No. 25-____

IN THE

Supreme Court of the United States

FARADAY HOSSEINIPOUR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether by establishing a pyramid scheme, the Government can shortcut its burden of proving the necessary elements of conspiracy to commit mail fraud and securities fraud, including whether each defendant acted with an intent to defraud?
2. Whether the instructions and the definition of pyramid scheme are impermissibly vague and abstruse, which will permit the Government to arbitrarily bring charges and convict participants in multi-level marketing companies?
3. Whether the Sixth Circuit's opinion directly conflicts with the Court's recent decision in *Glossip v. Oklahoma*, 604 U.S. 226, 248 (2025), and whether the Sixth Circuit misapplied *Napue* in allowing the Government's knowing failure to correct false evidence to go unaddressed?

PARTIES TO THE PROCEEDINGS

Petitioner, who was a Defendant-Appellant in the Sixth Circuit, is Faraday Hosseinipour.

Respondent, who was the Appellee in the Sixth Circuit, is the United States.

Doyce Barnes and Richard Maike were Defendant-Appellants in the Sixth Circuit.

RELATED PROCEEDINGS

United States of America v. Faraday Hosseinipour, et al, case no. 4:17-CR-00012-GNS-CHL, U.S. District Court for the Western District of Kentucky. Judgment entered January 6, 2023.

United States of America v. Faraday Hosseinipour, et al, Nos. 23-5029 & 23-5560, U.S. Court of Appeals for the Sixth Circuit. Judgment entered June 26, 2025.

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INTRODUCTION

Like millions of other Americans, Petitioner Faraday Hosseinipour joined a multi-level marketing company ("MLM") as an independent business owner ("IBO"). Even though no federal statute criminalizes pyramid schemes, the Government occasionally charges citizens under a theory that an MLM that meets the definition of an illegal pyramid scheme constitutes a scheme to defraud. A test for determining when an MLM is an illegal pyramid scheme has evolved from the civil regulatory context.

In *United States v. Gold Unlimited, Inc.*, the U.S. Court of Appeals for the Sixth Circuit first confronted this scenario and noted that "[n]o clear line separates illegal pyramid schemes from legitimate multilevel marketing programs…." 177 F.3d 472, 475 (6th Cir. 1999). The trial court used a definition of pyramid scheme that resulted from civil regulators' determination that certain plans will inevitably fail because they are dependent upon perpetual recruitment of new participants, which is impossible to sustain. *Id.* Historically, the Federal Trade Commission ("FTC") has determined whether an MLM is a pyramid scheme through a civil action under Section 5 of the FTC Act. 15 U.S.C. § 45.

The Sixth Circuit recognized that "[s]ome structures pose less risk of harm to investors and the public, however, and authorities permit those programs to operate even though the programs contain some elements of a pyramid scheme." *Gold Unlimited*, 177 F.3d at 479-80. "Courts and legislatures recognize a distinction between legitimate programs (known as multi-level marketing systems) and illegal schemes." *Id.* at 480. The court encouraged future trial judges to supplement the definition used in *Gold Unlimited's* instructions to reflect the difference between legitimate MLMs and

illegal pyramids. In other words, the Sixth Circuit encouraged future courts to narrow the definition in *Gold Unlimited* to ensure that legal activity is not encompassed by the definition.

Despite the definition's need for future clarification, on plain error review, the Sixth Circuit affirmed a jury instruction that contained the following: "A pyramid scheme constitutes a scheme or artifice to defraud for purposes of this count of the indictment." *Id.* at 484. The Court held there was no plain error because a different instruction required the Government "to prove…that the defendants knowingly devised a scheme or artifice to defraud" and the "instructions did not permit or command the jury to infer knowledge from any actions." 177 F.3d at 485. Thus, to convict, the jury had to find that "the defendants knowingly devised a pyramid scheme." *Id.* Judge Moore, in her concurrence, disagreed and stated, "The problem with this instruction is that a pyramid scheme, as the court defined it, does not necessarily constitute a scheme to defraud." *Id.* at 490. Judge Moore concluded that the instruction "largely eliminated the government's burden of establishing the existence of a scheme to defraud." *Id.* No petition for certiorari was filed in *Gold Unlimited*.

Gold Unlimited remains the law of the Sixth Circuit and has been relied on to support other convictions, including this case. *See* Pet.App.2a; *United States v. Benson*, 79 F. App'x 813, 823 (6th Cir. 2003); *United States v. Cantwell*, 41 F. App'x 263, 272 (10th Cir. 2002). This precedent continues to be interpreted to provide the Government with a shortcut to meeting its burden of proof; if the Government proves the existence of a pyramid scheme, it satisfies its burden of establishing a scheme to defraud. Judge Nalbandian in his Concurrence here wrote,

> The second major thing that we did in *Gold Unlimited* was hold that a court may instruct a jury that a "pyramid scheme constitutes a scheme or artifice to defraud" under the mail-fraud statute. *Id.* at 478, 484. In other words, a jury's finding that there was a "pyramid scheme" becomes a shortcut for the government's proof of mail fraud. Once the jury finds a pyramid, the only thing left for the government to prove is that the defendants used the mails to perpetuate their scheme.

