

IN THE TWELFTH JUDICIAL CIRCUIT COURT
MANATEE COUNTY, FLORIDA

SHANNON GLAZE and JOHNNY
EDWARD PEEL,

Petitioners,

v.

RICK WELLS, in his official capacity as
Sheriff for Manatee County, Florida, and
STATE OF FLORIDA,

Respondent.

Case No.: 2021 CA _____

Class Representation

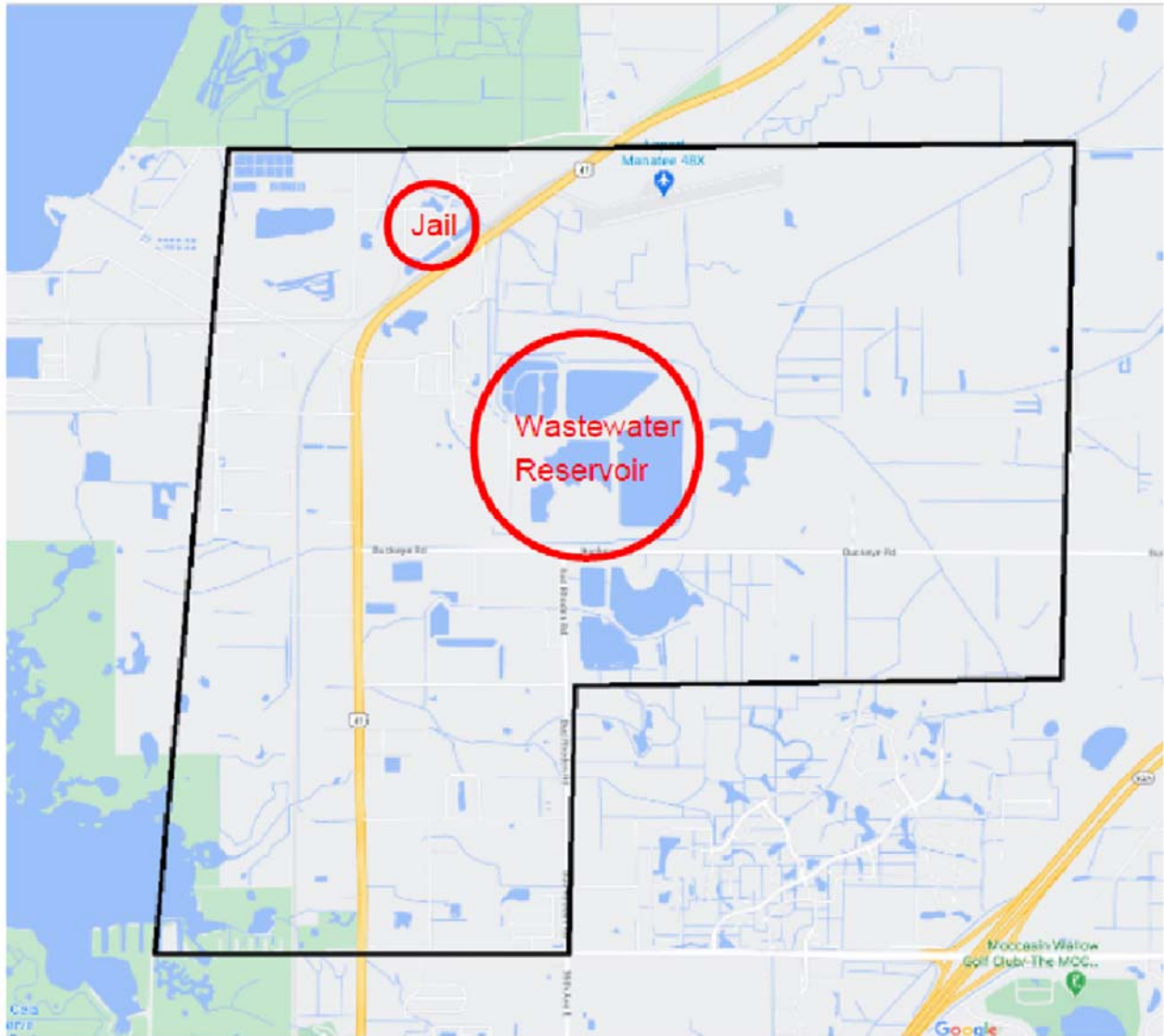
PETITION FOR WRIT OF HABEAS CORPUS
(Piney Point Reservoir)

