynolds’ system was critical to the Government’s case at trial. Before trial, the Government instructed Reynolds to create specific spreadsheets for use as trial exhibits. (R.498,#4209, 4217.) For example, 101-i, titled “participant

gain-loss,” purported to show all of the gain and loss data for I2G participants that was tracked by Reynolds’ system. (R.498,#4163.) In other words, 101-i purported to show how many IBOs earned more than they paid to I2G and how many IBOs earned less than they paid to I2G. (R.498,#4163-64; R.487,#3876.) According to 101-i, 96% of I2G participants were net losers.

The Government referred to Reynolds’ data as “gold” (R. 681,#8324-25,) and based its theory that I2G was a fraudulent scheme on the 96% net-loss figure. The district court viewed Reynolds as “an extraordinary witness.” (DN 681,#8340).

In its opening statement, the Government claimed that “the defendants together defrauded people out of more than \$30 million. This evidence will show that about 96 percent of the participants in the pyramid scheme lost money. That’s about 17,000 people, who together lost millions of dollars.” (R.485,#3735.)

The Government also specifically relied on 101-i in closing argument:

That’s a pyramid scheme if the design is set so that that many people will fail. Then he said let’s look at the actual situation, and he looked at the data. And in the actual data, he testified to you that 96 percent of the people, 96 percent of the participants lost money. And look at that spreadsheet, 101I, the participant gain/loss, 96 percent. That’s what he testified lost...

This was designed to be a pyramid scheme from the beginning, and it played out just as Dr. Keep had predicted what would have happened. And importantly at the end, Dr. Keep said that he had never had data like this. He had never had access to data like this of exactly how everything played out.

(R.671,#7691-92.) The Government told the court that the gain-loss rate was “necessary to the analysis of a pyramid scheme.” (R.680,#8273.)

A problem with all of this was discovered after trial. The 96% figure was false, and Reynolds’ system reflected something quite different.

The false data in 101-i permeated every quantitative claim by the Government about I2G. For example, Reynolds testified 101-i reflected the gains and losses of all I2G participants “tracked by [his] system.” (R.498,#4163-64.) But evidence discovered after trial showed that his system actually tracked \$38 million in commission gains, not the \$9.5 million that 101-i reflected. 101-i also included two years of non-I2G participants’ data *after* I2G had closed, which further inflated the loss rate.

Government expert witness Dr. William Keep built his opinions at trial on 101-i. Keep testified that 101-i “shows for every participant in the system how much they gained or lost.” (R.487,#3876.) He testified,

[101-i] shows...value paid in and the value paid out, meaning a return, the difference is either a positive number or a negative number or zero. And so that’s what this reports.

(R.487,#3876.) Keep testified 101-i “shows for every participant in the system how much they gained or lost.” (*Id.*) Keep testified that 96% of participants lost money based on the “actual data.” (*Id.* at #3877.) Keep testified that the “commissions

earned” were “consistent with the business being a pyramid scheme.” (*Id.* at #3886.) Keep testified that the data was “really [the] telling point” in establishing I2G was fraudulent. (R.486,#3752.) Keep testified he needed to “have all this data” and had to “do all this detailed analysis” to determine whether a company was a pyramid scheme. (R.487,#3934-35).

Agent Sauber created additional spreadsheets from the spreadsheets that Reynolds created. (R.497,#4077-79). For example, 101-j purported to show gains and losses of trial witnesses. Because it was pulled from 101-i, it was false. Agent McClelland presented a summary chart (US Ex. 232) that was based on Reynolds’ spreadsheets that purported depict the earnings of IBOs who purchased Emperor packages and, therefore, was based on the same falsehoods. (R.688,#8981-84.)

The false data pervaded the entire trial. In fact, this Court in affirming the conviction on direct appeal relied on it three times. *Maike*, 142 F.4th at 371 (“The company extracted some \$34 million from investors who paid to join the scheme, nearly all of whom lost money.”); *id.* at 373 (“Nearly all the investors who bought into the scheme—some 96%—lost money.”); *id.* at 375 (“96% of participants lost money”).

III. Post-trial evidence showed that Reynolds' evidence was false.

Before trial, the Government represented that it had “complied with all of its discovery obligations and will continue to do so.” (R.265,#1763.) The Government further stated, “the United States recognizes its disclosure obligations pursuant to Brady and Giglio and will fulfill such responsibilities.” (*Id.* at #1766.) At trial, the district court stated it was “relying upon the United States and their good faith” and was “counting on them to make sure that their disclosures are compliant with the law.” (R.683,#8635.) Specifically, as it related to Brady materials, the trial court instructed that it was “relying on [the prosecutors’] judgment to comply with *Brady* with regard to exculpatory evidence.” (*Id.* at #8637.) The Government affirmatively represented that “the United States is complying with all of its obligations.” (*Id.* at #8641.) The trial court “absolutely trust[ed]” that representation. (*Id.*)

But evidence discovered after trial shows that the Government abused the court’s trust. Specifically, Reynolds provided declarations after the trial that establish the falsity of trial testimony and exhibits. In his first post-trial declaration (R.856-1), Reynolds confirmed that 101-i excluded all commissions earned by participants that were used for purchases from I2G. In other words, if an IBO was paid \$1,000 in commissions but used that money for a purchase, 101-i did not include that money

as a gain but did include that money as an expense. During the restitution hearing, the trial court recognized the problem with this approach:

MR. MEYER: That's a concept I think the Court should address. If a person uses [\$1,600] 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 [5,000]? 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...*

(R.718,#11329 (emphasis added.)) Likewise, if an IBO earned commission and transferred that commission to another IBO, 101-i did not include that earned commission as gain. (R.856-1) The loss column on 101-i assumed that an IBO spent money any time that IBO received an I2G product regardless of whether the IBO actually paid for the product. (*Id.*)

Reynolds' first post-trial declaration revealed that his and Keep's testimony and that 101-i reflected "all gains and losses tracked by his system" was false. (R.498,#4164.) Reynolds' first post-trial declaration revealed that 101-i omitted over \$20 million of gains tracked by his system and also assigned "loss" to purchases that never occurred.

