

No. 26-5272

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA

Plaintiff-Appellee,

V.

RICHARD G. MAIKE 26-5244  
FARADAY HOSSEINIPOUR, 26-5272

Defendants-Appellants.

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

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**REPLY BRIEF FOR APPELLANT FARADAY HOSSEINIPOUR**

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## INTRODUCTION

The United States committed a *Brady* violation against Hosseinipour because it failed to make two disclosures at trial. First, it did not disclose it had instructed Jerry Reynolds to remove commissions from 101i, which had the effect of manufacturing tens of millions of dollars in losses that did not occur. The clear evidence discovered after trial shows that 101i directly resulted from the prosecutors' direction, and the United States does not deny this.

Instead, the United States argues that there was a distinction at trial between commissions "earned" and commissions "paid." No such distinction was ever disclosed at or before trial. The prosecutors and their witnesses made no such distinction, and prosecutors referred to the commissions on 101i as "earned" before both the district court and this Court. Reynolds' system did not even differentiate between "paid" and "earned" commissions. Regardless, the post-trial justification makes no sense: 101i omitted over \$28 million in commissions from the "gain" column but included purchases made by those same commissions in the "loss" column. This undisclosed fact severely skewed the calculation of the percentage of participants who lost money, resulting in the 96% loss rate the United States repeatedly relied on at trial and on direct appeal.

The practical effect of this false statistical analysis was to corroborate the Government's theory that i2g was a scam because almost everyone lost money. In reality, i2g performed better than most legitimate multi-level marketing companies ("MLMs"). The actual gain-loss statistics would have indicated to an individual with experience in the MLM industry (Hosseini pour) who did not set up i2g that she was participating in a legitimate, non-fraudulent company.

Second, the United States failed to disclose the actual calculation from Reynolds' system: 37% of I2G participants gained more money than they spent. The United States attempts to excuse the failure to disclose this information by arguing Hosseini pour should have figured these things out on her own and that she could have asked questions of Reynolds, but neither is a legitimate excuse: "A rule thus declaring prosecutor may hide, defendant must seek, is not tenable in a system constitutionally bound to accord defendants due process.'" *United States v. Tavera*, 719 F.3d 705, 711 (6th Cir. 2013) (quoting *Banks v. Dretke*, 540 U.S. 668, 696 (2004)). When a jury does not know that critical prosecution evidence is false because the prosecution instructed it to be manipulated, the trial is not fair. Justice requires a new trial for Hosseini pour.

## ARGUMENT

### **I. The district court erred in denying Hosseinipour's *Brady* claim.**

The parties agree that this Court reviews the question of whether a *Brady* violation occurred below de novo. The *Brady* claim is based on the failure to disclose two categories of evidence: (1) the prosecutors' instruction to Reynolds to filter out commissions earned by i2g participants, which caused Reynolds to present more than 7,000 participants as net losers on 101i<sup>1</sup> despite the fact that his system shows these participants were actually net gainers, and (2) the fact that Reynolds' system indicated that more than 37% of I2G participants were net gainers. The United States does not deny in its brief that it failed to disclose these facts to Hosseinipour. It fails to address its instruction to Reynolds and attempts to distort and distract from the failure to disclose the actual percentage of those who enjoyed net gains.

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

The United States does not address or dispute the extensive evidence cited by Hosseinipour that the prosecutors' instructions caused the creation of 101i and, thus, the exclusion of the approximately \$28 million in commissions that Reynolds' system tracked. The United States also does not dispute that Reynolds' system reflects that more than 37% of I2G participants were net gainers. Rather, the United States merely

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<sup>1</sup> 101i is on a flash drive submitted to the Court on August 12, 2026 and is called Exhibit 101i-redacted\_1.

cites to the district court's stated skepticism (without an evidentiary hearing or an evidentiary basis) of Reynolds' declaration. However, the United States' brief concedes that 101i did not include all of the participants' commissions. If these commissions were used by participants to make purchases from I2G or were transferred to others, they were excluded from the "gain" column on 101i (even though the resulting purchases from those commissions were included in the "loss" column). Thus, the United States' brief confirms the relevant portions of Reynolds' declaration, which confirmed (via a screen shot) that his system indicated that more than 37% of participants were net gainers.

