

**United States District Court
Southern District of New York**

STATE OF NEW YORK,

Plaintiff,

against

KRISTI NOEM, in her official capacity as
Secretary of the Department of
Homeland Security; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY; DAVID
RICHARDSON, in his official capacity as
Senior Official Performing the Duties of
the Administrator of the Federal
Emergency Management Agency;
FEDERAL EMERGENCY MANAGEMENT AGENCY,

No. 25-cv-8106 (LAK)

Defendants.

**MOTION OF THE CITY OF NEW YORK FOR LEAVE TO FILE
AN AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF**

RICHARD DEARING
CLAUDE S. PLATTON
MACKENZIE FILLLOW
JAMISON DAVIES

MURIEL GOODE-TRUFANT
*Corporation Counsel
of the City of New York*
Attorney for Amicus Curiae
100 Church Street
New York, New York 10007
212-356-2490
jdavies@law.nyc.gov

October 7, 2025

The State brought this lawsuit to prevent the Secretary of the U.S. Department of Homeland Security from revoking funding under the Transit Security Grant Program (TGSP) that was originally allocated to New York's Metropolitan Transportation Agency (MTA) for the coming fiscal year. The City of New York respectfully moves this Court for leave to file the accompanying brief as amicus curiae in support of the plaintiff's motion for a preliminary injunction.

This Court has broad discretion to permit the filing of an amicus brief. *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, No. 12-cv-7935, 2014 U.S. Dist. LEXIS 11179, at *5 (S.D.N.Y. Jan. 23, 2014). Granting leave may be appropriate when, for example, the amicus has a "special interest" in the case, *Liberty Resources, Inc. v. Philadelphia Hous. Auth.*, 395 F. Supp. 2d 206, 209 (E.D. Pa. 2005), and the amicus has "unique information or perspective that can help the court beyond" what counsel for the parties may provide, *Auto. Club of N.Y., Inc. v. Port Auth.*, No. 11-cv-6746, 2011 U.S. Dist. LEXIS 135391, at *6 (S.D.N.Y. Nov. 22, 2011). Amicus participation is especially appropriate where "an issue of general public interest is at stake." *Liberty Resources*, 395 F. Supp. 2d at 209.

The City has a special interest in this case and is able to offer useful information addressing the broader public interests at stake. The City has a strong interest in this case because the New York City Police Department is primarily responsible for public safety in the City's subway system, a component part of the MTA's transit network, and the MTA planned to pass on \$12 million of the grant award to NYPD, as its subgrantee, for counterterrorism policing in the subways. The City is well situated to address the risk of terrorism that it faces and the consequences of the federal government's actions, which relate to the preliminary injunction factors that this Court must consider.

The State of New York consents to the City's motion. The defendants take no position.

For the foregoing reasons, the motion for leave to file the proposed amicus brief should be granted.

Dated: New York, New York
October 7, 2025

Respectfully submitted,

MURIEL GOODE-TRUFANT
Corporation Counsel
of the City of New York
Attorney for Amicus Curiae

By: /s/ Jamison Davies
JAMISON DAVIES
Assistant Corporation Counsel

100 Church Street
New York, NY 10007
212-356-2490
jdavies@law.nyc.gov

RICHARD DEARING
CLAUDE S. PLATTON
MACKENZIE FILLLOW
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**BRIEF FOR AMICUS CURIAE THE CITY OF NEW YORK
IN SUPPORT OF PLAINTIFF THE STATE OF NEW YORK**

RICHARD DEARING
CLAUDE PLATTON
MACKENZIE FILLLOW
JAMISON DAVIES

MURIEL GOODE-TRUFANT
*Corporation Counsel
of the City of New York*
100 Church Street
New York, New York 10007
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jdavies@law.nyc.gov

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**INTEREST OF AMICUS CURIAE
AND PRELIMINARY STATEMENT**

The City of New York submits this brief as amicus curiae in support of the State of New York’s motion for a preliminary injunction. The State brought this lawsuit to prevent the Secretary of the U.S. Department of Homeland Security from revoking funding under the Transit Security Grant Program (TGSP) that was originally allocated to New York’s Metropolitan Transportation Authority (MTA) for the coming fiscal year. The City has a strong interest in this case because the New York City Police Department is primarily responsible for public safety in the City’s subway system, a component part of the MTA’s transit network, and the MTA planned to pass on \$12 million of the grant award to NYPD, as its subgrantee, for counterterrorism policing in the subways.

This Court should issue a preliminary injunction. First and foremost, the State is likely to succeed on the merits of its claim that the funding cut is unlawful. The statute authorizing the grant expressly provides that funds “shall” be distributed to public transit systems based solely on the risk of terrorism. The City’s subway system undeniably faces a higher risk of a terrorist attack than any other transit system in the country, and the Secretary thus is required to allocate part of the grant to the MTA. The Secretary’s choice to deny MTA funding—for the first time since the grant program’s creation—was admittedly motivated by a policy disagreement with city and state officials rather than any assessment of the risk of a terrorist incident in New York City’s subway system. That departure from the considerations permitted by the statute is the essence of arbitrary and capricious government action.