Pet.App.23a (Nalbandian, J., concurring). Here, the court attempted to follow *Gold Unlimited* by supplementing the regulatory definition of pyramid scheme and by instructing the jury that a pyramid scheme is a scheme to defraud. The Sixth Circuit affirmed the following instruction in Hosseinipour's case:

> A "pyramid scheme" is any plan…or other process characterized by the payment by participants of money to the company in return for which they receive the right to sell a product and the right to receive in return for recruiting other participants into the program reward which are unrelated to the sale of the product to ultimate users. The structure of a pyramid scheme suggests that the focus is on promoting the sale of interests in the venture rather than the sale of products, where participants earn the right to profits by recruiting other participants, who themselves are

> interested in recruitment fees rather than products.
> A pyramid scheme constitutes a scheme to defraud.

Pet. App. 108a-109a. The second sentence of the instruction resulted from the suggestion in *Gold Unlimited* that future courts "supplement" the instruction to "reflect the difference between legitimate multi-level marketing and illegal pyramids," but it did the opposite. Rather, the instruction, described by the Sixth Circuit as "abstruse," violated *Percoco v. United States*, which held fraud instructions "must be defined with the clarity typical of criminal statutes." 598 U.S. 319, 329 (2023).

The last sentence of this instruction improperly allowed the jury to presume an intent to defraud. In *Gold Unlimited,* the mandatory presumption was salvaged by the fact that the jury was required to also find that the defendant knowingly devised a scheme to defraud. However, Hosseinipour's instruction permitted the satisfaction of this element by a finding that the "defendant knowingly participated in…a scheme to defraud." Hosseinipour, like all IBOs, knowingly joined the MLM, which the jury was instructed to deem a scheme to defraud if it fell within the definition of pyramid scheme. Thus, Hosseinipour was convicted without the jury ever finding that she acted with an intent to defraud.

The Sixth Circuit recognized the problem with the instruction: "Thus—the defendants rightly observe—in the jury's mind, a finding that defendants participated in a pyramid scheme could substitute for a finding that they participated in a fraudulent scheme. And the court's definition of a pyramid scheme, as noted above, did not require the jury expressly to find that it was fraudulent. Pet. App. 11a.

But the majority incorrectly found that the instructions were redundant enough to require a finding of intent to defraud in other portions of the instructions.

No other circuit has endorsed a "shortcut" for the Government to meet its burden in federal fraud cases. The Court should address this issue because of this conflict between the Sixth Circuit and other circuits also to correct the conflict with *Percoco* caused by the use of a regulatory definition of pyramid scheme that can be changed and supplemented when courts draft jury instructions. This malleable and vague standard offers no way for the millions of participants in MLMs to separate lawful activity from criminal acts.

Additionally, the Government knowingly presented false evidence regarding the gain and loss rates associated with Infinity 2 Global ("i2g). The Government had multiple witnesses falsely testify that almost all i2g participants lost money by excluding more than $20 million in commissions. The Government knew the testimony was false and failed to correct it. The Government's expert witness testified that the loss rate and corresponding sales data were key factors for determining whether i2g was a pyramid scheme, yet the Government failed to correct false testimony regarding both of these factors. The Sixth Circuit upheld the Government's use of false testimony by relying on Hosseinipour's purported opportunity to cross examine the witnesses, but the Sixth Circuit's opinion directly conflicts with *Glossip v. Oklahoma*, 604 U.S. 226 (2025). Based on the fact that the Sixth Circuit failed to follow the Court's opinion, which was released after briefing and oral argument, the Court should vacate the conflicting opinion. These issues in isolation and together merit the Court's review of this case.

OPINIONS BELOW

The published decision of the U.S. Court of Appeals for the Sixth Circuit affirming the petitioner's judgment of conviction is reported at 142 F.4th 367, and the unpublished appendix is available at *United States v. Maike*, No. 22-6114, 2025 WL 1770555, at *1 (6th Cir. June 26, 2025). *See also* Pet.App.1a–68a. The district court opinions are unpublished and available at Pet.App. 70a–101a.

JURISDICTION

The Sixth Circuit issued its opinion and entered judgment on June 26, 2025, and denied rehearing on August 27, 2025. Justice Gorsuch extended the time to file this petition until December 24, 2025, and the Court was closed from December 24, 2025 through December 28, 2025. The Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

18 U.S.C. § 1341 provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing

> whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both…

18 U.S.C. § 1349 provides that "[a]ny person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

STATEMENT

This trial focused on the claim that the Emperor program of an MLM was a pyramid scheme. Emperor participants were capped at 5,000, each of whom paid $5,000 for the usage and resale rights of a package of present and future products, for the right to earn commissions from the same of products and from sponsoring others who joined i2g, and for the right to share in profits i2g earned from an overseas, online casino. By capping Emperors at 5,000, there was no promise that Emperors could be endlessly recruited, and the Government conceded that there was no risk of saturation. Emperors who referred users to the casino received commissions based on casino chip transactions. Ultimately, i2g had more than $1 million in casino transactions, and those transactions

led to commissions being paid to the individuals who drove traffic to the casino. Using an MLM structure to drive traffic was innovative but also consistent with other online casinos that used "generous 'refer a friend' programs" to recruit new participants. Hing, N., Cherney, L., Blaszczynski, A., Gainsbury, S. M., & Lubman, D. I., Do advertising and promotions for online gambling increase gambling consumption? An exploratory study, International Gambling Studies (2014).

