



**LAWYERS FOR
CIVIL RIGHTS
BOSTON**

August 30, 2022

VIA EMAIL

Secretary Peter Buttigieg
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Nuria Fernandez, Administrator
Matthew Welbes, Executive Director
Federal Transit Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Rachael S. Rollins
United States Attorney for the District of Massachusetts
John Joseph Moakley
United States Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

Re: Orange Line Shutdown

Dear Secretary Buttigieg, Administrator Fernandez, Director Welbes, and U.S. Attorney Rollins:

Lawyers for Civil Rights (LCR) recently issued [letters](#) to state and federal authorities regarding the Massachusetts Bay Transportation Authority's (MBTA) failure to comply with federal law in shutting down Greater Boston's Orange Line.¹ Those letters outline how: (1) the shutdown constituted a "major service change" under the MBTA's Title VI Policy; and (2) federal law thus required the MBTA to conduct a service equity analysis before the shutdown. The MBTA failed to do so and has since engaged in a woefully inadequate scramble to mitigate the harms on minority communities, particularly those affecting limited English proficient (LEP) riders.

In response to LCR's letters, the Federal Transit Administration (FTA) made disappointing public statements claiming that a service equity analysis "isn't required for a temporary line closure" that lasts under twelve months.² Not only is the FTA's position legally incorrect, but its public support for the MBTA's flawed Title VI approach sets a terrible precedent that seriously undermines civil rights protections for minority communities. Bostonians and Americans expect better from their federal leadership.

¹ See LCR's August 24, 2022 letters to the FTA and MBTA, available at <http://lawyersforcivilrights.org/our-impact/racial-justice/illegal-and-discriminatory-orange-line-closure/>.

² Benjamin Kail, *MBTA wasn't required to conduct equity study on Orange Line shutdown, FTA says*, BOS. BUS. J. (Aug. 25, 2022), <https://www.bizjournals.com/boston/news/2022/08/25/mbta-orange-line-equity-feds.html>.



I. Federal Law Required the MBTA to Conduct a Service Equity Analysis Prior to Implementing the Orange Line Shutdown

The FTA has promulgated a legally binding “Circular” pursuant to Title VI. As relevant here, the Circular directs large transit providers – like the MBTA – to “develop written procedures ... to evaluate, prior to implementation, any and all service changes that exceed the transit provider’s major service change threshold ... to determine whether those changes will have a discriminatory impact based on race, color, or national origin.”³

Each relevant transit provider is obliged to define “what constitutes a ‘major service change’ for its system” through a “public ... decision-making process.”⁴ Once the transit provider has produced a “major service change policy” with that definition, it “*must* conduct a service equity analysis for those service changes that meet or exceed [its] ‘major service change policy.’”⁵

The MBTA produced its Title VI Policy through an extensive public process and chose to define major service change as, *inter alia*, “a change in route length of at least 25% or three miles” and “the complete elimination of existing routes.”⁶ While the FTA Circular states that “[a] transit provider *may* exempt a temporary addition of service (e.g., demonstration projects) ... from its definition of major service change,”⁷ the MBTA opted not to include any such exemption in its definition. Thus, the Orange Line shutdown constitutes a major service change under the MBTA’s Policy. It is both a 3-mile “change in route length” and “the complete elimination” of a route.

Since the FTA’s Circular states that the MBTA “*must*” conduct a service equity analysis for changes that meet the MBTA’s definition of a “major service change,” the MBTA was obligated to do so for its Orange Line shutdown. The MBTA’s decision not to include any kind of exemption for temporary closures in its own Policy precludes it from relying on such an exemption now. In other words, the FTA’s binding Circular contradicts the position it has taken in the media. This constitutes a blatant misrepresentation of the underlying facts and applicable legal standards and inures to the detriment of public transit users, especially low-income people of color.⁸

By implementing this shutdown without an equity analysis, the MBTA disregarded not only federal directives, but the standards it set for itself in consultation with the community. The FTA’s

³ See FTA Circular 4702.1B at Ch. IV-11, *available at* https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Title_VI_FINAL.pdf.

⁴ *Id.* at Ch. IV-12, IV-14.

⁵ *Id.* at Ch. IV-12 (emphasis added).

⁶ MASS. BAY TRANSP. AUTH., MBTA TITLE IV REPORT 7-4, 7-5 (2017), *available at* <https://cdn.mbta.com/sites/default/files/2017-11/2017-2020-mbta-title-vi-report.pdf>.

⁷ *Id.* at Ch. IV-13 (emphasis added).