**B. Both categories of evidence are exculpatory.**

In its brief, the United States does not dispute that both categories of evidence at issue in Hosseinipour's *Brady* claim are exculpatory. That element is uncontested.

**C. The United States suppressed both categories of evidence.**

The United States does not deny that it failed to disclose its instruction to Reynolds and that Reynolds' system indicated 37.4% of participants were net gainers.

The United States, instead, argues that 101i reflected "paid" commissions, not "earned" commissions. This was never disclosed to Hosseinipour at trial. The first time the prosecutor discussed 101i was during the testimony of Government expert William Keep. The prosecutor stated that Reynolds' system

kept track of all the data for the company, for I2G they kept track of every sale that was made, *all the commissions that were due*, all the checks that were paid out, et cetera....So Dr. Keep has reviewed those records, and that was, you know, part of his review to determine, you know, how things played out...101-I is participant gain/loss.

R.680,PageID#8268-69 (emphasis added). The prosecutor explained that Reynolds' spreadsheets were "certainly relevant to Dr. Keep's analysis of how many people gained money and how many people lost money in this program, and that's a factor that he looks at and a factor that's necessary to the analysis of a pyramid scheme." *Id.* at #8273. There was no disclosure that 101i included "paid," not "earned" commissions, and no non-government participant in the trial had any idea that was the case.

Not only did the United States fail to reveal that it excluded certain commissions, so that 101i included only "paid" commissions, it and its witnesses said the opposite. In its brief, the United States explains that 101f,<sup>2</sup> a spreadsheet labeled "Checks," was the source of the commissions in 101i. Gov. Br. at 5. Reynolds explained the commissions listed in 101f as follows: "That's the total of all the commission types that that person earned for that period." R.498,PageID#4131. Reynolds testified that the commissions used in 101i were commissions earned. He

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<sup>2</sup> 101f-1 is on a flash drive submitted to the Court on August 12, 2026 and is called Exhibit 101-f\_1.

further explained that “‘check’ is kind of a misnomer in this case. It’s really just a transaction that’s due that person, okay?” R.498,PageID#4131.

The Government had Reynolds testify that 101e tracked the commission of the defendants in this case. R.498,PageID#4100-02. The Government did not disclose that it included more commissions in 101e (commissions “earned”) than it did in 101i (commission “paid”). If there were actually an issue with using all the commissions tracked by Reynolds’ system, then the Government would not have used all the commissions for 101-e, but it did. The real reason for using different commissions for different spreadsheets (and not disclosing what it did) was to enlarge losses and minimize gains for gain-loss analysis and inflate Hosseinipour’s gains compared to other i2g participants. These disparities were artificially created to incriminate Hosseinipour and did not present the data as shown in Reynolds’ system.

In briefing before the district court, the prosecutor said the opposite of what he argues now. The prosecutor wrote, “Reynolds also provided a ‘Participant Gain-Loss’ spreadsheet, summarizing for each participant the value of positions held and the value of *commissions earned*.” R.708,PageID#11219 (citing *101i*)(emphasis added). The prosecutor added, “Reynolds’ data on commissions earned *reflects commissions earned, not commissions paid*.” R.708,PageID#11219 (emphasis added). Because the Government claimed that 101i reflected commissions “earned,”

there can be no doubt that it never disclosed that 101i actually only reflected commissions “paid.”

The United States stated that 101i included commissions “earned” in its brief in the direct appeal of Hosseinipour’s conviction: “Reynolds explained that...101i showed i2G participants’ gain and loss data tracked in his system, including...their commission earnings, and their total gain or loss.” Gov. Br., p. 54, *United States v. Hosseinipour*, No. 23-5029/5560 (6th Cir. Mar. 13, 2024).

Because the United States argued before the district court and this Court that 101i included “earned” commissions, this Court should reject the argument now that it was evident that 101i did not include “earned” commissions but only “paid” commissions. “The United States Attorney’s word is worth considerably less when, as here, it is manifest that he made conflicting representations to the court below.” *United States v. White*, 492 F.3d 380, 412 (6th Cir. 2007).

Moreover, as it relates to the fact that Reynolds’ system shows that more than 37% of i2g participants gained money, Reynolds used “Total Commissions ***Paid*** to unique humans.” R. 847-3, PageID#12478 (line 78)(emphasis added). The Government, without citation, baldly asserts this calculation uses commissions earned, but the evidence below shows that Reynolds used “Total Commissions Paid to unique humans.”