Pursuant to Florida Const., Art. V, § 5(b), Petitioners Shannon Glaze and Johnny Edward Peel (collectively “Class Representatives”) petition this Court for a writ of habeas corpus to remedy their and each other similarly situated inmate’s detention in the county jail in Manatee County, Florida, in violation of the Fourteenth and Eighth Amendments to the U.S. Constitution. In support, Petitioners state as follows:

INTRODUCTION

1. The Piney Point phosphate wastewater reservoir may rupture at any moment. The surrounding community has been evacuated. The county jail in Manatee County (“Jail”) has not. Instead, jail staff continue to report to duty.

Approximately 700 people remain detained in the Jail. These conditions present an “unreasonable risk of serious” harm that violates the U.S. Constitution. Absent immediate relief from this Court, too many family members, friends, and loved ones at the Jail will be unable to avoid the unreasonable risk of serious harm.



Piney Point Evacuation Zone in Black¹

¹ Available at https://www.mymanatee.org/news_events/what_s_new/piney_point_update#evac

JURISDICTION & VENUE

2. This Court has subject matter jurisdiction over this habeas petition pursuant to the Florida Const., Art. V, § 5(b).

3. Venue is proper because Piney Point, the Petitioners, Respondent Sheriff, and all other putative class members are in custody in this judicial circuit.

PARTIES

4. Petitioner Shannon Glaze (“Glaze”) is detained pretrial in the Jail. Since Feb. 11, 2021, she has been awaiting trial on charges of possession of a controlled substance and trespass on property other than a structure or conveyance. She is unable to afford her monetary bail of \$1,620 and consequently is detained.

5. Petitioner Johnny Edward Peel (“Peel”) is serving a 364-day sentence in the Jail for possession of a controlled substance. He has completed over half his sentence.

6. Respondent Rick Wells (“Wells” or “Sheriff”), in his official capacity as Sheriff of Manatee County, Florida, currently has immediate custody over the Petitioners and all other putative class members.

7. Respondent State of Florida, through the Florida Attorney General and the State Attorney for Florida’s Twelfth Judicial Circuit, has caused Class

Representatives and all other putative class members to be detained in violation of the U.S. Constitution.

8. The Petitioners refer to the Respondents collectively as the “Government.”

FACTS

9. The Piney Point reservoir (“Reservoir”) is about to burst.

10. On Friday, April 2, 2021, a large-scale breach was discovered in the structure of the 77-acre wastewater Reservoir for an old phosphate plant. Officials determined a collapse of the Reservoir was imminent.

11. A potential second breach in the Reservoir was recently discovered.

12. The Reservoir’s water is toxic. It has elevated levels of phosphorus and nitrogen, which makes it acidic. It also sits in stacks of phosphogypsum, a solid radioactive byproduct from manufacturing fertilizer.

13. On April 3, 2021, Governor DeSantis issued a State of Emergency because of the imminent collapse of the Reservoir and the potential for “a real catastrophic flood situation.” The Reservoir held an estimated 390 million gallons of wastewater as of April 3. If the Reservoir were to collapse, it would rush an immense amount of polluted water into the surrounding area within seconds or

minutes. The flood could fill surrounding buildings with up to 20 feet of toxic wastewater. Governor DeSantis and Noah Valenstein, the secretary of the Florida Department of Environmental Protection, said flooding is the biggest danger to the public.

14. Manatee County officials stated their number one concern was public safety, as well as the safety of the workers and the responders in the Piney Point area. Manatee County Commissioner Carol Whitmore stated the Commission is “gravely concerned” about the leak.

15. A natural gas plant, which provides energy to millions in the area, is also in the flood zone, causing additional concerns to the already dire situation.

16. On April 3, 2021, Manatee County issued a mandatory evacuation order. More than 300 homes and multiple businesses in Piney Point have been evacuated as a result. More than 100 residents in the evacuation zone were placed in hotels. The mandatory evacuation area in Piney Point encompasses the Manatee County Jail.