Although i2g did not succeed in the long term, its success depended on the casino's success, not endless recruiting. Despite conceding that there was no saturation risk, the Government contended the Emperor program was a pyramid scheme. Pet.App.38a fn.5. In opening, the government made 18 references to "pyramid," and transcripts reference "pyramid" more than 800 times. The focus on the trial was whether the Emperor program was a pyramid scheme.

Hosseinipour was not one of the creators of i2g or the Emperor program. She did not devise the plan and, as an IBO, was a relatively "low-level" participant. Anzalone, Hosseinipour's business partner and the Government's star witness, testified that Hosseinipour would not lie, is a good person, would not deceive, and did not believe she was doing anything improper.

Hosseinipour, like thousands of IBOs, joined i2g after it started. She purchased Emperor packages like all the alleged victim witnesses. But knowingly joining the Emperor program does not mean she (or other IBOs) acted with the intent to defraud. The Government conceded that Hosseinipour was not in the business from the beginning. Regardless, she was tried alongside two of the alleged owners.

Hosseinipour insisted the plan be attorney-approved and compliant. Anzalone informed Hosseinipour that attorney D. Jack Smith gave the go ahead on this project. Based on these and other assurances, Hosseinipour and her husband became partners with the Anzalones as IBOs. The evidence at trial did not show that she joined i2g with an intent to defraud. But Sixth Circuit continues to interpret *Gold Unlimited* in a manner that does not inform MLM participants of the line between legal and illegal MLMs and that permits convictions without a jury finding that a defendant acted with the intent to defraud.

In its effort to prove a pyramid scheme, the Government introduced evidence to show the IBOs who lost money. *See* Pet.App.59a. Government witness Jerry Reynolds created and maintained i2g's system that tracked financial data. The Government introduced spreadsheets Reynolds created based instructions from the Government in a subpoena issued after the Government met with him. Based on an affidavit and spreadsheets Reynolds produced post-trial, the Government directed Reynolds to filter out and remove thousands of commission transactions that resulted in more than $20 million in earnings. The Government introduced a spreadsheet comparing payments made by IBOS to i2g with their earnings from i2g to supposedly show how many IBOs made money and lost money. But, it did not include more than $20 million in commissions earned by i2g participants as tracked by Reynolds' system. The Government told Reynolds to remove this information, and the Government then had Reynolds and Keep falsely testify regarding the data. Keep falsely testified that 96% of participants lost money, and the Sixth Circuit relied on this false testimony

three times when it cited the to the incorrect 96% loss rate. Pet.App. 7a, 10a, &59a.

REASONS FOR GRANTING THE PETITION

A. The Court must correct the Sixth Circuit's incorrect approval of a shortcut to the Government's burden of proof in fraud conspiracies.

The instructions permitted Hosseinipour's conspiracy convictions without a finding of specific intent to defraud. As the Concurrence noted, "a jury's finding that there was a "pyramid scheme" becomes a shortcut for the government's proof of mail fraud. Once the jury finds a pyramid, the only thing left for the government to prove is that the defendants used the mails to perpetuate their scheme." Pet.App.23a (Nalbandian, J., concurring). Stated otherwise, "[p]yramid is a surrogate for everything except use of the mails." Pet.App.26a fn2 (Nalbandian, J., concurring).

The Sixth Circuit noted that the fraudulent nature of a pyramid scheme is "implicit—any such scheme is doomed to fail—rather than explicit." Pet.App.11a. "Thus—the defendants rightly observe—in the jury's mind, a finding that defendants participated in a pyramid scheme could substitute for a finding that they participated in a fraudulent scheme." *Id.* The Sixth Circuit also agreed that pyramid scheme definition did not require the jury to expressly find it fraudulent. *Id.* But the Sixth Circuit incorrectly held that the instructions elsewhere required a finding of fraudulent intent.

Unlike in *Gold Unlimited*, Hosseinipour was not an owner, did not devise the MLM scheme, and was not charged with substantive mail fraud. Instead, she was charged solely with conspiracy. The conspiracy instruction (Instruction 3) had 2 elements: that two or

more defendants agreed with another person to commit mail fraud as defined in Instruction 8 and that Hosseinipour knowingly and voluntarily joined the conspiracy. Pet.App.101a-102a. The district court denied the defendants' request to include a third element: that defendants acted with the intent to defraud. Pet.App.112a-114a. Here, like all IBOs, Hosseinipour knowingly joined i2g; therefore, the critical questions were whether she agreed to commit mail fraud as defined by Instruction 8 and whether she acted with an intent to defraud.