Reynolds signed a second declaration in September 2025. (R.847-2,#12222.) The second declaration indicated that he provided the Government with a searchable “instance” of his database before trial. Reynolds’ second declaration indicated that this database indicated that 37.432% of participants made money—not the less than 4% that 101-i indicated. (R.856-3,#12419.) The Government possessed the database and never disclosed it. Reynolds demonstrated, with direct screenshots, that his trial testimony that 101-i represented all gains and losses “tracked by his system” was false, and that Government exhibits suppressed gains and portrayed fictitious losses. (*Compare* R.498,#4164 *with* R.847-3,#12478.)

Reynolds’ system also contained proof that alleged “victims” at trial were not victims at all. Reynolds’ second declaration and an accompanying screenshot show that Queyenne Pepito (who 101-i indicated was a net loser) was really a net gainer of \$7732.78. (R.847,#12222 & 12226.) Reynolds’ records prove that Pepito was paid commissions of \$214,935.99 versus \$20,000 on 101-i—a difference of \$194,935.99. (*Id.*) The prejudicial impact of Pepito’s losses is demonstrated through the trial court’s remarks: “Gosh, this lady really got suckered into losing a lot of money” and “Well, this poor lady lost a lot of money.” (R.718,#11347-48.)

Data provided by Reynolds after the trial showed that other so-called victims were not victims. For example, Michelle Kim received \$178,947.54 in actual

commissions versus \$23,843.37 on 101-i, a difference of \$155,104.17. (*See* R.856-2,#12415, 12420.) Shin Ja Jeong received \$212,494.34 versus \$26,200.00 on 101-i, a difference of \$186,294.34. (*Id.*) These “net-gainers” were directly represented at trial as “victims.” (R.671,#7497). Hosseinipour filed an analysis of only ten purported victims and compared the commissions listed on 101-i to the unfiltered data tracked by Reynolds’ system:

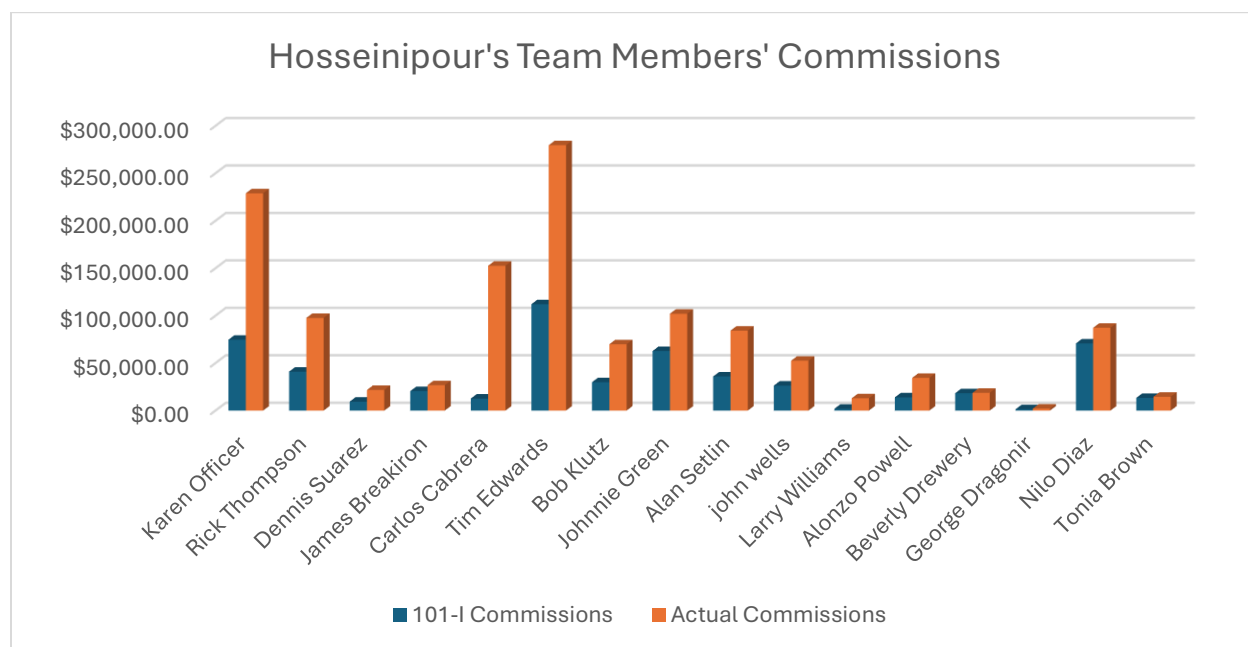
Case 4:17-cr-00012-GNS-CHL Document 856-4 Filed 11/06/25 Page 1 of 1 PageID #: 12420

Certain Alleged Victims in Indictment and Jury Instructions	Commissions on 101i	Actual Commissions	Difference in Actual Commissions versus 101-i Commissions	Loss Reported on 101-i	Gain or Loss Comparing Actual Commissions and Expenditures Shown on 101-i
Queyenne Pepito	\$20,000.00	\$214,935.99	\$194,935.99	-\$193,048.09	Gain
Shin Ja Jeong	\$26,200.00	\$212,494.34	\$186,294.34	-\$139,489.10	Gain
Michelle Kim	\$23,843.37	\$178,947.54	\$155,104.17	-\$123,355.21	Gain
Total:	\$70,043.37	\$606,377.87	\$536,334.50	-\$455,892.40	

	Commissions on 101i	Actual Commissions	Difference in Actual Commissions versus 101-i Commissions	Loss Reported on 101-i	Gain or Loss Comparing Actual Commissions and Expenditures Shown on 101-i
Additional "Victims" Shown on 101-i					
Mi Su Kim EB Inc	\$5,948.42	\$34,520.97	\$28,572.55	-\$36,592.53	Loss
Martin Rodriguez	\$2,466.96	\$35,112.54	\$32,645.58	-\$13,317.75	Gain
Beetna Le	\$39,561.70	\$345,706.31	\$306,144.61	-\$37,376.36	Gain
Adelaida/Petronila Pineda	\$45,685.00	\$158,967.84	\$113,282.84	\$6,424.17	Gain
Cris Bayani	\$4,006.50	\$147,670.74	\$143,664.24	-\$37,851.95	Gain
Austin Choi	\$500.00	\$5,943.28	\$5,443.28	-\$4,720.34	Gain
Maria Cruz	\$915.00	\$6,135.19	\$5,220.19	-\$4,699.45	Gain
	\$99,083.58	\$734,056.87	\$634,973.29	-\$128,134.21	

That analysis demonstrated that over \$1.15 million in commissions were omitted from the earnings of these ten IBOs on 101-i. (R.856-2,#12415, Hosseinipour Decl. Ex. 2; R.856-4,#12420.)

