

September 9, 2020

**VIA HAND-DELIVERY AND
ELECTRONIC MAIL**

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City of Phoenix
c/o Phoenix City Clerk
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RE: Notice of Claim Pursuant to A.R.S. § 12-821.01
Claimant: Bruce Elliot Franks, Jr.
Date of Incident: August 9, 2020
Demand: \$2,400,000.00

Dear Mayor Gallego and City Councilmembers,

There are few tools as effective at suppressing dissent as the enormous power of the prosecutorial state.

This is why *political prosecutions* are a hallmark of totalitarians the world over.

And when those in power target their critics, falsely accuse them of criminal offenses, and seek to neuter their influence through criminal prosecution and incarceration, international human rights organizations sit up and pay attention.

I'd ask you to do the same right now.

Overview

On August 9, 2020, Phoenix Police Officers sought out, identified, and arrested Bruce Elliot Franks, Jr. at a downtown protest. Targeted as the organizer of the protest – which had been entirely non-violent – Phoenix Police grabbed him, handcuffed him, and brought him inside Police Headquarters for questioning. They booked him into the Maricopa County Jail on 13 criminal counts. And even after a judge summarily dismissed 7 of those counts as legally meritless, the Phoenix Police Officers insisted on proceeding on the remaining 6 counts – criminal charges that remain pending, despite the fact that the officers' body worn camera footage completely exonerates him.

If Bruce Franks were anyone else, Phoenix PD's actions might well have gone unnoticed.

But Bruce Franks isn't anyone else.



Representative Bruce Franks, in Missouri State House of Representatives

He's a former Missouri State Legislator who won the first election of his life with over 76% of the vote against the sitting incumbent.

He's a lifelong gun violence prevention educator and police-reform advocate who gained national attention by engaging in 400 straight days of non-violent protest in Ferguson, Missouri in 2014 and 2015.

He's the author of the Protestor Bill of Rights – deployed by the Missouri ACLU and adopted by a Missouri Federal District Judge as a preliminary injunction against the St. Louis Police Department – as well as the First Amendment Enforcement Act, a piece of national legislation aimed at protecting free speech and assembly against government suppression.

And, most recently, he is the subject of a documentary produced by MTV Studios that has been nominated for an Academy Award.

As a result, Bruce Franks is something of an icon within the world of police-reform activists. After barely a year in Arizona, he is already looked to as a leader within the Movement for Black Lives.

All of which made it all-but-certain that his arrest and prosecution would get a tremendous amount of attention. Which, of course, is exactly the purpose of a *political prosecution*.

The Context:

The Political Prosecution of Jamar Williams

The necessary context for Bruce Franks' claims against the City of Phoenix takes us back to July 12, 2019. On that date, Rep. Franks was still in St. Louis, serving in the Missouri State House of Representatives. And Phoenix PD's attention was on another Black Lives Matter organizer: Phoenix attorney, Jamar Williams.

As you all will recall, Mr. Williams was arrested by two Phoenix Police Officers while he was serving as a peaceful legal observer at the "Lights for Liberty" candlelight vigil in downtown Phoenix. The officers caused him to be booked into jail, and sought charges against him for three violent felonies that he did not commit. They deprived him of the body-worn camera and surveillance video footage that they knew exonerated him. And the highest levels of the Police Department, including Chief Williams herself, coordinated to facilitate a criminal prosecution against him – and assured this body, inaccurately, that the prosecution was based on actual evidence.

You will recall that the frivolous prosecution against Mr. Williams was ultimately dismissed when a Phoenix Police Officer was finally placed under oath and forced to admit that there was no evidence of Mr. Williams having committed any crimes.¹

But even though it was dismissed, PPD's prosecution of Mr. Williams succeeded in multiple regards. It sent a clear message to the activist community – which looks to him for leadership – that no critic of the department (not even a respected attorney) is safe. And, it served as a trial balloon for deployment of this tool of control again in the future.