The substantive mail fraud instruction (Instruction 8) began by correctly articulating the elements of mail fraud. It then defined "scheme to defraud" as a "plan…by which someone intends to deprive another of money…by means of false or fraudulent pretenses." Pet.App.108a-109a. Then the instruction defined pyramid scheme by adding to the evolving administrative guidance from the FTC and directed the jury that a pyramid scheme was a scheme to defraud. *Id.*

The Sixth Circuit held the instructions were duplicative enough to salvage the pyramid scheme definition's missing intent element: "Instruction 8 directed the jury to make a finding as to every component of a scheme to defraud." Pet.App.12a. However, because this was a conspiracy charge, Instruction 3 did not direct the jury to find every component under Instruction 8—the charge at issue required only an agreement to commit mail fraud. *Id.* at 102a-103a.

Further, Instruction 8 directed the jury that a pyramid scheme was a "scheme to defraud," which it defined to include intent. *Id.* at 108a-109a. Reading Instruction 8 as written, a finding of a pyramid scheme required a finding of a "scheme to defraud," which was deemed to include intent. Thus, the court

instructed the jury to infer intent once it made a finding that i2g was a pyramid scheme. This inference is constitutionally impermissible because it directs the jury to make a finding of intent—an essential element of mail fraud conspiracy. *Sandstrom v. Montana*, 442 U.S. 510, 523 (1979). The court gave the jury a shortcut to convicting all defendants by instructing the jury that the finding that i2g was a pyramid scheme substituted for finding intent to defraud for each defendant. This violated Supreme Court precedent. *See United States v. U.S. Gypsum Co.*, 438 U.S. 422 (1978) ("[U]ltimately the decision on the issue of intent must be left to the trier of fact alone").

Permitting the substitution of finding the existence of a pyramid scheme for finding the existence of other elements of conspiracy to commit mail fraud is unconstitutional. *Gold Unlimited* first grappled with how a pyramid scheme prosecution fits with mail fraud on plain error review. There, the defendant devised the scheme, and the Sixth Circuit held it was not plain error to instruct that a pyramid scheme was a scheme to defraud because the jury also had to find that the defendant "knowingly devised" the scheme. *Gold Unlimited*, 177 F.3d at 485. Here, Instruction 8 only required "that the defendant knowingly participated in or devised" the pyramid scheme. All of the IBOs, including Hosseinipour, knowingly participated in i2g. Thus, this element did not cure the error for Hosseinipour.

In the *Gold Unlimited* concurrence, Judge Moore found that instructing that a pyramid scheme necessarily constituted a scheme to defraud was error. *Gold Unlimited*, 177 F.3d at 490. Judge Moore found the error harmless because the jury was required to separately find the defendant acted with the intent to defraud. Hosseinpour did not enjoy this safeguard

because the conspiracy instruction contained no such instruction, and Instruction 8 directed that "scheme to defraud" included intent.

Hosseinipour was substantially prejudiced by this error. The Government took advantage of the "shortcut" provided by the instructions by arguing that the Government did not need to prove that Hosseinipour knew the official definition of pyramid scheme for the jury to convict. The Government used Anzalone who pleaded guilty as an analogy: "[Did Anzalone know] what is a pyramid scheme[?]… No. Can he still commit the crime? Absolutely."

Under the instructions, the jury was permitted to convict Hosseinipour without the necessary elements for both conspiracies. The jury instructions prejudiced Hosseinipour by eliminating a primary defense – that she never intended to defraud anyone by participating in i2g. As the Concurrence here explained, *Gold Unlimited* holds that "[s]ucceeding on [a pyramid scheme] theory was a shortcut of sorts in its burden of proof." Pet.App.18a. This shortcut is especially dangerous for people like Hosseinipour who join an existing MLM. Hosseinipour, like thousands of others, joined i2g, without knowing it was a pyramid scheme. Because the Government claimed that Hosseinipour transitioned between legitimate and unlawful conduct, the need for consideration of her intent was essential.

The Sixth Circuit held that the government only had to prove that Hosseinipour "agreed (with at least one other person) to commit mail fraud, and did so knowingly and voluntarily." Pet.App.8a. But that fails to account for the fact that "[t]o convict on mail fraud conspiracy, the jury must find that a defendant acted with specific intent to defraud." *United States v. Ham*, 998 F.2d 1247, 1254 (4th Cir. 1993); *see also United States v. Feola,* 420 U.S. 671, 686 (1975) ("[I]n order to

sustain a judgment of conviction on a charge of conspiracy to violate a federal statute, the Government must prove at least the degree of criminal intent necessary for the substantive offense itself."). By allowing a jury to substitute a finding of a pyramid scheme with the individual inquiry required to find that a specific defendant acted with an intent to defraud, courts impermissibly permit the Government unfettered discretion to charge and convict any of the 25 million Americans who participate in MLMs with various federal fraud conspiracy counts.