The equities and public interest also favor an injunction. A substantial portion of the funds the Secretary has arbitrarily denied will go directly to making the subway safer. The NYPD uses the funds to train and support units that detect explosives and chemical and radiological weapons, identify and preempt incipient attacks, train officers to respond to active shooter attacks inside the subway system, and respond effectively to terrorist incidents. The harm from the loss of those funds will be felt not only by the City's 8.5 million residents, but also the millions of commuters and tourists who ride the subways every day of the year. No government official charged with ensuring public safety should be allowed to decide that it is worth risking mass casualties, severe property damage, and public terror to coerce a state or locality to fall in line with its policy priorities. The Secretary's unlawful and dangerous action should be enjoined to ensure that the MTA does not lose access to these vital funds.

ARGUMENT

THIS COURT SHOULD GRANT THE PRELIMINARY INJUNCTION

In deciding whether to grant injunctive relief, this Court must consider the State's likelihood of succeeding on the merits, the existence of irreparable harm, the balance of equities, and the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374 (2008). The City submits this brief to emphasize the impact of the challenged funding cuts on public safety in the New York City subway system, which confirms that the State is likely to succeed on the merits and that the equities and public interest heavily favor injunctive relief.

A. The State is likely to prevail because the funding cut violates a law requiring recipients to be selected based solely on risk.

The State is likely to succeed in showing that the Secretary's funding cut is arbitrary and capricious. *See* 5 U.S.C. § 706(2). The Transit Security Grant Program was created in the aftermath of 9/11—the single deadliest terrorist attack in U.S. history, which saw the loss of nearly 3,000 lives, the overwhelming majority of them in New York City. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, codified at 6 U.S.C. § 1135. The goal of the program is to make public-transit systems safe from terrorist attacks. 6 U.S.C. § 1132. To this end, the enabling statute expressly makes funding decisions dependent on one overriding concern: the Secretary of Homeland Security “shall” select grant recipients “based solely on risk.” *Id.* § 1135(c)(2). It can hardly be disputed that New York City faces the highest risk in the country when it comes to terrorist activity. And because of its role as a piece of critical infrastructure, the City's subway system is a particular target for terrorists.

New York City is a global hub for finance, culture, and education. It is also a unique symbol of pluralism and tolerance. As such, it inevitably draws the attention of terrorists.¹ The City also has a large Jewish population, a frequent target of terrorist attacks.² From 2001 to 2019, the City had the highest number of attempted

¹ *See* K. Calamur, *Terrorists are Still Obsessed With New York City*, THE ATLANTIC, Dec. 11, 2017, at <https://perma.cc/TE4F-WC4N>; B. Weiser, *Bin Laden on New York in His Own Words*, N.Y. TIMES, May 3, 2011, at <https://perma.cc/F85F-F39X>; Guy Martin, *Al Qaeda's New York*, N.Y. MAG., Apr. 29, 2005, at <https://perma.cc/52ZA-FYQT>.

² *See, e.g.*, T. McNicholas, *Man Planning to Commit Terror Attack at Jewish Center in NYC Arrested*, CBS NEWS, Sept. 7, 2024, at <https://perma.cc/9FMT-5XWK>.

or actual terror incidents in the country, most of which involved explosives.³ Looking back even further, between 1970 to 2008, Manhattan had the highest number of terrorist attacks in the United States by a wide margin.⁴

In creating the grant program, Congress recognized that public-transit systems “have been primary targets of terrorist attacks.” 6 U.S.C. § 1132(1). As the largest such system in the country, the City’s subway is a particular target. It transports 5.5 million people daily.⁵ Last year, there were roughly 1.8 billion subway rides taken, a number that includes hundreds of thousands of children who use the subway instead of yellow buses to get to school.⁶ And the subway is not just for City residents: commuters from suburban communities as well as tourists from every state and every corner of the earth ride the subway. A substantial number of the City’s approximately 65 million annual visitors will ride the subway at least once during their stay.⁷

Terrorists target the subway cars and stations because the large numbers of people in close quarters, with limited means of egress, creates the potential to inflict

³ See Nat’l Inst. of Justice, *Assessing Risk of Terrorist Acts by Looking at Location Data and Demographic and Social Characteristics*, at <https://perma.cc/945K-DQW6>.

⁴ Nat’l Consortium for the Study of Terrorism and Responses to Terrorism, *Urban U.S. Counties Hot Spots of Terror*, at <https://perma.cc/K2VN-3Z46>. See also Wikipedia, List of Terrorist Incidents in NYC, at <https://perma.cc/G9QZ-Y3WR>.