Instead of addressing its failure to disclose the categories of evidence on which Hosseinipour bases her *Brady* claim, the United States makes arguments that are not relevant. The United States argues that the exculpatory evidence could have been available from another source. Gov. Br. at 25. This is almost always the case when the Government suppresses exculpatory evidence; evidence always has a source. The fact that a witness could have theoretically been found by a defendant does not excuse a *Brady* violation. *See Banks*, 540 U.S. at 693 (when the Government has asserted “it would disclose all *Brady* material,” a defendant “cannot be faulted for relying on that representation”). The fact that Hosseinipour was ultimately able to discover post-trial that Reynolds’ system indicated that more than 37% of participants were net-gainers does not excuse the failure to disclose the categories of exculpatory evidence. The Government’s position would reward misconduct and is contrary to Supreme Court precedent. *Banks*, 540 U.S. at 693.

The United States continues to make a due diligence argument that is not appropriate. The United States argues that Hosseinipour could have figured out on her own that 101i was manipulated. But, the Government told the trial court that 101i contained commissions “earned,” not “paid.” R. 708, PageID#11219. The United States does not address the authorities cited in Hosseinipour’s initial brief that a

*Brady* violation is not absolved even when a defendant could have discovered the suppressed information.

The Government does not explain how Hosseinipour should have figured out that the Government instructed Reynolds to filter out millions of commissions from 101i, which was not created and produced until the eve of trial despite the fact that the indictment was filed five years earlier. *Compare* 101i (metadata) *with* R.1.

Nor does the United States explain the change in its position. It now argues that Hosseinipour should have been able to figure out before or during trial from what it refers to as the “initial ‘Checks’ spreadsheet” (USA-007240,<sup>3</sup> hereinafter “US-7240”) that 101i does not include tens of millions of dollars of commissions. *See* Gov. Br. at 4, 25-26. Yet, post-trial, it told the district court that US-7240 “had problems” and claimed that Reynolds’ stated that US-7240 needed to be corrected. R.718,PageID#11345. The prosecutor also argued the defense could not have understood Reynolds’ spreadsheets without an explanation from him:

MR. SEWELL: The general position of the United States... is that it’s not that this data is incorrect. It is that Mr. Meyer’s interpretation of the data is incorrect. 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....” And that’s not as productive as hearing from the victim or hearing from Jerry Reynolds,

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<sup>3</sup> US-7240 is on a flash drive submitted to the Court on August 12, 2026 and is called R.654-10 USA-007240.

because those are the people who are going to understand what happened.

R. 718, PageID#11353-54.

The United States told the district court that defendants could not possibly understand the data without Reynolds. Despite having multiple meetings with Reynolds prior to trial about the meaning of the data, it did not disclose its instructions to Reynolds or the real gain-loss rate. Given that the Government knew Hosseinipour could not understand the data without the disclosure, burying these categories of information is indefensible.

**D. Hosseinipour suffered prejudice.**

Without the suppressed evidence, Hosseinipour was deprived of a fair trial. In its brief, the United States does not address the authorities cited by Hosseinipour concerning the powerful impact of evidence that the Government fabricated. The revelation that the 96% loss rate was false and manufactured by the Government would have destroyed the Government's credibility. "The 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." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Suppressed evidence that would have permitted Hosseinipour to attack the integrity and reliability of the Government's investigation is material. *Id.* at 446.

Moreover, truthful evidence about the participants who were net gainers would have severely undermined the case against Hosseinipour. Reynolds' system shows that 37.4% of participants were net gainers. R.847-2,PageID#12476. The United States told the jury that 96% lost money. R.487,PageID#3877. Hosseinipour's success contrasted by the purported loss rate of her peers was critical to her conviction. In her initial brief, Hosseinipour cited evidence from the record below that all sixteen members of her personal downline were net gainers. 101i excluded almost \$750,000 in commissions that were tracked by Reynolds' system from those sixteen people. R.856-2, Page ID #12415. In response, the United States minimizes this by noting that there were hundreds of people below the sixteen in Hosseinipour's downline. But these individuals' commissions were also reduced as a result of the Government's instruction to Reynolds. The United States cites to no evidence that Hosseinipour had access to whether these people had net gains or losses. At trial, the United States conceded, "Faraday was not in the business from the beginning. Faraday joins later; and so she's differently situated. She's not one of the owners. She's one -- she's an individual IBO who's gonna earn commissions with the other IBOs." R.671,PageID#7704. That concession also refutes the district court's description of Hosseinipour as one of the "organizers." *See* Gov. Br. at 23-24.