Hosseini pour also presented evidence that all sixteen members of her personal downline team were net gainers; the government filtered out approximately \$750,000 in commissions from their records alone. (R.856-2,#12415; Hosseini pour Decl. Ex. 3; R. 856-4,#12421.) These are the IBOs to whom Hosseini pour was exposed. Unlike Maik e, who had access to all of the company information, Hosseini pour only had access to those with whom she worked. The difference between how her team members performed versus how the Government presented their performance is stark:



Finally, post-trial discoveries reveal that an evidentiary hearing would establish that the Reynolds' spreadsheets included years of data from a different company after the indictment period. After the Government executed a search warrant in January 2015, Maik e started a different company called XTG1. (R.663,

#6572; R.859-3,#12447-48.) The Reynolds exhibits contained data from a period ending in March 2017. (R.663,#6556-57.) Thus, adding to the other problems with 101-i, it included data after the indictment period for a different company. This irrelevant data significantly skewed 101-I's loss representations because it included purchases (i.e. losses) but did not include any earnings by IBOs (i.e. gains). (R.859,#12434 (admitting that 101-f, which was the earnings data used in 101-i, did not include any earnings after October 2014.) 101-i and the testimony about it was false.

IV. 101-i was false because of Government manipulation.

The Government sent a grand jury subpoena to Reynolds' company in 2015. (R.859-2,#12444-46.) The subpoena requested records reflecting commissions, and Reynolds produced a spreadsheet containing all commissions earned by IBOs "for the time period 1/1/2013 to present." (*Id.*) In response, Reynolds produced USA-007240 (Checks.xlsx) and USA-007241 (CommissionDetail.xlsx), which reflected over \$41 million in total I2G commissions earned by IBOs. (R.859-1,#12441.)

Years later, while preparing for trial with Reynolds, a decision was made to alter these spreadsheets and create 101-i. Post-trial, the Government unconvincingly described this meeting as follows at a hearing on restitution:

THE COURT: Do you want to let them argue that 7240 --what it shows first and then you can argue what it doesn't show? But I will consider it.

[Prosecutor] SEWELL: Right. And that will be -- if that document is to be considered at all by the Court, then Jerry Reynolds needs to be the one to explain to the Court, because this -- both sides --

THE COURT: Are you going to call Jerry Reynolds?

MR. SEWELL: And we will. So saying one side --

THE COURT: Is he here?

MR. SEWELL: He's not here, but, I mean, if we need to get an affidavit from him and get him through. But the important point is that that document was, at trial, turned into 101-F, because in the meetings with Jerry Reynolds -- we had meetings with Jerry Reynolds and were preparing for trial. That 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. So what --

THE COURT: It was much, much more helpful because it showed what you wanted. Listen, I'll consider what their arguments are from the document. If you can produce an affidavit from Mr. Reynolds that says this -- that 7240 is inaccurate and instead 101-F is more reliable or is accurate, then that's fine....

(R.718,#11344-45.) In this post-trial exchange, the Government divulged that the spreadsheets that were introduced at trial resulted from interactions between Reynolds and the Government about changing the information that had been previously produced by Reynolds. This exchange and the Government's directions to Reynolds were never disclosed by the Government to the defense. And Reynolds has sworn in his post-trial declarations that the evidence created from his database and introduced at trial did not accurately reflect what it purported to depict—the I2G participants who were net gainers and net losers.

Finally, the Government has confirmed that assistance from Reynolds was critical to understanding information from his system: “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.’” (R.718,#11354.)

V. The district court denied Hosseinipour’s motion for a new trial.

Hosseinipour timely moved the district court for a new trial based on the newly discovered evidence from Reynolds. (R.856,#12386.) The court denied the motion. (R. 865.) For the reasons that follow, the Court should reverse and remand.

SUMMARY OF THE ARGUMENT

The Government suppressed (1) its instructions to Jerry Reynolds on how to create Exhibit 101-I and (2) that over 37% of participants actually made money with I2G. The suppressed information would have permitted Hosseinipour to discredit the Government’s expert witness William Keep, prove that I2G was not a pyramid scheme under Keep’s analytical framework, show that the Government manufactured evidence in advance of trial to try and secure her conviction, and show that the participants that she interacted with on a daily basis all made money with I2G. Therefore, she, like other participants in I2G, lacked knowledge that the company was fraudulent and that she did not act with an intent to defraud.

Despite the fact that Hosseinipour supported her motion with declarations and contemporaneous evidence showing that the Government suppressed this information and the Government conceding that it received log-in information to Reynolds' database that it did not share with Hosseinipour and that Exhibit 101-i does not show all the gains and losses in Reynolds' system as the Government previously represented to this Court, the trial court refused to hold an evidentiary hearing and summarily dismissed that a *Brady* violation occurred. In doing so, the trial court made factual findings that rest upon mere speculation and misapplied controlling legal precedent. Because the trial court erred in denying Hosseinipour's motion for a new trial and refusing to hold a new trial, the Court should reverse.

In addition to the *Brady* violation, Hosseinipour submitted newly discovered evidence that showed the Government should have known it presented false evidence and failed to correct the false evidence. The Government presented a loss rate of 96%. At the time, the Government knew that the loss rate was inflated because it had Reynolds filter out commissions. After trial, Hosseinipour discovered that the Government was provided with a searchable form of the database. Thus, the Government could query the number of individuals who made money with I2G and find out that 37% of I2G participants made money. Yet, the Government did not disclose this information, and it did not correct the false testimony from either

Reynolds about presenting the gains and losses from his system or Keep about testifying to a manufactured loss rate.