B. Tension among circuit opinions exists regarding the necessary elements for conspiracy to commit mail fraud and securities fraud.

The Constitution requires "criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *United States v. Gaudin*, 515 U.S. 506, 510 (1995). A "'[c]onspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself.'" *Ingram v. United States*, 360 U.S. 672, 678 (1959) (quoting Developments in the Law—Criminal Conspiracy, 72 Harv. L. Rev. 920, 939 (1959)). Thus, intent to defraud is required for conspiracy to commit mail fraud (and securities fraud).

However, not all Court of Appeals decisions treat intent to defraud as a necessary element of a fraud conspiracy. For example, "[t]o prove a conspiracy to commit wire fraud under 18 U.S.C. § 1349, the evidence must establish '(1) that a conspiracy [to commit wire fraud] existed; (2) that the defendant knew of it; and (3) that the defendant, with knowledge, voluntarily joined it.'" *United States v.*

Watkins, 42 F.4th 1278, 1285 (11th Cir. 2022) (quoting *United States v. Vernon*, 723 F.3d 1234, 1273 (11th Cir. 2013)); *see also United States v. Gebbie*, 294 F.3d 540, 544 (3d Cir. 2002); *United States v. Hatch*, 926 F.2d 387, 393 (5th Cir. 1991); *United States v. Thompson*, 814 F.2d 1472, 1477 (10th Cir. 1987); *United States v. Shelton*, 669 F.2d 446, 451 (7th Cir. 1982). These cases do not explicitly require a finding of intent to defraud.

The current Sixth Circuit pattern jury instructions require the Government to prove four elements (although the fourth element only applies to conspiracies under 18 USC § 371):

> (A) First, that two or more persons conspired, or agreed, to commit the crime of [insert substantive crime].
> (B) Second, that the defendant knew of the conspiracy and its [objects] [aims] [goals].
> (C) Third, that the defendant joined the conspiracy with the intent that at least one of conspirators engage in conduct that satisfies the elements of [insert substantive crime].
> (D) And fourth, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Sixth Circuit Pattern Jury Instructions, § 3.01(A) (last updated May 1, 2025). This reflects an additional element that was not previously included. The previous version of the pattern jury instructions only required three elements:

> (A) First, that two or more persons conspired, or agreed, to commit the crime of _____.

> (B) Second, that the defendant knowingly and voluntarily joined the conspiracy.
> (C) And third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Sixth Circuit Pattern Jury Instructions, § 3.01(A) (last updated March 21, 2021). The instructions in this case were based on the previous jury instructions, which did not include intent to defraud or an express requirement that the defendant willfully intend to advance the aims of the conspiracy.

The Eleventh Circuit defines a conspiracy to commit mail fraud as having two elements: "(1) two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit mail fraud, as charged in the indictment; and (2) the Defendant knew the unlawful purpose of the plan and willfully joined in it." Eleventh Circuit Pattern Jury Instructions, O13.1 (last updated September 5, 2025).

The Ninth Circuit's pattern instructions require three elements:

> First, beginning on or about [*date*], and ending on or about [*date*], there was an agreement between two or more persons to commit at least one crime as charged in the indictment; [and]
> Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it[.] [; and]
> [Third, one of the members of the conspiracy performed at least one overt act [on or after [*date*]] for the purpose of carrying out the conspiracy.]

Ninth Circuit's Manual of Model Jury Instructions, § 11.1 (last updated June 2024). The Seventh Circuit

offers two conspiracy instruction. The instruction when an overt act is not required is as follows: "1. The conspiracy as charged in [Count —] existed; and 2. The defendant knowingly became a member of the conspiracy with an intent to advance the conspiracy." The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit, § 5.08(B) (2023).

These conspiracy instructions are general in nature and reflect divergences in how conspiracies are viewed. These differing approaches lead to further conflicts with how fraud conspiracy instructions are drafted. While some circuits require each defendant to knowingly or willfully advance the aim of a conspiracy, others do not. This split in approach leads to convictions that lack the necessary elements to support certain convictions. Proving conspiracy generally does not require proof of the substantive offense. *Ocasio v. United States*, 578 U.S. 282, 288 (2016). But that general statement does not alleviate the Government's burden to prove that the defendant acted with the intent necessary for the substantive offense (i.e. intent to defraud as it relates to Ms. Hosseinipour's convictions).