Regardless, the point that the United States cannot refute remains: the real gain-loss evidence establishes that any limited exposure Hosseinipour had as a non-management distributor to the success of others would have indicated that i2g had more people succeeding than in other legitimate MLMs. The distinction between a company that has a 96% loss rate and less than a 63% loss rate is the difference between a legitimate MLM and a fraudulent pyramid scheme. *See, e.g.* R.487,PageID#3925. Given her experience with the MLM industry, Hosseinipour would not have been on notice that anything was fraudulent based on how many people were experiencing success by participating in i2g.

Had the Government disclosed that Reynolds' system showed more than 37% of participants made money, she could have exposed Keep's optimal scenario as bogus. Keep testified that in the best possible scenario, only 12.5% of participants could have gained money. R.487,PageID#3842-43. But, the suppressed information would have shown that the Government hired an expert to say the scheme was fraudulent based on numbers pulled out of thin air. While the Government argues that Hosseinipour made misrepresentations, the absence of the two categories of evidence eliminated critical support for her *mens rea* defense and thus deprived her of a fair trial.

The United States relies on its new distinction between “earned” and “paid” commissions to argue that Hosseinipour cannot show prejudice. But the record shows that this distinction has no basis. The United States claims that the \$28 million in commissions tracked by Reynolds’ system that were removed from 101i was not “paid.” Gov. Br. at p. 19. It refers to these commissions as “paper earnings.” Gov. Br. at p. 20. The evidence does not support this.

Reynolds’ system shows that there were more than 62,000 commission transactions that his system calls checks. US-7240; R.498,PageID#4131. Of those 62,000 checks, the United States had Reynolds filter out more than 54,000 from 101i. *See* US-7240 (CheckTypeIDs 17 and 21). The United States did not disclose that these transactions that were tracked by Reynolds’ system were filtered out of 101i. Reynolds explained that his system had a function called an e-wallet, which he likened to Venmo. R.498,PageID#4185-86. I2G would pay commission into the e-wallet and distributors could spend the money on other I2G products, transfer the money to other distributors, or could request a check. *See id.* Reynolds confirmed the following description: “[T]here’s an account that will accumulate and a participant when they want to get the money out [would] do so, but if they want[ed] to leave the money in to pay something or pay for another product.” *Id.* at #4185. The Government’s current attempt to argue that commissions paid to the e-wallet that

were spent or transferred to another distributor were not “paid” is nonsensical. A transfer to Venmo that is transferred to another person or used to make another purchase is every bit as valuable as the receipt of a check.

An examination of US-7240 shows the fallacy of the Government’s position. The Government called this spreadsheet “Backoffice Enterprise Solutions: Checks.xlsx.” R. 859-1, PageID#12441. US-7240 shows commission checks paid to I2G participants. 7240 listed three different types of checks: CheckTypeID 17, 19 and 21. Column R of US-7240 indicates that CheckTypeID 21 reflects commissions that a participant transferred to another account. The amount of these checks totaled more than \$17 million. US-7240 lists \$9.5 million in CheckTypeID 19 commissions and \$11 million in CheckTypeID 17 commissions. Column R of US-7240 indicates that CheckTypeID 17 and 19 transactions were “requested from e-wallet via web.” 101f and 101i only contained CheckTypeID 19 commissions (though this was never explained or indicated).

As a result of the Government’s instructions, 101i filtered out over \$28 million in checks, including internal transfers and the expenditures of commissions for products. Despite the fact that CheckTypeID 21 commissions were used for internal transfers, the Government counted the purchases as losses but did not include the corresponding commissions as gains. 101i, instead, only includes CheckTypeID 19

commissions counted as gains. In short, the Government instructed Reynolds to omit CheckTypeID 17 and 21 commissions from 101i. It did not disclose these instructions to the defendants, so Hosseinipour was unaware that the loss rate was manufactured and did not accurately reflect what Reynolds' system showed. 101f did not disclose the CheckID, the CheckTypeID, or the message contained within Reynolds' system (Column R of US-7240), so nothing suggested that 101f omitted any checks. Moreover, Reynolds' testimony confirmed that all gains were used in making 101i. Hosseinipour could not have been expected to believe (1) the United States manipulated the data, and (2) Reynolds falsely testified.

