

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

JUDY HAISTEN

DAVID HAISTEN

CRIMINAL ACTION  
NO. 16-00461-1, 2

**PAPPERT, J.**

**April 7, 2020**

**MEMORANDUM**

Citing concerns over the COVID-19 pandemic in the prison setting, Judy and David Haisten ask the Court to release them from jail and allow them to serve the remainder of their sentences confined to their homes. The Haistens have not, however, exhausted their administrative remedies. Even had they done so, the extraordinary and compelling reasons for which Congress has authorized courts to release inmates are not present here. The Court denies the Haistens' Motion accordingly.

I

A jury convicted Judy and David Haisten of conspiracy, distributing an unregistered pesticide, distributing a misbranded pesticide, delivering misbranded animal drugs and trafficking in counterfeit goods. (Jury Verdict Form, ECF No. 63.) The Third Circuit Court of Appeals later affirmed their convictions. *See United States v. Haisten*, 790 F. App'x 374 (3d Cir. 2019) (unpublished).

In May of 2018, the Court sentenced Judy Haisten to sixty months' imprisonment and David Haisten to seventy-eight months' imprisonment. (Min. Entries, ECF Nos. 90 & 91.) When sentenced, Judy Haisten was fifty-one years old, (Gov't Sentencing Mem. 7, ECF No. 83), and David Haisten fifty-two, (David Haisten

Sentencing Mem. 6, ECF No. 84). The Haistens' prison terms began in July of 2018. (Orders to Surrender, ECF Nos. 88 & 89). Assuming good behavior, Judy Haisten will be released in late October of 2022; David Haisten is set for release in late January of 2024. *See* (Gov't Resp. 1, ECF No. 124).

After serving twenty months of their sentences, the Haistens moved for a new trial under Federal Rule of Criminal Procedure 33. *See* (Mots. for New Trial, ECF Nos. 115 & 116). Before the government responded, the Haistens filed this Emergency Motion seeking release on account of the COVID-19 pandemic. *See* (Emergency Mot., ECF No. 121).

## II

Though styled as a motion for bail, the Court interprets it as one for compassionate release under 18 U.S.C. § 3582(c).<sup>1</sup> The relevant provision of that statute allows a district court to modify a prisoner's sentence when "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). But a prisoner may move for this form of compassionate release only after: (1) fully exhausting "all administrative rights to appeal" the Bureau of Prisons's failure to move for such release on his behalf, or (2) thirty days have lapsed since the Bureau received the prisoner's request for release. *Id.* § 3582(c)(1)(A).

<sup>1</sup> Reading the Motion as one seeking bail leads to the same conclusion—the Court lacks power to grant the Motion. Congress authorizes district courts to grant bail to detainees pending trial, 18 U.S.C. § 3142, or pending sentence or appeal, *id.* § 3143. Under Third Circuit precedent, a district court may also grant bail pending resolution of a petition for *habeas corpus* if the petitioner raises "substantial constitutional claims upon which he has a high probability of success" and "extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective." *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992); *see also* Fed. R. App. P. 23. The Haistens offer no authority for the Court to grant them bail pending resolution of their motions for a new trial under Rule 33. Read as a *habeas* petition under 28 U.S.C. § 2255, the Motion still fails because does not raise a claim with a high probability of success.

The Haistens have not asked the Bureau of Prisons to move for compassionate release on their behalf. Until they do so and thirty days lapses or they exhaust all administrative rights following the Bureau's refusal, the Court has no power to grant them compassionate release. *See United States v. Raia*, --- F.3d ----, 2020 WL 1647922, at \*2 (3d Cir. Apr. 2, 2020). In any event, the Haistens do not claim to have any health problems or other susceptibility to COVID-19 that distinguishes them from the general prison population. *Cf. United States v. Rodriguez*, No. 2:03-CR-00271-AB-1, 2020 WL 1627331, at \*7 (E.D. Pa. Apr. 1, 2020) (prisoner with diabetes, liver disease and other ailments); *United States v. Muniz*, No. 4:09-CR-0199-1, 2020 WL 1540325, at \*2 (S.D. Tex. Mar. 30, 2020) (prisoner with end-stage renal failure). Nor have they alleged that the Bureau's Action Plan addressing COVID-19 is inadequate. *See* (Govt' Resp. 1–4). Instead, they ground their Motion on “the extraordinary circumstances of a deadly pandemic” while noting there are no COVID-19 cases at their prisons. (Emergency Mot. 2.) But as the Third Circuit has held, “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison cannot independently justify compassionate release.” *Raia*, at \*2.

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert  
GERALD J. PAPPERT, J.

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**ORDER**

**AND NOW**, this 7th day of April 2020, upon consideration of Judy and David Haisten's Emergency Motion for Bail (ECF No. 121) and the government's Response (ECF No. 123), it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

*/s/ Gerald J. Pappert*  
GERALD J. PAPPERT, J.