Thus, intent to defraud is essential to proving conspiracy to commit mail fraud (and securities fraud). *United States v. Bellomo*, 176 F.3d 580, 591 (2d Cir. 1999); *United States v. Garza*, 429 F.3d 165, 168–69 (5th Cir. 2005); *Phillips v. United States*, 356 F.2d 297, 303 (9th Cir. 1965). "'[I]ntent to defraud requires a wilful act by the defendant with the specific intent to deceive or cheat, usually for the purpose of getting financial gain for one's self or causing financial loss to another.'" *United States v. Sheneman*, 682 F.3d 623, 629 (7th Cir. 2012) (quoting *United States v. Howard*, 619 F.3d 723, 727 (7th Cir. 2010)). Because "'the term scheme to defraud connotes some degree of planning by the perpetrator, it is essential that the evidence

show the defendant entertained an intent to defraud.'" *United States v. Pintar*, 630 F.2d 1270, 1280 (8th Cir. 1980) (quoting *United States v. Brown*, 540 F.2d 364, 374 (8th Cir. 1976)).

This is especially true in cases where the general activity that serves as the basis for the crime is not illegal or fraudulent. For example, in an illegal drug conspiracy case, intent generally follows knowledge of heroin trafficking. *See, e.g. United States v. Falcone*, 311 U.S. 205, 210–11 (1940) ("[O]ne who without more furnishes supplies to an illicit distiller is not guilty of conspiracy even though his sale may have furthered the object of a conspiracy to which the distiller was a party but of which the supplier had no knowledge."); *United States v. Superior Growers Supply, Inc.*, 982 F.2d 173, 180 (6th Cir. 1992) (more is required where the nature of product does not put seller on notice as to its illegal use).

Here, the activity underlying the charges was participation in an MLM, which is legal and not fraudulent. What makes the conduct illegal depends on information that is kept from distributors. The Government did not offer proof that Hosseinipour had special knowledge compared to other distributors. Thus, the jury was permitted to convict Hosseinipour because the instructions did not require the jury to find that she actually had an intent to defraud.

The Court should review this case to clarify that in cases involving fraud conspiracies, the instructions must require the jury to find that each defendant acted with an intent to defraud to be convicted.

C. The evolving and abstruse definition of pyramid scheme captures nonfraudulent MLMs and permits arbitrary criminal enforcement against millions of lawful MLM participants.

Here, the Government used an ever-morphing definition of pyramid scheme that does not clearly delineate between legal and illegal conduct to convict Hosseinipour. This decision targets the direct selling industry and MLMs, which presents a national issue of great importance. In the United States, there are $34 billion in annual direct sales. 2024 Global Annual Direct Selling Statistical Data Report, World Federation of Direct Selling Associations, p. 13 (November 2025). Approximately, eight percent of U.S. adults will participate in an MLM at some time. Claudia Groß, Claudia & William Keep, The Law and Consumer Harm in Multi-Level Marketing: a Review. Journal of Marketing Management (2025). Both the level of sales and the percentage of Americans who participate in MLMs show the importance of correcting vague jury instructions that permit the Government to arbitrarily target distributors in MLMs. Every MLM participant now faces the same threat of prosecution and conviction that Hosseinipour experienced.

As the Second Circuit explained, "[m]ulti-level marketing involves 'a system of distributing products or services in which each participant earns income from sales of a product to his or her downline and also from sales to the public.'" *Doe v. Trump Corp.*, 6 F.4th 400, 404 (2d Cir. 2021) (quoting *F.T.C. v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 531 (S.D.N.Y. 2000)). Sales to downline participants are an inherent part of a legitimate MLM. *Id.* In 1999, the Sixth Circuit held that "[n]o clear line separates illegal pyramid schemes from legitimate multilevel marketing programs." *Gold Unlimited, Inc.*, 177 F.3d at 475; *F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 883 (9th Cir. 2014) ("Not all MLM businesses are illegal pyramid schemes."). Legitimate MLMs "contain some of the elements of a pyramid scheme." *Gold Unlimited*,

177 F.3d at 480. Thus, the mere fact that an MLM has characteristics of a pyramid scheme does not make it fraudulent, yet the definition used by the Government fails to account for this accepted fact.

Although the Sixth Circuit has recognized that the definition of pyramid scheme does not clearly delineate between illegal pyramid schemes and legitimate MLMs and that the definition is abstruse, criminal fraud prosecutions are still permitted to substitute the abstruse definition for a scheme to defraud and an intent to defraud. As the Government argued, "[p]yramid is a surrogate for everything except use of the mails." Pet.App.26a fn2 (Nalbandian, J., concurring).

The failure to separate lawful and illegal behavior gives prosecutors too much discretion and makes the criminalization of legitimate MLMs subject to abuse. The Government has unbridled discretion in charging and prosecuting participants in MLMs regardless of their involvement.

Moreover, the Sixth Circuit's opinion is inconsistent with the reasoning in the Fifth Circuit's en banc *Torres* opinion. Although *Torres* involves class certification, it is a seminal opinion for how courts conceptualize and deal with MLMs that could be pyramid schemes. "Whether a multi-level marketing program is fraudulent or legitimate depends on its internal structure. And such information is not readily apparent or interpreted." *Torres v. S.G.E. Mgmt., L.L.C.*, 838 F.3d 629, 643 (5th Cir. 2016). This suggests that a participant who joins later cannot know whether the scheme is fraudulent as such information is not readily interpreted. Moreover, "it is reasonable to infer that individuals do not knowingly join pyramid schemes." *Id.* "If a scheme's illegality were apparent, the scheme would not work. After all, the whole point of a pyramid scheme is to dupe

unwitting investors into joining." *Id. Torres* holds that a distributor, like Hosseinipour, would not knowingly join a pyramid scheme. This underscores need to determine whether she acted with an intent to defraud, which was not required in this case. It also supports that her conviction based on an abstruse instruction should not stand.