From 101i, the total amount of purchases is \$40,550,638.63. The Government characterizes these losses as "participants initial investments." *See* Gov. Br. at 20. But, there is no support for the fact that \$40 million in cash was paid into i2g. The evidence at trial was that there was only \$17 million deposited. Reynolds' system certainly does not show \$40 million in new payments into i2g. Instead, it shows that there were more than \$17 million in internal transfers. The Government, without any basis, had Reynolds run a new report that treated every dollar transferred internally as a loss (and did not book the corresponding gain); even though, no money was expended. Thus, instead of showing those internal transfers netting themselves out

and the commissions tracked by the system actually being counted in the gain-loss data, the Government failed to disclose that it manipulated the data.

There was no basis for counting the internal transfers used to make purchases as losses but not gains. Doing so portrayed false picture of the company to the jury. This caused the company to appear fraudulent despite the fact that data did not back up the testimony presented by the Government. The 96% loss figure portrayed a failed venture as an orchestrated scheme to defraud.

The new evidence shows that instead of using a spreadsheet with data from Reynolds' system (US-7240), prosecutors instructed him to create a new spreadsheet that manufactured tens of millions of dollars in losses. The United States created a false gain-loss percentage by excluding commissions used for the purchase of products from the "gain" column of 101i but also including purchases by the excluded commissions in the "loss" column. An example demonstrates the problem with 101i. If a participant bought two Emperor packages for \$10,000 and also earned \$10,000 in commissions, the participant broke even. However, applying the instructions that created 101i, if that same participant used the \$10,000 in commissions to purchase 2 additional Emperor packages, that participant would be deemed to have lost \$20,000; even though, the participant only paid \$10,000 into i2g. The calculation would not credit the commissions to the participant because

they were spent on i2g products; at the same time, the commissions used to make the purchases would be included in the loss column as an additional expenditure. This methodology results in a false calculation. The calculation was further skewed by using transactions from XTG, a separate company that Hosseinipour had no involvement with, and transactions that occurred after the indictment period. As the Government admitted at sentencing (after trial), these amount to \$3.4 million in losses approximately. R. 693,PageID#6593. The gains from this period are omitted. See Exhibit 101f (last date of October 8, 2014); Exhibit 101i (incorporating 101f).

The Government argues that Agent McClelland's US 232 corroborates Keep's false 96% figure. But on direct appeal, the United States admitted that the district court erred in admitting Exhibit 232. Gov. Br, p. 84, *United States v. Hosseinipour*, No. 23-5029/5560 (6th Cir. Mar. 13, 2024). Now, the United States attempts to justify its false evidence by citing an admittedly inadmissible exhibit. Because the evidence was inadmissible, it cannot be considered. Regardless, Exhibit 232 does not support a 96% loss rate.

US 232 assumed that every Emperor package on a list on Maiké's computer was purchased for \$5,000, and then he compared that total to the amount of payments to participants from a company called Global Gateway Payroll. R.688,PageID#8979. US 232's calculation was based on the following incorrect

assumptions: (1) that every Emperor package was paid for, (2) that every purchaser of an Emperor package did not use earned commissions to make the purchase, and (3) that the Global Gateway payments reflected all of the commissions of those who purchased the Emperor packages. Each of these assumptions was false. The reliance on US 232 fails.

The United States argues that the *Brady* violation is immaterial because there is other inculpatory evidence that supports a generic fraud conviction. However, a defendant does not need to “‘demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict.’” *Schledwitz v. United States*, 169 F.3d 1003, 1012 (6th Cir. 1999) (quoting *Kyles*, 514 U.S. at 434–35). Because the materiality analysis is not a sufficiency of the evidence test, this argument must be rejected. *Id.* The collective suppression of both the instructions the Government gave Reynolds to create 101i and the fact that his system showed that more than 37% of participants gained money left Hosseinipour unable to rebut the narrative that she should have known the scheme was fraudulent because of these “red flags.” But, the “red flags” were not nearly as clear as the Government portrayed to the jury because the reality was that this was not an enterprise where everyone was losing money. Instead, the participants were succeeding at a better rate than a legitimate MLM.

