

June 1, 2021

VIA EMAIL

Jamey Tesler, MassDOT CEO and Secretary
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Steven Poftak, MBTA General Manager
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Kenneth Green, Chief of MBTA Police
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**Re: Black Lives Matter Protests Reveal Alarming Lack of Policies Guiding MBTA
Shut-Down Procedures**

Dear Secretary Tesler, Mr. Poftak, and Chief Green:

Lawyers for Civil Rights (LCR) has been investigating the basis for the May 31, 2020 decision by the Massachusetts Bay Transportation Authority (MBTA) and MBTA Transit Police Department (TPD) to shut down service to dozens of train stations following the Black Lives Matter protest that evening. The extensive shut-down—a first since the system-wide MBTA closure during the 2013 Marathon bombing manhunt—effectively stranded hundreds of people throughout downtown Boston, where heavily-armed police officers were using tear gas and other violent methods to disperse the crowd.

Our investigation of MBTA's May 31, 2020 shutdown has revealed a number of troubling issues, including that MBTA has a complete lack of formal policies, procedures, or other written guidance pertaining to the suspension of public transportation services for any other reason other than weather or maintenance. LCR is deeply concerned that MBTA's lack of plan or policy leads to unlawful ad-hoc decisions without consideration of the legal and practical consequences of suspending transportation services—including preventing egress from dangerous situations and contributing to an escalation of tensions and risk of bodily harm to the public. Such ad-hoc, discretionary decision-making frequently has a disproportionate impact on communities of color. As a public and federally-funded entity, MBTA is prohibited from conduct that has an unjustified impact based on race, color, or national origin. *See* 42 U.S.C. § 2000d.

As detailed below, this latest event is not the first to raise concerns about how MBTA is serving communities of color. Accordingly, LCR calls upon MBTA to not only remedy the specific shortcomings highlighted by the May 31, 2020 shutdown, but also to undertake a comprehensive

review of its policies and procedures to ensure that they do not result in and perpetuate racially disparate treatment. LCR is also requesting federal intervention and oversight to investigate and remedy this concerning racial justice matter.

Timeline of Events on May 31, 2020

LCR served broad public records requests to the City of Boston, Boston Police Department and MBTA to investigate the basis for the MBTA Transit Police Department’s decision to suspend service following the BLM protests. From the responses received, contemporaneous news reports, and tweets from various entities, including the Boston Police Department, the following timeline emerges. The timeline indicates that any conflicts between police and protestors on the night of May 31, 2020 took place entirely outside of MBTA train stations, and MBTA’s decision to abruptly close several key stations in fact resulted in stranding and endangering hundreds of people—especially transit-dependent people of color—who were forced to evacuate the area on foot.

Following the deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery, Black Boston, a community organization in Massachusetts, organized a Black Lives Matter protest for Sunday, May 31, 2020. According to advertisements for the protest, the demonstration was scheduled to take place from 6:30 pm to 11:00 pm, beginning in Nubian Square in Roxbury and ending at the State House in Boston. The official Facebook event for the demonstration emphasized that it would be a “PEACEFUL Protest,” and participants should be aware that “Masks HIGHLY recommend” [sic], and “NO weapons” would be permitted.

The protest proceeded peacefully according to this plan. At around 8:40 pm on May 31, Kassandra Kelly (Supervisor, MBTA Operations Control Center) reported, “*The protest is still peaceful and the stations are still clear...*” Ex. A at MBTA_0001.¹ Nonetheless, she went on to state that “[a]ll night supervisors and officials have been advised to be vested, vigilant, and prepared to shut down stations if needed.” *Id.* Public records indicate no reason why, in light of the peaceful nature of the protest, this warning was given. It raises the specter of discrimination against transit-dependent people of color participating in the protest.

Protesters were asked to begin dispersing at around 9 pm, and at 9:14 the Boston Police Department tweeted that “dangerous projectiles” were being thrown at officers in the area of Winter and Washington Streets. Similar tweets and reports suggest that the projectiles used by protestors and police officers alike were limited to a handful of blocks in the Downtown Crossing area of Boston.