⁸ Although not cited by the FTA, its FAQ document about COVID-19 is also not applicable here. Fed. Transit Admin., *Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)*, transit.dot.gov, <https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19> (last visited August 26, 2022). As its title suggests, this FAQ concerns funding and policies undertaken due to the pandemic, which is not the reason for the Orange Line closure. Moreover, to the extent it implies any deviations from the requirements of the Circular, it appropriately states that “[t]hese FAQs do not have the force and effect of law and are not meant to bind the public in any way Grantees and subgrantees should refer to FTA’s statutes and regulations for applicable requirements.” *Id.*

continued support of such impropriety sends a dangerous message that Title VI protections are merely a suggestion for transit providers.

II. The FTA’s Hasty and Erroneous Public Statements on the Orange Line Shutdown Undermine Civil Rights Laws

Even if the FTA were correct in its legal interpretation of the MBTA’s Title VI policy – which it is not – it significantly undermines Title VI itself for the FTA to imply approval of the manner in which the MBTA has undertaken the Orange Line shut-down. More than 100,000 riders take the Orange Line per day.⁹ Many of those most affected by the botched shut-down are residents of “predominantly Black neighborhoods such as Jamaica Plain, Hyde Park, Roxbury, and Mission Hill, as well as Asian workers and residents in Chinatown.”¹⁰ Title VI protections are toothless if they do not mandate proactive steps to mitigate harm for changes of this magnitude.

Although the FTA maintains that it still expects the MBTA to “take reasonable measures to ensure service disruptions occur equitably, in compliance with Title VI,” its apparent approval of the MBTA’s failure to act proactively to minimize harm to affected communities makes clear that the FTA is not enforcing that expectation.¹¹ Title VI prohibits transit providers like the MBTA from discriminating on the basis of race, color, or national origin, including by denying “meaningful access for limited English proficient (LEP) persons.”¹² Yet as media reports and community outcry make clear, the MBTA has failed to provide anything approaching adequate support for LEP riders during the shutdown.¹³ Widespread problems persist, with particularly significant gaps in oral translation. For example, people unaffiliated with the MBTA have had to serve as ad-hoc Spanish translators, and many riders have complained about the MBTA’s lack of Cantonese language assistance.¹⁴ These ongoing failures are unacceptable if Title VI protections are to mean anything.

LCR’s client communities understand that there have been safety issues on the Orange Line that necessitate repairs. No one is more deeply invested in the safety of the MBTA than the riders of color and low-income riders who are most dependent on public transit. However, the MBTA can, and legally must, address safety and equity in tandem. The FTA’s dismissive public statements last week – made in haste and without sound legal basis – amount to an abdication of its duty to protect minority communities under federal civil rights law. This would be troubling at any time but it is even more so coming from an administration that purports to have equity as one of its [top](#)

⁹ See Will Katcher, *MBTA Orange Line shutdown hits first workday as Boston-area commuters navigate disrupted system*, MASSLIVE.COM (Aug. 22, 2022), <https://www.masslive.com/boston/2022/08/mbta-orange-line-shutdown-hits-first-workday-as-boston-area-commuters-navigate-disrupted-system.html>.

¹⁰ See Q.J. Shi, Nicole Obi, & Tracye Whitfield, *Letter: Minority Communities Disproportionately Impacted by Unprecedented Orange Line Shutdown*, JAMAICA PLAIN NEWS (Aug. 25, 2022), <https://www.jamaicaplainnews.com/2022/08/25/letter-minority-communities-disproportionately-impacted-by-unprecedented-orange-line-shutdown/487103>.

¹¹ Kail *supra* note 2.

¹² FTA Circular *supra* note 3 at Ch. I-6.

¹³ See, e.g., Mark Herz, *‘Last-minute scramble’ to help non-English speakers navigate Orange Line shutdown*, GBH NEWS (Aug. 24, 2022), <https://www.wgbh.org/news/local-news/2022/08/24/last-minute-scramble-to-help-non-english-speakers-navigate-orange-line-shutdown>.

¹⁴ See *id.*

[priorities](#).¹⁵ What happened here exhibits all the characteristics of federal abuse and neglect under the Trump Administration: misrepresentation of facts, failure to comply with the law, and the complete abandonment of people of color.

LCR urges the FTA to reconsider its position that a service equity analysis was not required in this instance. More importantly, we urge the FTA to step in now and insist that the MBTA take immediate steps to ensure a more equitable implementation of this shutdown going forward.

The MBTA has a history of discriminatory conduct, and the FTA's leadership is sorely needed to change that. On behalf of our client communities, we hope the FTA will change course and work to ensure the MBTA's Title VI compliance going forward.

Please do not hesitate to contact us at osellstrom@lawyersforcivilrights.org if you have any questions or need further information.

Sincerely,

/s/

Iván Espinoza-Madrigal, Executive Director
Oren Sellstrom, Litigation Director
Jacob M. Love, Staff Attorney

¹⁵ See Jessica Wehrman, *Buttigieg makes equity a top priority for DOT*, ROLLCALL.COM (Feb. 23, 2021), <https://rollcall.com/2021/02/23/buttigieg-makes-equity-a-top-priority-for-dot/>.