"From Ferguson to Phoenix": The Protest and Unlawful Arrest of Bruce Franks

On August 9, 2020, Bruce Franks helped organized and lead a non-violent demonstration in Downtown Phoenix to commemorate the 6th year anniversary of Michael Brown's murder by Ferguson Police.

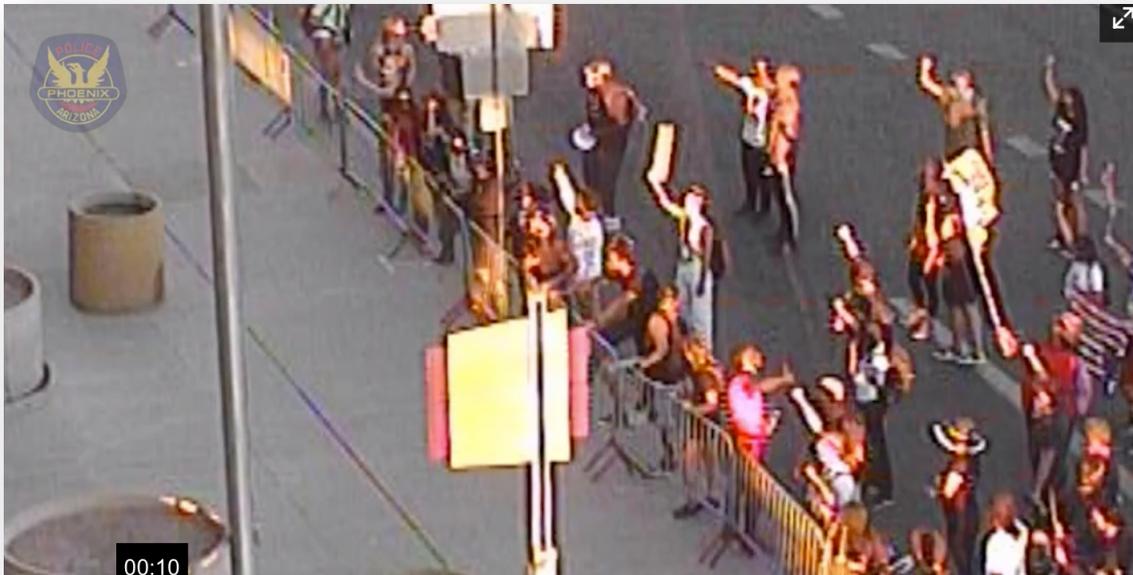
Promoted on social media as a "Blue Silence March," attendees arrived at Phoenix City Hall at 6 p.m. and listened to Rep. Franks and speak for some time. They then placed blue tape over their mouths and walked together, in silence, to Phoenix Police Headquarters at 620 West Washington.



August 9, 2020 "Blue Silence March" led by Rep. Franks (in red tee shirt)

¹ In preparation for a mediation of Mr. Williams' claims against the City in June, we prepared a video with audio excerpts of the officer's shocking testimony. Available at www.phxpoliticalprosecution.com/, we will seek its admission into evidence in Rep. Franks' case as it is *directly* relevant to the Phoenix Police Department's targeting of political opponents and the City's affirmative knowledge (and ensuing ratification) of this practice.

When the group arrived at Police Headquarters, they found that a temporary barricade had been erected along the curb – effectively preventing any public access to the sidewalk in front of 602 West Washington. After removing the tape over their mouths, numerous protestors began leaning against the fencing while chanting, while others had no choice but to stand in the road or the south sidewalk.



Still image of PPD Surveillance Footage in front of 602 West Washington

Within a minute of group's arrival the temporary fencing collapsed. And, after an initial moment of confusion, a handful of demonstrators moved forward on to the sidewalk and out of the roadway.

A large group of Phoenix Police officers in full riot gear then exited the front door at Headquarters and formed a skirmish line. Rep. Franks observed that multiple officers had their body-worn cameras activated. When he noticed that other officers' body cameras specifically appeared to be de-activated, he immediately requested that they turn on their cameras. They did so. And, within seconds, the entire skirmish line began deploying massive force against the non-violent protest, pushing against the group of demonstrators and forcing them back over the barricade and into the road.