17. The Florida Department of Environmental Protection issued an Emergency Final Order recognizing “the imminent or immediate danger to the

public health, safety, and welfare of the citizens of the State of Florida” and the potential for “loss of life, personal injury, or severe property damage.”²

18. The Florida Highway Patrol closed U.S. 41. If the Reservoir fails, emergency access to the Jail by EMS and the fire department will be significantly restricted, if not entirely blocked.

19. Approximately 267 persons in the Sheriff’s custody have been transferred to the county jail for Polk County, Florida.

20. Yet, more than 700 other persons remain detained in the Jail.

21. The Jail has detention cells on both the first and second floor. The Sheriff has moved many of the people detained in the Jail to the second floor’s cells. This has resulted in overcrowding on the second floor. Many 4-person capacity cells now hold people. This greatly increases the risk of COVID-19 transmissions. If the Jail is flooded, persons detained in the Jail as well as Jail officials will be unable to access critical infrastructure on the first floor.

22. When the Government takes people into custody and detains them against their will, the Constitution confers upon the Government a duty to assume

² Available at <https://floridadep.gov/sites/default/files/21-0323.pdf>, p. 1, 6.

responsibility for those detainees' safety and general well-being. *See Helling v. McKinney*, 509 U.S. 25, 32 (1993).

23. The continued detention is sufficiently serious. The threat of a breach of the Reservoir—and the flow of phosphate-mine wastewater into the nearby and down-grade Jail—“poses an unreasonable risk of serious” harm. *Helling*, 509 U.S. at 35. “[A] remedy for unsafe conditions need not await a tragic event.” *Id.*, at 33. Indeed, residents around the Piney Point Reservoir have been evacuated precisely because of this threat. Accordingly, the risk is “so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk”—it “is not one that today’s society chooses to tolerate.” *Helling*, 509 U.S. at 36.

24. The Sheriff knows of, yet disregards, this substantial risk of serious harm. Continuing to detain persons in the Jail is not a reasonable response to the risk—it is not a response at all.

25. Removing the persons detained in the Jail from the Jail—either by transfer or release—is the only way to alleviate the unconstitutional conditions. *See Brown v. Plata*, 563 U.S. 493, 545 (2011).

26. The Petitioners and other putative class members have no adequate remedy at law for the denial of the fundamental right to safe conditions of detention.

27. Absent intervention by this Court, the Class Representatives and other putative class members will continue to be detained in violation of the U.S. Constitution.

CLASS REPRESENTATION ALLEGATIONS

28. The Class Representatives bring this action on behalf of themselves and all others similarly situated pursuant to Fla.R.Civ.P. 1.220(b)(2). The Government has acted or refused to act on grounds generally applicable to all the members classes, thereby making class-wide relief appropriate.

29. Questions of law and fact are common to the class members and predominate, including: (1) Does the continued detention at the Jail pose an unreasonable risk of serious harm? (2) Does the Sheriff know of this substantial risk of serious harm and has he disregard it by continuing to detain people in the Jail? (3) Does the continued detention in the Jail violate the Fourteenth Amendment (Pretrial Class) or the Eighth Amendment (Post-Conviction Class) to the U.S. Constitution? (4) Can the Sheriff safely detain any number of persons in the Jail without posing an unreasonable risk of serious harm to them, and if so, what number?

30. The Class Representatives' claims are typical of the claims of the members of the class. They are all detained in the Jail notwithstanding the unreasonable risk of serious harm.

31. Class Representatives seek to represent two classes.

(a) Glaze seeks to represent the Pretrial Class defined as follows:

All persons currently detained awaiting trial in the county jail for Manatee County, Florida.

(b) Peel seeks to represent a Post-Conviction Class defined as

follows:

All persons currently detained after a conviction in the county jail for Manatee County, Florida. This class includes people detained awaiting a hearing on violation of probation.

32. Each proposed class is so numerous and so fluid that joinder of all members is impracticable and uneconomical. The Pretrial Class has approximately 400 people in it. The Post-Conviction Class has approximately 300 people in it. The identity of inmates held in the Jail changes daily.

