

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA :

v. : No. 19-1636

RAPHAEL HUNT-IRVING :

**APPELLEE’S RESPONSE IN OPPOSITION
TO MOTION FOR RELEASE**

Appellant Raphael Hunt-Irving seeks release from custody pending appeal in light of the COVID-19 crisis. The government submits that bail should be denied.

In this criminal case, Hunt-Irving was convicted at trial of conspiracy to possess 500 grams or more of cocaine with the intent to distribute, in violation of 21 U.S.C. § 846 (Count One), attempt to possess 500 grams or more of cocaine with the intent to distribute in violation of 21 U.S.C. § 846 (Count Two), conspiracy to possess cocaine with the intent to distribute, in violation of 21 U.S.C. § 846 (Count Seven); and conspiracy to possess 500 grams or more of cocaine with the intent to distribute, in violation of 21 U.S.C. § 846 (Count Eight). He also pled guilty to a charge of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g).

On March 18, 2019, the district court sentenced Hunt-Irving to 64 months' imprisonment, four years' supervised release, and a \$400 special assessment. Hunt-Irving is serving that sentence at FCI Fort Dix, with a current estimated release date of April 16, 2024.

On direct appeal, the matter is fully briefed, and this Court stated that the matter will be submitted on the briefs on May 18, 2020.

Hunt-Irving now presents a motion in this Court for bail in light of the crisis regarding COVID-19. He is 47 years old, and represents that he suffers from ankylosing spondylitis (inflammatory arthritis), for which he takes Humira, an immunosuppressant. He states that accordingly he is at greater risk of an adverse outcome should he contract COVID-19. He is presently held at FCI Fort Dix, where 27 cases of COVID-19 have been identified among inmates, with no deaths.

The risk that COVID-19 presents is unknown, as so little is known about this pernicious disease at this time, in terms of the infection rate, fatality rate, and why different individuals have such drastically different outcomes. In addition, to our knowledge, there has been no study about the link between an immunosuppressant drug such as Humira and COVID-19 risk. In the meantime, the Bureau of Prisons is engaged in strenuous efforts to reduce the incidence of COVID-19 in its facilities, and to treat those who contract it. In part, BOP has transferred over 1,800 vulnerable inmates to home confinement, and others have sought compassionate release in sentencing courts. BOP has also drastically changed operations at its prisons to limit entry and reduce contact among

inmates to the extent possible. Pertinent information is available on its web site, www.bop.gov.

On April 1, in *United States v. Roeder*, -- F. App'x --, 2020 WL 1545872 (3d Cir. Apr. 1, 2020) (per curiam) (not precedential), addressing a request to delay self-surrender based on the epidemic, a panel of this Court observed: “the existence of a widespread health risk is not, without more, a sufficient reason for every individual subject to a properly imposed federal sentence of imprisonment to avoid or substantially delay reporting for that sentence.” *Id.* at *3. The Court continued: “Similarly, the existence of some health risk to every federal prisoner as the result of this global pandemic does not, without more, provide the sole basis for granting release to each and every prisoner within our Circuit.” *Id.* at *3 n.16. *See also United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (“But the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.”).

Hunt-Irving has not stated grounds to be treated differently. We also observe that there is no statutory authority for bail in this case. Under 18 U.S.C. § 3143(b)(1), the Court may grant bail pending appeal upon a finding by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community, but only if the Court also finds that “the appeal is not for the purpose of delay and raises a substantial question of law

or fact likely to result in—(i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.” That requirement is not met in this case, for all the reasons set forth in the government’s brief on appeal, filed on December 17, 2019. The issues presented on appeal by Hunt-Irving have been fully briefed and are without merit.

The government therefore recommends that the motion for bail be denied.

Respectfully yours,

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CERTIFICATE OF SERVICE

I hereby certify that this pleading has been served on the Filing User identified below through the Electronic Case Filing (ECF) system:

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DATED: April 29, 2020.