Further, the United States used Keep to testify that Hosseinipour made false claims about income and how the “data will not support” her income claims, but the underlying gain-loss data that Keep was referencing was manipulated. R.487,PageID#3883-84. The prejudice Hosseinipour suffered from these failures to disclose was substantial. For the reasons explained above, this prejudice is also sufficient to support a false evidence claim and traditional new trial standard.

**II. The district court erred by denying Hosseinipour a new trial because the Government’s case included false testimony.**

The Government does not squarely address Hosseinipour’s false evidence claim. Instead, as part of its response to Hosseinipour’s *Brady* claim, it argues that the exhibits it presented through Reynolds were not false because “presenting spreadsheets based on commissions paid—and explaining that these spreadsheets are based on commissions paid—does not equate to presentation of ‘false’ evidence due to ‘Government manipulation.’” Gov. Br. at 26. But, the United States never indicated that its spreadsheets were only based on “paid” commissions. Instead, it represented to the district court that these spreadsheets were based on commissions earned: “Reynolds’ data on commissions earned reflects commissions earned, not commissions paid.” R.708,PageID#11219. The Government’s attempt to now contradict itself must be rejected.

The Government relies on additional false evidence to suggest that it did not elicit false testimony. To open its brief, the Government relies on the fact that a panel of this Court held that I2G “extracted some \$34 million from investors.” *United States v. Maike*, 142 F.4th 367, 371 (6th Cir. 2025). This quote stems from the Government’s representation that I2G “took in over \$34 million.” Gov. Br. p. 16, *United States v. Hosseinipour*, No. 23-5029/5560 (6th Cir. Mar. 13, 2024). But, none of the evidence cited by the Government supports this. Instead, the evidence was that \$34 million in i2g products were sold. The evidence the Government relied on does not reveal how much of the \$34 million was paid through internal transfers. *See* R.497,PageID#4055. The evidence was that there were only \$17 million in customer deposits and, as US Exhibit 229 shows, \$11 million paid back to participants. R.700,PageID#10438. US-7240 shows that there were \$17 million in internal transfers. Thus, it appears that half of the money the Government represented that I2G “took in” was not actually paid in. Instead, half of the payments were internal transfers that did not create additional losses. Yet, the Government mischaracterized such payments as additional money paid in to inflate the amount its participants lost.

Additionally, the Government argues that “Defendants ‘new evidence’ would also have no effect on Dr. Keep’s analysis.” Gov. Br. at 21. But, Keep’s analysis was entirely dependent on Reynolds’ data. Keep testified that he had never previously

received data about the winners and losers in an MLM, and the data was “very helpful” in reaching his conclusion. R.487,PageID#3998. The Government’s contention that 101i’s tens of millions of dollars in fictitious losses did not affect Keep’s analysis is belied by his own testimony. It is further belied by its own statements at trial that gain-loss data was “necessary to the analysis of a pyramid scheme.” R.680,PageID#8273.

Keep falsely testified that 101i shows “the value of payments made, payments made back out to the individual in a spot, an individual account; the value of the position that they held; and then whether or not that account had a net gain or a net loss, *meaning if you were to look at the 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,PageID#3876 (emphasis added). But, post-trial, it has been discovered that 101i does not show the value paid in, as Keep testified. 101i treats the value of all product purchases as a loss regardless of the source of funds, even if no payment was made.

Reynolds testified that he received a “request from the United States to provide data on all participants’ gain and loss,” and he produced 101i in response to the request. R.498,PageID#4163. He testified that “all the participants’ gain and loss data [that] was tracked by [his] system” was contained within 101i. *Id.* at

