

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:25-cr-00057

JAMES LOMAX

DEFENDANT'S SENTENCING MEMORANDUM

Pursuant to this Court's April 23, 2025 Order, Defendant James Lomax submits this Sentencing Memorandum.

Mr. Lomax is a 33-year-old resident of Hurricane, West Virginia, where he lives with his parents. He has significant health problems that prevent him from working, living alone, and maintaining any semblance of a normal life. In 2020, Mr. Lomax was a salesman at Charleston Suzuki. The COVID-19 pandemic caused a significant downturn in all retail, including car dealerships. Mr. Lomax was laid off, and like many of his colleagues he applied for unemployment compensation through the state, which was subsidized by the federal CARES act to keep workers like Mr. Lomax afloat during this downturn. As stipulated, Mr. Lomax returned to work at Charleston Suzuki but continued to collect unemployment benefits for three months as if he was still unemployed. This was wrong. It is important to note, however, that Mr. Lomax's pay at Charleston Suzuki was largely commission based, and the car business did not turn around during the months of May, June, and July 2020.

Mr. Lomax collected \$13,000 in unemployment benefits to which he was not entitled, but he never got rich. He paid his bills, supported his child, and used this income to cover basic needs such as food and transportation. In light of the circumstances of the offense, Mr. Lomax's health,

and the rest of the 18 U.S.C. § 3553(a) factors, Mr. Lomax urges this Court to sentence him to a term of probation.

A. The nature and circumstances of the offense and the history and characteristics of the defendant weigh in favor of probation.

The COVID-19 pandemic gave rise to lucrative fraud schemes all over the country. Bad actors created fictitious employers and employees using stolen PII to collect over \$30 million,¹ underreported millions of dollars of income to obtain federal COVID-relief,² and allegedly falsified tax returns claiming more than \$600 million in COVID-related credits.³ Mr. Lomax's conduct was not only small in terms of its price tag, but also in terms of its criminal effort. There was no conspiracy, there was no creation of fictitious records, and there was no elaborate plan to trick the government and evade detection. Rather, Mr. Lomax was properly receiving unemployment benefits, and for an additional three months continued to receive them. His only affirmative action driving this offense was wrongfully checking a box agreeing that he was unemployed when he was prompted. While wrong, these actions were not motivated by greed but by the same fear and uncertainty that many felt during those early months of the pandemic, and a need to provide for his family. His wrongful conduct was also not rewarded with a lavish lifestyle, but by the continued ability to afford basic needs.

Mr. Lomax's health should also be a significant, and perhaps the most significant, consideration in his sentence. Over the last year, Mr. Lomax has been diagnosed with diabetes, blood clots, anemia, and congestive heart failure. Over the course of this prosecution, Mr. Lomax

¹ <https://www.justice.gov/opa/pr/three-sentenced-30-million-covid-19-unemployment-fraud>

² <https://www.justice.gov/opa/pr/california-restaurant-owner-sentenced-covid-19-and-tax-fraud-schemes>

³ <https://www.justice.gov/opa/pr/seven-charged-nations-largest-covid-19-tax-credit-scheme>

has been hospitalized at least monthly and recently learned that he needs a heart transplant.⁴ It currently takes the daily efforts of his family, multiple medical institutions, and a small pharmacy to keep him alive. Mr. Lomax represents to this Court that he has been unable to get on the heart transplant list while this case is pending due to concerns about a potential prison sentence. Even a short prison sentence would be detrimental to his health and would require more government resources than are available.

B. The sentencing purposes are served through probation.

A sentence of probation would reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. Comparatively, Mr. Lomax's offense is not as serious as most COVID-19 era federal fraud, and the fact that he is being prosecuted at all will provide deterrence for anyone in his position—a non-criminal who is presented with the opportunity to make a misstatement in order to continue receiving minor benefits. He is far from a danger to the community nor is he in need of rehabilitation, and a sentence of probation is the only way to ensure he receives the medical care he needs.

C. Probation is available.

Due to two criminal history points relating to an offense from age 18, Mr. Lomax has a criminal history category of two. Combined with his offense level (which includes a 2-point reduction for acceptance of responsibility), his guidelines are 1-7 months and in Zone B. Assuming the government moves for the third point for acceptance, his guidelines move to 0-6 months and into Zone A. Either way, probation is a sentence available to this Court under § 5B1.1(a) of the United States Sentencing Guidelines.

⁴ See Exhibit 1, West Virginia Department of Human Services Disability/Incapacity Medical Assessment (confirming diagnosis of “Advanced Heart Failure” and noting limitations such as “can’t lift anything” and lacks “capacity to walk more than a few feet”; further noting “poor” prognosis with “life expectancy < 1 year”).

D. A sentence of probation avoids sentencing disparities.

On December 19, 2024, Mr. Lomax's father, Gary Lomax, was sentenced to five years of probation for unlawfully collecting around \$9,000 in unemployment benefits and \$20,000 in PPP Loans. *United States v. Lomax*, 2:24-cr-00114 (ECF No. 15, 29). Gary Lomax's offense was similar to Mr. Lomax's, and of higher value. His sentence reflects the district's preference to reserve prison sentences to defendants with greater culpability, and who present a danger to the community or a risk of committing other crimes. A sentence of probation for Mr. Lomax would comport with this district's practices and avoid sentencing disparities.

Respectfully submitted,

JAMES LOMAX

/s/ Gabriele Wohl

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CERTIFICATE OF SERVICE

I, Gabriele Wohl, hereby certify that on the **24th day of July, 2025**, I filed the foregoing ***Sentencing Memorandum*** via the Court's CM/ECF system, which will send notification of such filing to counsel of record as follows:

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