The response from the protestors was, predictably, fear and anger. But as a veteran of over 500 non-violent protests, Rep. Franks naturally assumed the role of peacekeeper. He immediately calmed not only other demonstrators, but the police officers themselves (many of whom acted as if they had not received much, if any, training in protest management).

At one point, Rep. Franks brought officers' attention to a particular protestor and prevented police from inadvertently crushing him against a concrete planter – an act for which a Phoenix Police Officer specifically thanked him.

But the appreciation for this, and all of Rep. Franks' de-escalation efforts, would be short-lived.

As Rep. Franks was attempting to calm tensions between police and demonstrators, Lieutenant Mark Schweikart, standing behind the skirmish line, pointed at him and barked instructions to his officers. The skirmish line then split as multiple police officers came rushing through. They grabbed Rep. Franks.

Rep. Franks went down to a knee to surrender, verbally announcing to the officers that he was complying. He instructed other protestors to move away and allow him to be arrested. He did what the officers asked, moved where they told him to move. And, after they arrested him, the officers again thanked him.

All of this is evidenced by Phoenix PD body-worn camera footage – evidence that Phoenix PD has never produced. Not to Rep. Franks. Not to the public. And, seemingly, not even to the deputy Maricopa County Attorney it has convinced to charge this matter.

The reason for this secrecy is no surprise. With the actual evidence of what happened on August 9, 2020 available, the prosecution of Rep. Bruce Franks would be exposed for what it is.

Political Prosecution: A Primer

America's foremost expert on the politicization of criminal prosecution is Scott Horton. A human rights attorney and professor at Columbia Law School, Mr. Horton is frequently retained by the Department of State to consult on the human rights concerns raised by foreign prosecutions that might be political in nature.

In 2007, Mr. Horton wrote a piece for *Harper's Magazine* in which he summarized a guide he had authored for the U.S. Government titled "How to Spot a Political Prosecution."² Defining a *political prosecution* as an effort to "use the criminal justice system to destroy" a political opponent, Horton identified eleven factors to consider in determining whether an arrest and prosecution has crossed the line into the realm of a *political prosecution*.

Some of the eleven factors are specific to the conduct of prosecutors. But five of the factors extend outside of the walls of a prosecutor's office: (1) the identification of a high-profile political opponent, (2) inherently political charges, in particular those involving protected speech, (3)

² See Scott Horton, "When is a prosecution political?" *Harper's Magazine*, February 7, 2008. Available at <https://harpers.org/2008/02/when-is-a-prosecution-political/>

insufficient or rushed criminal investigations, (4) the government’s refusal to produce exculpatory evidence, and (5) the government’s efforts to control the story in the media.

The Political Prosecution of Rep. Bruce Franks

As evidenced by PPD’s own video footage, Rep. Franks had done nothing wrong. He had diffused a potentially volatile situation that had been escalated by Phoenix PD itself. He had prevented a potentially serious injury by highlighting the protestor trapped against the concrete planter. And, when police grabbed him, he allowed himself to be arrested.

He committed no crimes, much less violent felonies.

Yet, when he saw the Maricopa County Superior Court Commissioner for his initial appearance, he found himself charged with an astounding 13 criminal counts – two counts of aggravated assault on an officer (a Class 5 felony), one count of participating in a riot (a Class 5 felony), one count of resisting arrest (a class 6 felony), unlawful assembly, trespassing, seven counts of soliciting others to commit criminal offenses.

Many of the charges would not last: At the Initial Appearance, the judge took the extraordinary step of dismissing 7 of the 13 solicited charges as legally meritless. But he nonetheless set a “status conference” – a court hearing at which Rep. Franks would finally receive the evidence alleged gathered against him, and have a formal opportunity to present his own exculpatory evidence to the State – for August 25, 2020.