The Sixth Circuit acknowledged that the definition of pyramid scheme used in the instruction was "abstruse." Pet.App.13a. An abstruse instruction fails to properly notify the jury regarding what must be proven. Like the law in effect during the relevant period, the instructions did not draw reasonably clear lines between what is forbidden and what is not. *Gold Unlimited,* 177 F.3d at 475. If no clear line delineates between legal and illegal conduct, a defendant cannot be charged with a crime based on such conduct. *Smith v. Goguen*, 415 U.S. 566, 574 (1974). In *Percoco*, this Court held that an honest services fraud conviction cannot stand based on a vague jury instruction that lacked the definiteness to allow jurors to understand what is prohibited. *Percoco v. United States*, 598 U.S. 319, 331 (2023). A "criminal law is supposed to provide 'ordinary people fair notice of the conduct it punishes.'" *Percoco*, 598 U.S. at 336 (Kavanaugh, J., concurring) (quoting *Johnson v. United States*, 576 U.S. 591, 595 (2015)).

The court's instruction did not give guidance on how to differentiate between legitimate MLMs and pyramid schemes or even the unclear line that divides them. Thus, ordinary people would be unable to "understand what conduct is prohibited," and the instruction lacked the definiteness necessary to not "encourage arbitrary and discriminatory enforcement." *Percoco*, 598 U.S. at 331 (quoting *McDonnell v. United States*, 579 U.S. 550, 576 (2016)). This is especially true in the context of Hosseinipour

and future distributors. The definition of pyramid scheme fails to notify distributors of what is a legitimate MLM and an illegal pyramid scheme. Indeed, illegal pyramid schemes are set up to deceive distributors. *Torres*, 838 F.3d at 643. Almost all distributors joined i2g and made sales to downline participants or attempted to make sales to downline participants. Their actions advanced the alleged fraud. But that does not mean that they knew their actions were fraudulent. Moreover, the Government argued that Hosseinipour could be convicted without even knowing what a pyramid scheme is. Thus, the Government used a vague and abstruse instruction to convict Hosseinipour without putting her or the jury on notice of what was illegal.

As it relates to the pyramid scheme definition used by the trial court, the additional sentence the trial court here added to the *Gold Unlimited* definition does not clarify the definition; instead, it makes the definition vaguer and more expansive. The trial court added to the definition of pyramid scheme that "[t]he structure of a pyramid scheme suggests that the focus is on promoting the sale of interests in the venture rather than the sale of products, where participants earn the right to profits by recruiting other participants, who themselves are interested in recruitment fees rather than products." Pet.App.108a. However, what a company's structure suggests cannot support the finding of criminal liability. "Structure suggests" does not tell a jury what it needs to find; instead, it instructs the jury to infer guilt because of a company's pyramidal structure. Legitimate MLMs have "structures" that "contain some elements of a pyramid scheme." *Gold Unlimited,* 177 F.3d at 480; *see Whole Living, Inc. v. Tolman,* 344 F. Supp. 2d 739, 745 (D. Utah 2004); *State ex rel. Stratton v. Sinks,* 741 P.2d 435, 440 (N.M Ct. App. 1987).

The additional sentence of the instruction arose from a suggestion in *Gold Unlimited* that future courts should "supplement" the instruction to "reflect the difference between legitimate multi-level marketing and illegal pyramids." However, it had the opposite effect. It blurred the distinction between legitimate MLMs and pyramid schemes, and it resulted in an abstruse definition.

All legitimate MLM companies grow by promoting interest in their ventures and rewarding distributors for growing their teams or recruiting others. Moreover, all MLM companies are structured in a pyramid shape or some variation of this structure as the teams expand. This is the essential nature of a "multi-level" enterprise. The difference between legitimate MLMs and illegal pyramid schemes was not adequately conveyed in the instructions as to put the jury on notice as to what makes a pyramid scheme fraudulent. As such, the Court should take review of this case to ensure that further pyramid scheme prosecutions do not rely on abstruse instructions to obtain convictions.

D. The Sixth Circuit violated *Glossip*, and the opinion conflicts with controlling precedent.

After briefing and oral argument, the Supreme Court decided *Glossip*, which addressed the proper standard to apply to a *Napue* argument. The Court centered the materiality analysis on the effect of the Government correcting the false testimony. *Glossip*, 604 U.S. at 248. Additionally, this Court held that the ability to cross examine does not cure a *Napue* violation. "The Due Process Clause imposes 'the responsibility and duty to correct' false testimony on [the prosecution] not on defense counsel." *Glossip*, 145 S. Ct. at 630 (quoting *Napue v. Illinois*, 360 U.S. 264,

269-70 (1959)). The Sixth Circuit failed to apply controlling precedent, which questions the import of *Glossip*. *Glossip* requires courts to review prejudice from the standpoint of the impact of the Government having to correct false testimony.