At around 9:18 pm, Todd Johnson (MBTA Chief Operating Officer) instructed Ms. Kelly to “[m]ake sure train announcements [a]bout the bypassing are made multiple times before the trains leave the proceeding stations,” suggesting that MBTA and TPD had already decided to

¹ Emphases added unless otherwise noted.

shut down certain stations in downtown Boston by this time. *Id.* at MBTA_0005. However, there are no records indicating what factors MBTA and TPD may have considered prior to Mr. Johnson’s 9:18 email; or the legal or practical implications of shutting down certain train stations.

At around 9:31 pm, MBTA issued an internal OCC Incident Notification an alert stating, “Due to police action as a result of the protest, TPD has requested multiple stations in the downtown area to shut down.” *Id.* at MBTA_0007. The alert indicated that the following stations would be shut down: Chinatown, Downtown Crossing, State, and Haymarket on the Orange Line; Downtown Crossing and Park Street on the Red Line; and Park Street and Government Center on the Green Line. The notification did not provide further detail as to the nature of the “police action” that required the shutdown, nor is there any such discussion that appears in the public records produced by MBTA. Other sources, such as new articles and reports indicate that police and protestors continued to altercate, and at around 9:40 pm, authorities at the State House fired less-than-lethal projectiles at protestors after individuals converged on a TPD vehicle.

Again, contemporaneous tweets and subsequent reports indicate that altercations between police and protestors were limited to the Downtown Crossing area, but several of the stations suspended by MBTA were well outside of the area of conflict. The overreaction by MBTA in unnecessarily closing key train stations ironically resulted in endangering hundreds of people who were attempting to leave the area via public transportation, but were instead forced to traverse Downtown Crossing by foot. MBTA’s overreaction appears to be race-based and connected to the identity of the protestors and their affiliation or association with Black Lives Matter.

At around 10:04 pm, Ms. Kelly sent an email stating that “per TPD multiple stations are shut down and bypassed,” and that “all bus service has been suspended in the downtown area including Yankee shuttle buses.” *Id.* at MBTA_0047. Again, there are no records of what discussions, if any, the MBTA or TPD had regarding the decision to suspend service.

At 10:37 pm, the Boston Police Department tweeted that “[i]ndividuals now congregating in the area of Boston Common and Downtown Crossing need to vacate the area and go home.” The tweet did not mention that all public transportation services in that area had been suspended, or provide alternate suggestions for those in the area who required public transportation in order to “vacate the area” safely and expediently.

Mixed Messages Regarding Justifications for Suspending Services

Documents produced by MBTA reveal inconsistencies in the stated justifications for suspending service on the evening of May 31, 2020. It is also unclear from the documents who has the ultimate authority to suspend MBTA services: MBTA, TPD, or the Boston Police Department (BPD).

At around 4:14 pm on June 1, 2020, the day after the protest, Andrew Cassidy (MBTA Director of Social Media) sent an internal message to MBTA employees stating, “Regarding station

closures, it is important for us to provide rationale and justification. In a press release that will be going out later today, the T is specifically stating that closures are at the request of law enforcement and public safety officials, and are done out of an abundance of caution for the health and safety of MBTA employees and customers.” *Id.* at MBTA_0112. Although Mr. Delano’s post-facto message states that the MBTA’s press release will “provide[] greater context and show the decision wasn’t made lightly,” it does not refer to any formal policies or procedures that were consulted by either MBTA or TPD regarding the suspension of services.

Also on June 1, 2020, Arthur Prokosch (Manager of Fare Tariff, MBTA) emailed Steve Poftak (General Manager, MBTA) regarding the May 31 shutdowns, asking:

Why did we shut so many stations down last night, stranding protesters and essential workers through the end of service. . . . Sometimes in similar situations we have thrown faregates open – even if it exacerbates crowding on platforms. What policies do we have, or are we creating?

Id. at MBTA_0114. Mr. Prokosch further wrote:

It’s not clear to me how the agency makes the tradeoff between public safety in stations and public safety of the thousands of people who were stranded on the streets last night. I recognize that COVID makes everything harder. **But that makes it more important to protect the people most impacted by COVID, which means Black and transit-dependent people.** How can that be reflected in policies too?