As to the remaining 6 counts, Phoenix PD began preparing to prosecute Rep. Franks both in court of law and in the court of public opinion: While its officers were refusing to produce body-camera and video surveillance footage to Rep. Franks, Phoenix PD’s public information office was already working on public messaging. The PIO reviewed surveillance and body camera footage, selected the pieces it presumably believed best supported the arrests, and produced a professionally edited 2-minute public relations video aimed at justifying the arrest.³



Still image of PPD Public Relations video re: August 9, 2020 arrests

³ https://www.azfamily.com/news/8-arrests-made-at-downtown-phoenix-protest-honoring-life-of-michael-brown-jr/article_6b5172cc-dab0-11ea-8ffa-63997b2a0b67.html

And, on August 21, 2020, PPD cemented its role in (and the City's civil liability for) the political prosecution: That day, four days prior to Rep. Franks' scheduled court hearing, a Phoenix Police Officer appeared and testified at a secret grand jury hearing seeking Rep. Franks indictment.

The grand jury hearing is, of course, confidential as a matter of law. But it appears that, at this unusually accelerated hearing, the testifying officer did not show the grand jury a second of video footage of Rep. Franks' actual conduct (footage that would have shown Rep. Franks diffusing a situation that Phoenix PD had escalated and ultimately allowing himself to be arrested). Instead, it is believed that the testifying officer deliberately misled the grand jury with inaccurate hearsay statements from other officers claiming that Rep. Franks had committed a series of criminal acts.

Presented only with this one-sided and misleading presentation of evidence, the grand jury indicted Rep. Franks for four felony counts (two counts of aggravated assault, one count of rioting, and one count of resisting arrest) and two misdemeanors (unlawful assembly and trespassing). PPD and their partners at the Maricopa County Attorney's Office's "First Responders Bureau" have ignored numerous requests that PPD simply produce the body-worn camera footage that will exonerate him.

And he continues to suffer the fallout of these false charges:

His national reputation as a skilled non-violent activist has been stained by the allegations of violence against officers.

His consulting contracts with non-profit interest groups have come under close scrutiny as his partners have seemingly second-guessed their involvement with someone accused of assaulting police officers and rioting.

And his clean record has been tarnished by these felony charges, preventing him from obtaining other employment.

In short, all of what Bruce Franks has worked to build over his 35-year life has been threatened by your Police Department's efforts to destroy him. Just as it had directly threatened everything Jamaar Williams had built over the course of his life.

Conclusion

It has been nine months since I detailed your police department's gross abuse of power with respect to Jamaar Williams. Your response – victim-blaming Mr. Williams for filing a \$1.2 million Notice of Claim and terminating him from your volunteer committees – was received loud and clear.

Not only by an activist community who is now crystal clear on exactly how little the City Council values its constitutional freedoms. But by a police department that has clearly been emboldened by your defense of its political prosecution of Mr. Williams.

Your decisions in responses to these Notices of Claim are messages to your police department about the type of conduct you will and will not accept. They are messages to our community – your constituents – about the degree to which you value *their* constitutional rights.

If you wish to send a message to your police department that you will not tolerate its use of the criminal justice system for the furtherance of suppression of dissent against PPD, you can do so by paying Representative Franks the sum of \$2,400,000. This figure represents a fair estimate of his economic, emotional, and reputational damages, and represents a 10% “tax” on the \$24 million raise you just provided to the Phoenix Police Department.

In lieu of such action, you can continue to do what you did in response to Mr. Williams' claim: attempt to find a legal technicality upon which to hinge a defense to a multi-million dollar civil rights claim, refuse to acknowledge this existential threat to democracy in your city, and continue to harbor the hope that you never find yourself on the wrong end of the political prosecution mechanism you have enabled, excused, and empowered.

I strongly urge you to take the former course of action.

Very truly yours,

THE PEOPLE'S LAW FIRM, PLC



Steve Benedetto