Hosseini pour also satisfies the traditional standard for a motion for new trial based on newly discovered evidence. At minimum, the district court abused its discretion in refusing to hold an evidentiary hearing based on the evidence and arguments presented.

ARGUMENT

I. The trial court erred in denying Hosseini pour's *Brady* claim.

While this Court reviews the denial of a motion for a new trial under an abuse of discretion standard, the district court's determination regarding the existence of a *Brady* violation is reviewed de novo. *United States v. Rafidi*, 829 F.3d 437, 446-47 (6th Cir. 2016). A *Brady* violation requires (1) evidence that is favorable to the accused because it is exculpatory or impeaching, (2) the evidence must have been suppressed by the Government either willfully or inadvertently, and (3) prejudice must have ensued. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

Two categories of evidence are at issue that Hosseini pour learned for the first time after trial. First, the Government failed to disclose the fact that it instructed Reynolds to suppress information from his system that resulted in false testimony concerning 101-i. Below, Hosseini pour argued, "The Government had Reynolds

filter out commissions earned by [7,000 participants who were represented as net losers on 101-i who actually gained money], and the Government suppressed this information from Hosseinipour.” (R.856,#12397.) Second, Reynolds’ system indicated that more than 37% of I2G IBOs were net gainers. Both categories meet the *Brady* test as applied to Hosseinipour.

A. Proof in the record establishes both categories of evidence.

Proof in the record establishes both categories. In 2015, the Government sent a grand jury subpoena seeking commission information from Reynolds’ system. He produced this information to the Government. US 7240 reflects all money earned by I2G IBOs and includes money that IBOs used to buy things from I2G and money that IBOs transferred to other IBOs.

Much later, before trial, the Government met with Reynolds and instructed him to produce spreadsheets that were different from what was requested in 2015 and that did not include all the earnings of IBOs that were reflected in Reynolds’ system. The proof that this occurred came from the words of the prosecutor. At trial, the prosecutor asked Reynolds about 101-i: “Do you recall receiving a request from the United States to provide data on all the participants’ gain and loss?” (R.498,#4163.) Reynolds answered, “I do” and that he provided 101-i because of the request. (*Id.*) He then falsely testified that 101-i had “I2G records that show all the

participants' gain and loss data that was tracked by [his] system.” (*Id.*) There can be no dispute that 101-i resulted from a Government request and the exact request that the Government made has never been turned over.

The Government further confirmed during trial that it provided Reynolds specific instructions: “As you heard in Mr. Reynolds’ testimony, the United States has met with him multiple times, the United States has issued multiple specific subpoenas to his business to prepare for trial. It’s no mystery that Jerry’s information is gold in this trial.” (R.681,#8324.) The subpoena that resulted in 101-i has never been produced. Yet, post-trial, the Government presented an unrelated subpoena for a different spreadsheet. (R.859-2,#12444). Its willingness to present that subpoena but not the subpoena for 101-i raises more questions than answers. The trial court expressly found that the Government “subpoenaed specific data from the database for I2G maintained by Reynolds.” *United States v. Maike*, No. CR 4:17-CR-00012-GNS-CHL, 2026 WL 788946, at *3 (W.D. Ky. Mar. 20, 2026). Thus, there is a finding that Reynolds was instructed to present this specific information.

In addition, Reynolds signed a declaration stating that commissions were filtered out. Reynolds’ counsel implicitly confirmed the existence of instructions from the Government and that he was not “comfortable having Jerry [Reynolds] provide this kind of information.” (R.870-1,#12594). This evidence is buttressed by

the difference between what Reynolds' database actually shows versus the manipulated loss rates shown in Exhibit 101-i. Together, it shows that the Government worked with Reynolds to specifically obtain data that is not reflective of the actual loss rates shown by Reynolds' system and then did not disclose such instructions.

Hosseini pour discovered after trial was that the Government's request to Reynolds to create 101-i resulted in the omission of IBO earnings that the system tracked and the inclusion of fictitious losses. At the post-trial restitution hearing, the Government disclosed its version of the interaction between the prosecutor and Reynolds:

[I]n the meetings with Jerry Reynolds -- we had meetings with Jerry Reynolds and were preparing for trial. That 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. So what --
THE COURT: It was much, much more helpful because it showed what you wanted.

(R.718,#11344-45.) This interaction was never disclosed prior to Hosseini pour's conviction. It is also highly likely that Reynolds would disagree with the Government's version of this exchange if given an opportunity to testify at an evidentiary hearing. But even in the Government's version of this meeting, the

Government instructions to Reynolds arose from an effort to “correct” (i.e. manipulate) the previously produced, unfiltered data regarding IBO earnings.

Reynolds’ first declaration confirmed that the result of this interaction was to omit earnings that were tracked in his system from 101-i. (R.721-2,#11428-29.) For example, Reynolds swore that the earnings used to make purchases from I2G were excluded from 101-i as were earnings that were transferred from one IBO to another. (*Id.*) Thus, 101-i excluded money earned from IBOs’ gains but included the expenditure of that same money in the IBOs’ losses. This was deeply flawed resulting in tens of millions of dollars being filtered out of 101-i and the creation of fictitious losses due to the Government’s instruction.

The second category of evidence was Reynolds’ second declaration accompanied by screenshots showing that the data tracked by his system indicated that more than 37%, and not 4%, of I2G IBOs were net gainers, including some who were referred to as “victims” by both the Government and the Court during the final stages of the case. This declaration corroborated that the Government’s instructions to Reynolds regarding the creation of 101-i, which showed a loss rate of more than 96%, must have included a request to suppress substantial compensation information tracked by his system. As the Government had the ability to run searchable queries of Reynolds’ database, they had access to this information and were required to

disclose it. *See United States v. Graham*, 484 F.3d 413, 417 (6th Cir. 2007) (“*Brady* and its progeny have recognized a duty on the part of the prosecutor to disclose material evidence that is favorable to the defendant over which the prosecution team has control.”).