Hosseinipour showed that the Government knowingly submitted and failed to correct false evidence. Keep, the Government's pyramid scheme expert, McClelland, the Government's lead investigator, and Jerry Reynolds, another primary witness for the Government, all testified falsely. After meeting with Reynolds the day before and sending a specific subpoena for a specific document, the Government was able to have Reynolds exclude $20 million in commissions. The omission of this data significantly skewed i2g's loss rate, and the Government presented false and manipulated data.

Reynolds and Keep together testified regarding the IBOs who earned more than they paid to i2g and the IBOs who paid more to i2g than they earned. Keep testified that 96% of the IBOS lost money as shown in Reynolds' database, and this statistic was heavily relied on by the Government at trial. McClelland echoed the substantial losses that i2g participants allegedly experienced.

After trial, however, Reynolds signed an affidavit that described the data from his system that was omitted based on the Government's instructions. Keep's testimony was that only 579 Emperors earned commissions. Reynolds, however, explained he had the ability to run a report showing all commissions earned as tracked by his system, and he specifically ran a report for commissions earned by all Emperors. That report showed that more than 3,300 Emperors received money from i2g. Because of the Government's directive, Keep failed to account for approximately 2,700 Emperors who earned money from i2g. In other

words, the Government excluded 80% of the Emperors who earned money with i2g.

For all distributors, the Government excluded over $20 million in commissions. Keep's calculations and opinions excluded these commissions despite the fact that they were tracked by Reynolds' system. Thus, the combined testimony of Reynolds and Keep grossly altered the real financial results of i2g IBOs, and they presented false testimony. How the IBOs fared in i2g was critical to Keep's conclusion that i2g was a pyramid scheme. This was the Government's theory of the case for both fraud conspiracy charges. Being able to completely refute that i2g was a pyramid scheme would have materially altered the verdict.

In its appellate briefing, the Government argued 101i's deficiencies simply reflected the data in Reynolds' system and that the jury was so informed. The Sixth Circuit indicated that Reynolds acknowledged limitations in his data. Pet.App.59a.

But as Reynolds' affidavit makes clear, Reynolds' system tracked substantially more commissions than what Keep and Reynolds testified to. The jury never heard this information. Rather, Keep falsely testify that 101i reflected to the difference between IBO payments in and payments out. Keep testified that he sorted the 101i by gains and losses and determined that 96% of the i2g participants lost money.

The 96% loss figure was critical to the Government's case. The Sixth Circuit cited the loss rate twice. The Government relied on it in its opening and hammered it in closing. The district court referred to the data as "gold."

Based on the *Napue* error, under *Glossip*, the Government must "establish harmlessness beyond a reasonable doubt." But, from a direct appeal, the burden to show immateriality is on the Government. The Sixth Circuit incorrectly placed the burden to

show materiality on Hosseinipour. *Compare* Pet.App.59a ("[D]efendant must demonstrate that evidence was both false and material and that the government knew of its falsity.") *with Glossip*, 604 U.S. at 246 ("'[B]eneficiary of [the] constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.") (quotation omitted).

The Sixth Circuit failed to apply this standard and rejected the argument for two reasons. First, the Sixth Circuit noted that Reynolds testified that every payment that i2g made to participants may not be included in the data. Reynolds' actual testimony was that the evidence showed all participants' gain and loss data that was tracked by his system. This was false; the evidence excluded over $20 million of commissions tracked by his system.

Second, the Sixth Circuit held that no due-process violation occurred because "defendants had ample opportunity to cross-examine both Keep and Reynolds about anything that the spreadsheets contained." Pet.App.59a. But a *Napue* violation cannot be cured by cross-examination. *Glossip*, 145 S. Ct. at 631n.10. Like in *Glossip*, the defense had no idea Reynolds had excluded information from his system. Moreover, the defense asked Reynolds about the significant information he had about i2g and whether he had presented all the significant information he had about i2g, and he said to his knowledge all the information was presented. The prosecution had the duty to correct the false evidence not the defense.

This case presents an opinion from the Sixth Circuit in direct contravention of the Court's recent precedent of *Glossip* and involves the Government's manipulation of data to artificially increase the amount of i2g participants who lost money with i2g in order to bolster its claim that i2g was a pyramid

scheme. By presenting false testimony that understated commissions by $20 million, the Government through multiple witnesses gave the false impression that almost all i2g participants lost money. Accepting review and vacating the Sixth Circuit's opinion is necessary to ensure that the lower courts follow *Glossip* while also maintaining the integrity of the criminal justice system.

CONCLUSION

The Court should grant this petition.

Respectfully submitted,

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