PageID#4163-64. While he acknowledged that there could have been payments outside his system, he affirmatively testified on three occasions that 101i reflected all the gain and loss tracked by his system. *Id.* This is demonstratively false. Reynolds' second declaration categorically establishes that the data tracked by his system shows that 37% of i2g participants gained money. R. 847, PageID#12476. His declaration is substantiated by a live screenshot of his database showing that Reynolds had the ability to run a report called "PercentageOfAllDealersWhoMadeMoney," and the data shows that more than 37% of participants gained money. R. 847-3, PageID#12478. The Government does not dispute the accuracy of this screenshot. This is not a declaration that clearly disputes prior testimony without evidence to support the declaration. Unlike the affidavits in the Government's cases—a defendant's own affidavit in *Winborn* and a party's summary-judgment affidavit in *Biechele*, Gov. Br. 29—Reynolds' declaration comes from the Government's own witness and is corroborated by un rebutted documentary evidence. *Cf. Biechele v. Cedar Point, Inc.*, 747 F.2d 209, 215 (6th Cir. 1984); *United States v. Winborn*, No. 16-1038, 2016 WL 10749644, \*2 (6th Cir. Sept. 29, 2016). This evidence shows that the United States presented, failed to correct, and now doubles down on false testimony that it knows is false.

Finally, the Government claims that Hosseinipour has raised this issue twice and lost both times. But, on direct appeal, the Court never considered the fact that Reynolds' system showed that more than 37% of i2g participant gained money. This information was not known to Hosseinipour at the time, and it was never presented to this Court. Instead, the Court addressed the single issue of whether Reynolds' system did not track certain transactions that occurred outside his system: "[T]he spreadsheet might not have included every payment that I2G made to participants, so it might overstate how many participants lost money." R.832,PageID#12168. That holding rested on the possibility of transactions outside of Reynolds' system. The Court said nothing about what the system itself reflected. The Court relied on the Government's explanation of the limitations of Reynolds' system:

Reynolds confirmed that Exhibit 101i showed "participants' gain and loss data *that was tracked by [his] system.*" R.498:#4164 (emphasis added). The government asked Reynolds a follow-up question to confirm that point:

Q. Now, if there was data by your system -- or if there was payments, like, by your system -- example we gave earlier, that I2G writes a check to someone and they don't have to tell you about that, that would not be tracked by this?

A. It would not. *Id.*

This exchange made clear that Reynolds's system did not track all transactions and thus it was possible that Exhibit 101i did not account for all gains and losses by I2G participants. Instead, Exhibit 101i merely presented the data as recorded in Reynolds's system...

Gov. Brief, p. 56 (emphasis in original), *United States v. Hosseinipour*, No. 23-5029/5560 (6th Cir. Mar. 13, 2024). But, the fact that it is possible that some transactions were not tracked by Reynolds' system is irrelevant to the transactions it clearly tracked and the issues before the Court on this appeal. The relevant fact is that the Government presented false testimony.

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

The United States does not dispute that Hosseinipour learned post-trial (1) Reynolds was instructed to filter out commissions of i2g participants, (2) 101i used a methodology that significantly increased the percentage of participants who purportedly had net losses, and (3) Reynolds' database showed that more than 37% of i2g participants were net gainers. The United States, however, argues that such information could have been learned through due diligence. The United States argues that Hosseinipour could have made charts before trial that show that many of the participants 101i indicates were net losers were actually net gainers. But this assumes that Hosseinipour knew that 101i excluded commissions that were transferred internally. In support, the United States cites only 101i, a discovery letter that does not reveal anything, and Reynolds' testimony. Reynolds testified that 101i contained "a sum total of all of the checks," and Reynolds previously explained that

this is the sum of the “transaction[s] that’s due that person.” R.498,PageID#4131. Reynolds’ “best description” of the “checks” in 101f was that they were the “total of all commission types that the person earned for that period.” *Id.* This testimony did not put Hosseinipour on notice that the United States instructed Reynolds to filter out tens of millions of dollars of commissions and manufacture similar losses for 101i. Instead, the testimony was that they were commissions earned. It also did not put her on notice that Keep’s testimony was inconsistent with the actual data tracked by Reynolds’ system.

In any event, the Court has declined to require a due diligence requirement in the *Brady* context. *Tavera*, 719 F.3d at 712. *Banks* “makes it clear that the client does not lose the benefit of *Brady* when the lawyer fails to ‘detect’ the favorable information.” *Id.* Rather, a defendant may “‘assume that his prosecutors would not stoop to improper litigation conduct to advance prospects for gaining a conviction,’” including manufacturing a loss rate and not correcting false testimony. *Jefferson v. United States*, 730 F.3d 537, 545 (6th Cir. 2013) (quoting *Banks*, 540 U.S. at 694). As it relates to false evidence, the duty to correct false evidence is on the Government, and Hosseinipour did not have the duty to correct the false evidence introduced by the Government. *Glossip v. Oklahoma*, 604 U.S. 226, 253 (2025).