B. Both categories of evidence are exculpatory.

Evidence that the Government instructed Reynolds to exclude tens of millions of dollars of earnings from the spreadsheet that determined which IBOs gained or lost money would have been devastating to the Government at trial. It would have revealed an intentional effort to skew the evidence, destroyed the credibility of all evidence from Reynolds’ system, and destroyed the credibility of the prosecution.

The evidence that data tracked by Reynolds’ system showed that more than 37% of I2G IBOs were net gainers would demonstrate that a fundamental basis of the Government’s case—that more than 96% of IBOs lost money—was false. There can be no dispute that both categories of evidence are exculpatory.

C. The Government suppressed both categories of evidence.

“*Brady* held that ‘suppression by the prosecution of evidence favorable to an accused...violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.’” *Coleman v. Mitchell*, 268 F.3d 417, 437–38 (6th Cir. 2001) (quoting *Brady v. Maryland*, 373 U.S.

83, 87 (1963)); *see also Strickler*, 527 U.S. at 288 (“under *Brady* an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment”).

The Government never disclosed to Hosseinipour that it instructed Reynolds to exclude tens of millions in earnings by IBOs tracked by his system or use a methodology to create fictitious losses when it requested that he create 101-i. Moreover, the Government never disclosed that Reynolds’ system did not, in fact, track data indicating that more than 96% of its IBOs lost money. The Government never disclosed that the data that Reynolds’ system tracked actually indicated that more than 37% were net gainers.

The district court held that “Maiké and Hosseinipour have not shown the United States suppressed evidence that was both unknown to them and not available from another source.” (R.865,#12495.) But the trial court never addressed the two categories of evidence that Hosseinipour contends was suppressed. First, Hosseinipour did not know and could not have known that the Government instructed Reynolds to filter out earnings that his system tracked in creating 101-I or use a methodology that created fictitious losses. Second, Hosseinipour did not know and could not have known that the data Reynolds’ system tracked actually indicated that 37% of IBOs were net gainers.

Any suggestion that spreadsheets, such as USA-007240 (Checks.xlsx) and USA-007241 (CommissionDetail.xlsx), would have informed Hosseinipour of the Government's pretrial instruction to Reynolds or of the actual percentage of net-gainers is contradicted by the Government's concession to the district court. Specifically, the Government explained 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.'" (R. 718, #11354.)

In any event, a *Brady* violation is not absolved even if a defendant should have discovered the suppressed information. A defendant is entitled to reasonably rely on the presumption that the Government will fully perform its duty to disclose all exculpatory materials as well as the Government's express representation that it will disclose *Brady* information. *Strickler*, 527 U.S. at 284. When the Government makes such a representation, a defendant has no "basis for believing the [Government] had failed to comply with Brady at trial." *Id.* at 287. When the Government asserts "it would disclose all *Brady* material," a defendant "cannot be faulted for relying on that representation." *Banks v. Dretke*, 540 U.S. 668, 693 (2004). 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). “A rule thus declaring ‘prosecutor may hide, defendant must seek,’ is not tenable in a system constitutionally bound to accord defendants due process.” *Banks*, 540 U.S. 668, 696 (2004).

Here, the Government represented that it had “complied with all of its discovery obligations and will continue to do so.” (R.265, #1763). The Government further stated, “the United States recognizes its disclosure obligations pursuant to *Brady* and *Giglio* and will fulfill such responsibilities.” (R.265, #1766). Given the Government’s representations, the district court’s holding that Hosseinipour has not shown she could not learn the contents of spreadsheets showing all of the earned commission (which is not what Hosseinipour contends was suppressed) from a different source was not relevant to the *Brady* argument. The district court failed to properly apply *Banks* and *Jefferson* in determining whether a *Brady* violation occurred. *See United States v. Tavera*, 719 F.3d 705, 712 (6th Cir. 2013) (“The *Banks* case makes it clear that the client does not lose the benefit of *Brady* when the lawyer fails to ‘detect’ the favorable information.”). “*Brady* does not [allow] the State simply to turn over *some* evidence, on the assumption that defense counsel will find the cookie from a trail of crumbs.’” *United States v. Paulus*, 952 F.3d 717, 725 (6th Cir. 2020) (quotation omitted).

The district court made additional errors in its analysis of the suppression element. It improperly speculated without any evidentiary basis that it was “skeptical of Reynolds’ declaration, which calls into question his own trial testimony.” (R.865,#12494.) The trial court had previously called Reynolds “an extraordinary witness.” (R.681,#8340.) The Government referred to his data as “gold.” (*Id.* at #8324-25.) The very nature of newly discovered *Brady* evidence is that it contradicts evidence at trial; the fact that evidence is exculpatory is reason to take it very seriously not to dismiss it based on unsupported skepticism.

The trial court also imposed some sort of due diligence requirement that was factually inapplicable to Hosseinipour and lacked a legal basis. Maiké’s counsel was unable to communicate with Reynolds before trial because of advice Reynolds received from his counsel. The trial court held, “In light of the Maikes’ long-standing relationship with Reynolds, it seems implausible that Reynolds or his businesses would not have cooperated with Defendants.” (R.865,#12494.) Because there was no evidentiary hearing, there is no evidentiary basis for this, it is speculative, and it is inconsistent with a common understanding of routine legal advice to cooperating Government witnesses to have no contact with defendants. Moreover, it was nonsensical to conclude that a prior relationship between Maiké and Reynolds would somehow benefit Hosseinipour, a distributor with no ties to the data supplier. That

conclusion was based on an incorrect assumption that these co-defendants (Maike and Hosseinipour) were working together.