Id. at MBTA_0114-15. General Manager Poftak’s response does not answer the crux of Mr. Prokosch’s critical inquiry—namely, what policies and procedures does MBTA have in place to ensure that its decisions to suspend transit service do not adversely affect people of color:

The decision was made throughout the night to close various stations when, in the opinion of the incident commander, TPD was unable to provide adequate security to the station and the outside activity posed a danger. It was a very unsettled scene and a fluid situation. My concern is that an act of violence in a station poses risks to other riders, T employees, the actor themselves (e.g. potential contact with a train or 3rd rail) and critical MBTA assets (e.g. signal cables). . . . In discussions with the Chief, we are in full alignment that our bias at the MBTA is always to provide service unless safety concerns necessitate closure. I would note that there was a smaller protest the evening before and TPD had contemplated closing Park Street and Boylston but did not as conditions did not deteriorate.

Id. at MBTA_0114. Although there were there were altercations between police and protestors in the area around the State House and Downtown Crossing, it is troubling that General Manager Poftak post-hoc raises a concern regarding “an act of violence in a station” when none of the contemporaneous MBTA records or Boston Police Department tweets from the evening of May 31 indicated that was likely to occur. Indeed, [the Boston Globe later reported](#) that “many

marchers began to leave Boston Common around 9 p.m., when the city’s coronavirus curfew goes into effect, scattering into surrounding streets and disappearing into MBTA stations at Park Street and Downtown Crossing,” and that later altercations occurred entirely “outside the stations.” Nevertheless, the Park Street and Downtown Crossing stations were ultimately closed by MBTA, forcing hundreds to navigate the significantly more-dangerous network of police barricades on the streets. The MBTA’s actions strongly suggest racial motivation.

On June 2, 2020, in response to an outside inquiry asking whether there is “a scenario where the T closes stations again,” Anita Gonzalez (MBTA Manager of In-Station Contracted Services Support) wrote “That decision is made by TPD.” *Id.* at MBTA_0116. However, in a June 4, 2020 report, Sergeant Andrew Roy (TPD) wrote that BPD—not MBTA or TPD—requested that the Downtown Crossing and Park Street stations be shut down during a June 3 protest. *Id.* at MBTA_0259; Ex. B. The lack of clear policies and procedures governing MBTA service suspension make it difficult to understand what factors are considered prior to suspension and by whom, resulting in potentially arbitrary, unlawful, and discriminatory decisions by a variety of state actors.

Action Required In Light Of MBTA’s History of Inequitable Conduct

Unfortunately, the MBTA’s May 31, 2020 shutdown, which stranded hundreds of people—and primarily transit-dependent people of color—in downtown Boston, is not the first instance of inequitable conduct by MBTA. Other examples in the recent past include:

- [The cancellation of late night bus service in 2016](#), which unjustifiably burdened people of color and low-income riders.
- The racial profiling of riders of color, [including a client of LCR’s who was improperly removed from a Red Line train at South Station](#).
- [The cancellation of commuter trains on the Fairmount Commuter Rail Line](#), which resulted in a disproportionately negative impact on people of color and low-income riders.
- The disproportionate issuance of [fare evasion citations](#) to people of color.

In light of this pattern and practice, LCR calls upon the MBTA to: 1) immediately develop written policies and procedures to govern service suspension and ensure transportation services are not withheld in a discriminatory fashion, as required by federal and state law; and 2) undertake an equity analysis, conducted by an independent consultant, of all of MBTA’s policies and practices, to determine whether they have a disparate impact or otherwise disproportionately burden communities of color.

We request a meeting to discuss these critical racial justice issues with you. We look forward to MBTA taking immediate steps to rectify its lack of policies and procedures and ensure compliance with federal law.



**LAWYERS FOR
CIVIL RIGHTS
BOSTON**

Sincerely,

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Lawyers for Civil Rights

CC:

Governor Charles Baker
Lieutenant Governor Karyn Polito
Senator Elizabeth Warren
Senator Ed Markey
Representative Richard Neal
Representative James McGovern
Representative Lori Trahan
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Representative Katherine Clark
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