33. The Class Representatives seek relief to end the unconstitutional conditions that are applicable to and desirous of all in the class. The answer to whether the government violates Class Representatives' constitutional rights will determine the claims for every other class member.

34. The Class Representatives will fairly and adequately protect the interests of the class. They have no interest that is now or may potentially be antagonistic to the interests of the class. They understand the duties and responsibilities of serving as class representatives. The Class Representatives are represented by attorneys employed by or working in cooperation with the ACLU Foundation of Florida. They have extensive experience in class action cases involving constitutional claims.

35. A class action is a superior means and the only practicable means to challenge the Government's practices.

COUNT 1: UNSAFE CONDITIONS
(Pretrial Class Claim)

36. Petitioners reallege and incorporate by reference the foregoing allegations.

37. The Fourteenth Amendment to the U.S. Constitution prohibits detaining a person awaiting trial in unsafe conditions. *See Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982).

38. The Government is detaining Glaze and members of the putative Pretrial Class in unsafe conditions in violation of the Fourteenth Amendment.

COUNT 2: CRUEL & UNUSUAL PUNISHMENT
(Post-Conviction Class Claim)

39. Petitioners reallege and incorporate by reference the foregoing allegations.

40. The Eighth Amendment to the U.S. Constitution prohibits detaining a person post-conviction in unsafe conditions. *See Helling*, 509 U.S. at 32-34; *Youngberg*, 457 U.S. at 315-16; *Rhodes v. Chapman*, 452 U.S. 337, 345-46 (1981).

41. The Government is detaining Peel and members of the putative Post-Conviction Class in unsafe conditions in violation of the Eighth Amendment. The execution of their sentences is unconstitutional.

RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request the following relief:

A. Certify of Pretrial Class and Post-Conviction Class pursuant to Fla.R.Civ.P. 1.220, to be represented by the Class Representatives with their counsel as class counsel.

B. Order the Government to do one of the following:

(1) Release all persons detained at the Jail.

(2) Transfer all persons detained at the Jail from the Jail and to another secure location outside Manatee County's mandatory evacuation zone. This may include releasing persons in the Sheriff's custody, but temporarily detained in the county jail for Polk County, Florida, so to permit those currently in the Jail to then be transferred to the Polk jail.

C. Retain jurisdiction of this matter to enforce the terms of the Court's orders.

D. Such further and different relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished to the following person(s) on the E-filed date of this document by filing the document with service through the e-Service system (Fla.R.Jud.Admin. 2.516(b)(1)):

Eduardo Alexis Brodsky
Served per § 79.071, Fla. Stat.
Fla.'s 12th Cir. State Attorney
2071 Ringling Blvd Ste 400
Sarasota, FL 34237-7040
ebrodsky@sao12.org

Sheriff for Manatee County, Fla.
Served per § 79.03, Fla. Stat.
Brian A. Iten, General Counsel
600 301 Blvd W., Ste 202
Bradenton, FL 34205-7953
brian.iten@manateesherriff.com

State of Florida
Florida Attorney General
Criminal Appeal Division
3507 E. Frontage Road, Suite 200
Tampa, FL 33607
CrimAppTPA@myfloridalegal.com

Respectfully Submitted,

Larry Eger

Fla.'s 12th Cir. Public Defender
Fla. Bar No. 510297
2071 Ringling Blvd., 5th Floor
Sarasota, FL 34237
T. 941.861.4535
leger@pd12.org

*Counsel for Glaze and Putative Pretrial
Class*

s/Benjamin James Stevenson

Benjamin James Stevenson

Fla. Bar. No. 598909
ACLU Found. of Fla.
3 W. Garden St., Suite 712
Pensacola, FL 32502-5636
T. 786.363.2738
bstevenson@aclufl.org

Jacqueline Nicole Azis

Fla. Bar No.101057
ACLU Found. of Fla.
4023 N. Armenia Ave., Suite 450
Tampa, FL 33607
T. 786.363.2708
jazis@aclufl.org

Daniel Tilley

Florida Bar No. 102882
ACLU Found. of Fla.
4343 W. Flagler St., Suite 400
Miami, FL 33134
T. 786.363.2714
dtilley@aclufl.org

*Counsel for Petitioners and Putative
Pretrial Class and Post-Conviction
Class*