In addition, the district court's assumption that Reynolds cooperated with Maike was contradicted by the evidence and contemporaneous testimony. Reynolds would not talk to the Defendants. (R.681,#8326.) Reynolds testified that he would "not communicate with anybody except my attorney." (R.498,#4219.) Because Reynolds would not meet with the defendants, Hosseinipour could not have discovered the Government's instructions to Reynolds or the true data concerning the percentage of net gainers. *See Strickler*, 527 U.S. at 285 ("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, 381 & 383 n.18 (6th Cir. 1997) (recognizing an attempt to interview a witness as sufficient for exercising diligence where witness refused based on advice of counsel); *see also United States v. Garland*, 991 F.2d 328, 336 (6th Cir. 1993). To this day, counsel for Reynolds continues to prevent Reynolds from providing the Government's pretrial instructions. (R.870-1,#12594 ("I am a civil, not a criminal lawyer, and I do not feel comfortable having Jerry provide this kind of information."))

D. Hosseinipour Suffered Prejudice

The district court held that there was not prejudice because “whether the proof is 96% or less than 63% of the participants lost money in the scheme where the organizers earned millions of dollars, neither Maiké nor Hosseinipour has shown that there was a reasonable probability of a different result at trial and have failed to show prejudice.” (R.865,#12497; *see also id.* at #12501 (“Because there is still overwhelming evidence that the organizers made millions while the vast majority of participants lost money to show that the scheme was fraudulent, Maiké and Hosseinipour have failed to show that the introduction of the new evidence would have resulted in acquittal.”)).

As an initial matter, “[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Strickler*, 527 U.S. at 290 (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). “[T]he materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury’s conclusions....Rather, the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Strickler*,

527 U.S. at 290 (internal quotation marks omitted). “Accordingly, a *Brady* claim does not require a showing that introduction of the exculpatory evidence would have rendered the overall evidence insufficient to convict.” *Frost*, 125 F.3d at 383.

Here, the absence of the two categories of evidence rendered the verdict against Hosseinipour unworthy of confidence. First, the evidence that the Government manipulated trial evidence by instructing Reynolds to remove tens of millions of dollars in earnings from 101-i undermines confidence in the verdict. The efforts taken by the Government to skew the true percentage of IBOs who were net gainers destroys the credibility of the Government. The absence of evidence of Government manipulation of evidence is extremely prejudicial:

If the jury could have been persuaded to believe that the government’s representatives in charge of the prosecution had previously tried to convict appellants Graham and McKay by means in part at least of the testimony of Moore which they knew was fabricated, which they, indeed, had aided in fabricating, and were still trying to do so even after Moore had recanted, the basis would have been laid for the same presumption against the government that arises against persons who fabricate, suppress or destroy testimony. *Omnia praesumuntur contra spoliatores*. The jury would then have had reason enough for concluding that the prosecutor was conscious that his case against the appellants was lacking in merit and that they were innocent men unjustly accused.

Shelton v. United States, 26 A.3d 216, 232 (D.C. 2011) (quoting *United States v. Graham*, 102 F.2d 436, 442 (2d Cir. 1939)). Evidence of the Government’s instructions to filter out IBO earnings would be particularly powerful here because of

the extent to which the Government's key witnesses relied on Reynolds' loss data at trial on the false claim that over 96% of IBOs were net losers. Had this information not been suppressed, Hosseinipour would have been able to draw out the falsity of the Government's claims compared to "the limited cross-examination of [Keep] regarding Exhibit 101-I" that occurred due to the suppression of the exculpatory evidence. Moreover, the mere fact that the Government worked with Reynolds to manipulate the data to present a different loss rate evidences that the information is both exculpatory and material. *See Blackwell-Esters v. Roe*, No. 21-11586, 2025 WL 817676, at *5 (E.D. Mich. Mar. 14, 2025) (conduct by police "shows the statement's obvious exculpatory value.").

Additionally, the district court erred by attributing its conclusion that "organizers made millions" to Hosseinipour. First, the Government did not allege that Hosseinipour made "millions." (R.96, Second Superseding Indictment, #572, alleging Hosseinipour made \$800,000.) Second, unlike Maiké, Hosseinipour was not an "organizer." The Government agreed that Hosseinipour "was not in the business from the beginning. [She] join[ed] later[,] and so she's differently situated....She's...an individual IBO who's gonna earn commissions with the other IBOs." (R.671, #7704.) It is also contrary to the district court's finding at sentencing that Hosseinipour was not an organizer, leader, manager, or supervisor.

(R.675,#7826.) The trial court previously found that Hosseinipour was less culpable than the organizers of I2G: “I do believe that in a way you [Hosseinipour] were duped, but in terms of Mr. Barnes, who was one of the architects of this whole scheme, I think that your culpability is significantly less.” *Id.* at # 7890. Thus, the district court’s reliance on the fact that “organizers earned millions” simply did not apply to Hosseinipour.

Holding that Hosseinipour did not suffer prejudice because “organizers earned millions” while a majority of IBOs lost money was incorrect for additional reasons. Merely making money is not evidence of fraud. *United States v. Ratliff*, 63 F. App’x 192, 196 (6th Cir. 2003)(“Financial gain from a fraudulent scheme is not relevant to proving guilt”).

Moreover, the trial court’s reliance on the combination of “organizers earning millions” and “the [purported] vast majority of participants” losing money did not apply to Hosseinipour for an additional reason. Unlike Maiké, Hosseinipour did not have access to the company data and had no knowledge of the prevalence of participants who lost money. Rather, she was only exposed to the people she interacted with. And, the actual data tracked by Reynolds’ system showed that the individuals that Hosseinipour interacted with the most all made money: all sixteen members of her personal downline team were net gainers. (R.856-2,#12415,

Hosseini pour Decl. Ex. 3; R.856-4,#12421.) The suppressed evidence would have been uniquely favorable to Hosseini pour as a distributor because it would have established that her experience with I2G resulted in her personal team gaining money and because her ample experience (*Maiké*, 142 F.4th at 370) would lead her to conclude that I2G was outperforming typical MLMs.

This evidence would undermine the Government's entire narrative at trial. For example, the Government's expert, Keep, testified that if I2G were operating optimally, the loss rate would still exceed 87.5%. (R.487,#3841-42.) The evidence showing that, at most, 63% of IBOs actually lost money would have irreparably undermined Keep's opinions and bolstered Hosseini pour's argument that she did not believe that I2G was fraudulent and, therefore, lacked the requisite *mens rea*.