The United States also argues that the evidence Hosseinipour relies on was not discovered after trial. The United States suggest that Hosseinipour's newly discovered evidence is only a new interpretation of the legal significance of evidence. But, the fact that Reynolds' system shows that more than 37% of participants gained money in i2g is not a new interpretation of the legal significance of evidence disclosed prior to trial. Hosseinipour could not have found out that number based on the information that the United States disclosed, and the United States has not offered any calculation for how she could have discovered that Reynolds' system showed that more than 37% of participants gained money in i2g. Rather, the evidence from Reynolds is that he provided the United States with access to this information. At that point, the duty to disclose this information was absolute, and the United States admits they did not make the required disclosure. *See Moldowan v. City of Warren*, 578 F.3d 351, 387 (6th Cir. 2009) (absolute duty on prosecutor to disclose material exculpatory evidence). Not appreciating the significance of the information in the Government's possession is not a defense. *United States v. Dado*, 759 F.3d 550, 559 (6th Cir. 2014); *White*, 492 F.3d at 409 ("It matters little whether the government suppresses the evidence out of oversight or guile").

As it relates to the instructions that the United States gave to Reynolds to create 101i, Hosseinipour only became aware of these instructions post-trial during

restitution proceedings when the United States admitted that it had a conversation with Reynolds prior to trial in which Reynolds purportedly stated that US-7240 “needs to be corrected” and that it “has problems.” R. 718, PageID#11345. The fact that Reynolds’ data has problems is both exculpatory and material. Yet, the conversation was never disclosed. This alone violated *Brady*. See *United States v. Rodriguez*, 496 F.3d 221, 226 (2d Cir. 2007) (“The obligation to disclose information covered by the *Brady* and *Giglio* rules exists without regard to whether that information has been recorded in tangible form.”). In response, the United States worked with Reynolds and instructed him to create new spreadsheets. These instructions resulted in the filtering of tens of millions of dollars of commissions. These instructions also were not disclosed. The newly discovered evidence was the fact that the United States had this conversation with Reynolds that it never disclosed. It cannot be seriously contended that this is a new interpretation of the legal significance of evidence when the conversation was suppressed until after trial.

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

The district court abused its discretion in not holding an evidentiary hearing. “Where the submission of written affidavits raises genuine issues of material fact and where, as here, the *Brady* claims... are neither frivolous nor palpably incredible, an

evidentiary hearing should be conducted.” *United States v. Dansker*, 565 F.2d 1262, 1264 (3d Cir. 1977).

While the United States cites the district court’s skepticism of the declarations of Reynolds, it has not offered any proof to suggest that they are wrong in any way. Reynolds’ declarations are supported with exhibits from his database that reinforce the truthfulness of his declarations. Despite the district court’s unsupported skepticism of Reynolds’ declarations, the proper resolution was to hold an evidentiary hearing in which all the evidence could be examined with the benefit of Reynolds’ live testimony. Because this did not occur, at a minimum, remand for an evidentiary hearing is necessary.

It should also be noted that the Government has previously taken the position that it needs “Jerry Reynolds to be the one to explain [the data] to the Court.” R.718,PageID#11345. The Government also told the trial court that it would get an affidavit from Reynolds to support its position. R.718,PageID#11363. But, it ultimately did not do so. The Government identified the one witness who can explain US-7240; it promised to provide the trial court his sworn account; and it failed to produce the declaration to back up its position. Meanwhile, Defendants have produced two declarations from Reynolds, supported by a screenshot of his database

as well as spreadsheets from his database, which contradict the Government's position. This factual dispute warrants an evidentiary hearing.

## CONCLUSION

The briefing establishes that Hosseinipour is not similarly situated. She was not an organizer; she joined later. She did not have access to Reynolds' system, and her knowledge was not the same as Maiké's knowledge. The trial court erred in lumping her together with Maiké. Because Hosseinipour's circumstances are unique, which make the prejudice she suffered greater, the Court should reverse the trial court's denial of her motion for new trial based on newly discovered evidence and remand for a new trial, or alternatively, for an evidentiary hearing.

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 6,456 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 September 22, 2026, a copy of the foregoing brief was served upon all counsel of record by electronic filing.

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