Similarly, Keep explained that "85 to 90 percentage of all people who participate in multi-level marketing companies will end up in a loss position." (R.487,#3925). Thus, any loss rate lower than 85% would be better than a typical, legitimate MLM and inconsistent with a fraudulent scheme. The evidence showing that more than 37% of IBOs were net gainers would support the inference that I2G was indeed a legitimate MLM. Based on that significantly higher success rate compared to the typical MLM, the jury would have had a completely different view of Hosseini pour's intent and role. The district court's conclusion that a loss rate of

less than 63% would still support the inference that I2G was fraudulent has no factual basis. (R.865,#12496) (“This new evidence that less than 63% of participants in I2G lost money, however, would still ‘support[] an inference that [the scheme] was fraudulent, rather than . . . just star-crossed.’” (quoting *Maiké*, 142 F.4th at 375.)) Accepted as true, all MLM participants would be inferred to have knowledge that they are participating in fraudulent schemes despite the fact that this Court has previously held that some are legitimate. *United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 475 (6th Cir. 1999). The sweeping inference made by the district court that MLMs with loss rates of below 70% would turn normal accepted business into fraudulent activity, and it is simply incorrect. The district court did not make any other finding regarding a lack of prejudice. (R.865,#12496-97.)

Keep testified that the data was “really [the] telling point” in establishing that I2G was fraudulent. (R.486,#3752.) The suppressed categories of evidence demonstrate that the “telling point” was manufactured at the Government’s direction on the eve of trial.

The district court found that defense counsel failed to exercise due diligence because he failed to take advantage of the opportunity to cross examine Reynolds on 101-i. (R.865,#12500.) This, however, augments, rather than diminishes, the prejudice Hosseinipour suffered. Because the information was suppressed,

Hosseini pour was not able to drive these points home to the jury through cross examination. Confidence in the verdict is not present, and reversal is required.

II. The district court erred by denying Hosseini pour a new trial because the Government's case included false testimony.

A different standard applies to a new trial motion when the Government's case included false evidence: "[W]here 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 standard of review is abuse of discretion. *Antone*, 603 F.2d at 568. A district court abuses its discretion when it applies the wrong legal standard, misapplies the correct legal standard, or makes clearly erroneous findings of fact. *United States v. Turns*, 198 F.3d 584, 586 (6th Cir. 2000).

The district court abused its discretion when it found, without an evidentiary hearing, that Hosseini pour failed to show any false evidence presented by the United States. (R.865,#12498.) The trial court misunderstood and failed to consider Hosseini pour's claims. As is stated above, Reynolds' testimony that 101-I reflects the gains and losses tracked by his system along with the greater than 96% loss rate were false. The district court quoted this Court's opinion on direct appeal that limited its

review to the argument that Reynolds’ system might not have included all payments made to I2G participants. (R.865,#12498; *United States v. Maike*, No. 22-6114, 2025 WL 1770555, at *6 (6th Cir. June 26, 2025) (“spreadsheet might not have included every payment that I2G made to participants”). This related to evidence that I2G made some payments to IBOs outside of the normal commission system (e.g. by writing checks) that were shown in Reynolds’ system. This is not the issue that was revealed by the post-trial evidence relied on here. The issue here is that the testimony that 101-I included all earnings that were tracked by Reynolds’ system was false. The undisputed evidence is that the categories of evidence presented concerning 101-I and the greater than 96% loss rate were false. The fact that Reynolds’ database shows that less than 63% of the individuals who participated in I2G was known by the Government, but Hosseinipour did not discover this until Maike filed his motion for a new trial based on newly discovered evidence. The Government should have known of the falsity because it directly caused the data manipulation that resulted in 101-I’s creation. As shown above, there is a reasonable likelihood that the false evidence affected the jury’s judgment—the Government repeatedly relied on the 96% loss rate.

III. The district court erred by denying Hosseinipour a new trial based on newly-discovered evidence.

The district court also abused its discretion by denying Hosseinipour’s motion under the traditional standard for motions for a new trial based on newly discovered

evidence. *See United States v. Jones*, 399 F.3d 640, 648 (6th Cir. 2005). Again, the district court failed to apply the legal standard to the categories of evidence that Hosseinipour claims was newly discovered – the instructions to Reynolds to filter out earnings of IBOs and use a methodology that created fictitious losses in 101-i and that more than 37% of IBOs were net gainers.

It is undisputed that this evidence was discovered after trial. The district court clearly erred by concluding that Hosseinipour could have discovered this evidence through due diligence. The court incorrectly stated that Hosseinipour was aware when the United States subpoenaed data from Reynolds' database and that she knew there was other data in the database. (R.865,#12499.) There is no evidence of that. Regardless, Hosseinipour was entitled to rely on the representations of the Government that it had complied with its *Brady* obligations, and she could not interact with Reynolds pretrial because he was represented by counsel. The opportunity to cross-examine at trial (which exists in every case) does not mean that due diligence could have discovered the fact that the repeated reference to a greater than 96% rate of net gainers was false. As the Government maintained, a layperson had no ability to decipher the Reynolds' data.

The trial court ignored the material impact of evidence that the Government's involvement caused the incorrect over 96% loss rate. The Government's role in

inflating the loss rate would undermine the credibility of its case especially given its repeated reliance on the greater than 96% loss rate at trial. Finally, the new evidence was particularly material for Hosseinipour. The fact that more than 37% of IBOs were net gainers reveals that I2G was significantly outperforming legitimate MLMs. The uninflated data shows the IBOs Hosseinipour directly interacted with were succeeding. All of this would severely contradict the Government's contention that Hosseinipour acted with criminal intent. This evidence would have been a game changer and changed the result for Hosseinipour.

IV. The district court erred by denying an evidentiary hearing.

Denial of an evidentiary hearing is reviewed for abuse of discretion. *United States v. Anderson*, 76 F.3d 685, 692 (6th Cir. 1996). Summary denial is proper only when allegations “cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact.” *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999). “Where a factual question is raised as to whether a *Brady* violation occurred, the defendant is ‘entitled to have it determined by the district court in a hearing.’” *Gov’t of Virgin Islands v. Martinez*, 780 F.2d 302, 306 (3rd Cir. 1985) (quoting *United States v. Alexander*, 748 F.2d 185, 193 (4th Cir.1984)).

The district court resolved material factual disputes without a hearing. It declared itself “skeptical of Reynolds’ declaration”—making an adverse credibility finding against a sworn witness without ever hearing him testify. That is the precise error addressed in *United States v. White*, 492 F.3d 380 (6th Cir. 2007). This Court held that a district court “cannot know” whether the government violated a defendant’s rights “absent more detailed examination” and “could not properly determine” the new-trial question on the written record. *Id.* at 412-13.

The restitution hearing demonstrated the necessity of a hearing. The government insisted Reynolds’ testimony was absolutely necessary to understand the commission data: “If it is to be considered at all by the Court, then Jerry Reynolds needs to be the one to explain it to the Court,” and a “layperson” like Hosseinipour had “no way to understand the data without Reynolds.” (R.718,#11343-44.) The Government made additional claims at that hearing that warrant inquiry: that Reynolds invalidated his own data (USA-007240, 007241) in his pre-trial interactions with the Government by stating that it was “prepared by staff without his involvement,” had “problems,” and “needed to be corrected.” (R.718,#11345.) Those corrections included the omission of over \$28 million in commissions to create 101-i and 101-f days before trial, manufacturing over \$20 million in fictitious losses, and including post-indictment-dated data through March 9, 2017, for all the

government's exhibits. In light of Reynolds' post-trial declarations regarding the invalidity of trial evidence, an evidentiary hearing is the only way to assess the veracity of the government's claim and the truth surrounding the data.

Comments by the district court at the restitution hearing also highlight the urgent need for an evidentiary hearing to reveal the withheld instructions: the court noted that 101-i was used at trial because "[i]t was more helpful because it showed what you wanted." (R.718,#11345.) The court also made inquiries about Reynolds' appearance to explain the data or provide an affidavit (R.718,#11344-45,) which never occurred. If Reynolds' testimony was necessary to understand the commission data for a restitution calculation, it is infinitely more necessary to understand the construction of the exhibit that drove the verdict.

When a defendant presents evidence of a *Brady* claim, it is appropriate for the trial court to hold a hearing to "more carefully consider the nature of the documents and the information contained therein." *United States v. White*, 492 F.3d 380, 413 (6th Cir. 2007). The questions of fact as to what instructions the Government gave Reynolds and then suppressed require an evidentiary hearing.

Finally, the seriousness of the concerns raised by the post-trial declarations warrants an evidentiary hearing. If a parent company reports earnings and includes all revenue from its subsidiary but omits all corresponding costs, the reported

earnings would be fraudulent. The fact that the company might claim it believed that was a fair way to present its financials does not ameliorate the fraudulent nature of the report. Similarly, the Government chose to have Reynolds testify to losses by omitting all commissions on internal transfers while counting all internal transfers as losses. This resulted in evidence and testimony that the loss rate of i2g was more than 96% despite the fact that both Reynolds and the actual data in his database showed a loss rate of less than 63%. Thus, regardless of the Government's intent behind presenting the data in this light, the Government's suppression of its instructions to Reynolds constitutes a *Brady* violation. This appeal stems from the admitted fact that the Government sent a specific subpoena to Reynolds, which had the result of manipulating Reynolds' data to show an artificial loss rate of 96%, and the Government's suppression of its instructions and the subpoena it sent to Reynolds in violation of *Brady*. It further stems from the fact that the Government had ability to query Reynolds' database to show that 37% of participants made money with i2g, and the Government did not disclose this information to Hosseinipour. This evidence directly undercuts that i2g was fraudulent, and it supports Hosseinipour's central defense that she did not knowingly join a fraudulent scheme and did not act with an intent to defraud. As such, the district court abused its discretion in not holding an evidentiary hearing. *Frost*, 125 F.3d at 383 (remanding for evidentiary

hearing because “this is a fact which would have allowed the jury to infer a lack of intent to defraud.”). Given the serious concerns raised by Hosseinipour’s motion, the Court should vacate the trial court’s order and remand for an evidentiary hearing. *See United States v. Hanna*, 55 F.3d 1456, 1461 (9th Cir. 1995) (“resolution of this matter is best served by the light of a hearing, not the darkness of an assumption on appeal.”) (quotation omitted).

CONCLUSION

The Court should reverse the trial court’s denial of the motion for new trial based on newly discovered evidence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with Fed. R. App. P. 28 and 32 because the countable portion thereof contains 9,043 words and was typed in 14-point Equity A font.

/s/ Philip E. Cecil
Counsel for Faraday Hosseinipour

CERTIFICATE OF SERVICE

I certify that on June 25, 2026, a copy of the foregoing brief was served upon all counsel of record by electronic filing.

/s/ Philip E. Cecil

Counsel for Faraday Hosseinipour

ADDENDUM**Designation of Relevant Record Documents**

District Court Docket Entry	Description	PageID# Range
R.1	Indictment	1-43
R.230	Second Superseding Indictment	1452-73
R.486	Keep Vol. 1	3737-3838
R.487	Keep Vol. 2	3839-4000
R.497	Reynolds Vol. 1	4010-4084
R.498	Reynolds Vol. 2	4085-4252
R.642	Judgment and Commitment Order	6391-97
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R.856	Motion for New Trial	12386-12408
R.856-1	Reynolds' First Post-Trial Declaration	12409-12
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R.859	Response to Motion for New Trial	12427-37
R.860	Reply in Support of Motion for New Trial	12449-62
R.865	Order Denying Motion for New Trial	12482-504
	Exhibit 1 to R. 856-2	Native Spreadsheet
	Exhibit 2 to R. 856-2	Native Spreadsheet
	Exhibit 3 to R. 856-2	Native Spreadsheet
	101-i (admitted at trial)	Native Spreadsheet
	US 7240 (restitution exhibit)	Native Spreadsheet