⁵ MTA *Subway and Bus Facts 2019* (Apr. 2020), <https://perma.cc/R8TA-ZK9L>.

⁶ *Public Transportation Ridership Report*, Q4 2022, AM. PUB. TRANSP. ASS’N, at 2, <https://perma.cc/P8M9-EW4F>; MTA Press Release: *New York City Transit President Davey Welcomes NYC Students Back to the Transit System* (Sept. 8, 2022), <https://perma.cc/X56R-X27D>.

⁷ City of N.Y. Press Release: *Mayor Adams Celebrates Nearly 65 Million Visitors to NYC in 2024, Second Highest Number of Visitors in City History* (Dec. 20, 2024), <https://perma.cc/2GD7-47YK>.

a high number of casualties. Just last week, a bomb threat shut down the Hudson Yards subway station and the surrounding area.⁸ In 2022, a man detonated two grenades and opened fire on the N train in Brooklyn, injuring 29 people.⁹ And a few years earlier, a man attempted a suicide bombing in the passage between the Times Square and Port Authority stations, two critical transit hubs, seriously injuring himself and four others.¹⁰

Given the undeniable risk that the City’s subway system faces, there is no rational basis for the Secretary not to allocate TGSP funds to the MTA. *See* 6 U.S.C. § 1135(c)(2) (Secretary “shall” select grant recipients “based solely on risk”). Indeed, the MTA has received TGSP funding every year since the program’s inception, including \$19.8 million in the last fiscal year (ECF No. 3-4, at 2). The Secretary’s admitted basis for changing course this year is utterly impermissible under the statute: that the MTA is based in “a Sanctuary Jurisdiction city” (ECF No. 3-3, at 25; Defendants’ Memo of Law at 3). The Secretary doesn’t even claim to have considered risk at all. Indeed, the word cannot be found in its brief to this court. The State is thus likely to succeed on the merits of its claim that the denial of funding to the MTA for the present fiscal year is arbitrary and capricious.

Moreover, the Secretary’s decision is even more unsupportable given that the Secretary has reversed course on announced massive cuts to the State from a similar

⁸ G. Heyward & L. Hochman, *Hudson Yards Station Reopens After Bomb Threat*, *GOTHAMIST*, Oct. 3, 2025, at <https://perma.cc/HD5S-8DNB>.

⁹ Dep’t of Justice, *Frank James Sentenced to Life in Prison for Subway Mass Shooting*, at <https://perma.cc/Z4GX-V6C8>.

¹⁰ B. Weiser & E. Palmer, *Akayed Ullah Guilty of ISIS-Inspired Bombing Near Times Square*, *N.Y. TIMES*, Nov. 6, 2018.

but separate grant—the Homeland Security Grant Program—which is also required to be distributed based on risk. 6 U.S.C. § 608; Grace Ashford, *Trump Administration Reverses \$187 Million in N.Y. Counterterrorism Cuts*, N.Y. TIMES, Oct. 3, 2025. That grant program helps fund radiation detection armor, active shooter training, and equipment for bomb squads, among other things. *Id.* While the federal government has recognized its grave error as to that other vital counterterrorism funding, it continues to withhold all funding from the MTA under the Transit Security Grant Program on equally baseless grounds.

B. The equities and public interest strongly favor injunctive relief.

The equities and the public interest also strongly favor a preliminary injunction. Since the inception of the TGSP program, the NYPD has received close to \$250 million in funding, which it has used to support vital counterterrorism initiatives in the subway system (ECF No. 3-4, at 3). NYPD plans to use its portion of the grant funds for fiscal year 2025 to continue to safeguard the subway-riding public. But the Secretary has decided to wield the threat of violence and terror to the subway-riding public as a weapon in a political dispute over immigration enforcement. Indeed, the evidence cited by the State shows that the MTA was denied TGSP funding, for the first time ever, *solely* because of policies adopted by the jurisdiction where it is based. That unconscionable political tactic should not stand. The equities and public interest strongly favor injunctive relief.

The grant funding the Secretary has withheld will support a variety of NYPD deployments that work to keep the subway safe. Officers on the Radiological Anti-Terror Patrol Train Operational Sweep team inspect critical infrastructure

throughout the subway system, including stations, tunnels, equipment rooms, tracks, and train cars, for radiological weapons. The Explosive Detection Canine Unit patrols the subway with dogs trained to find chemical, radiological, and nuclear explosives. The Mobile Explosive Screening Team uses explosive-detection equipment to screen passengers' bags at entrance points. The Suspicious Activity Behavior Recognition team sends undercover officers on the subway to prevent terrorism. And the Transit Operational Response Canines and Heavy Weapons team patrols entrances during rush hour to deter attacks. The grant will also fund training for transit officers to respond to active shooter attacks inside the subway system.

All of these important initiatives would be undermined if the Secretary is allowed to zero-out the MTA's TGSP award. The result will strain police resources and risk a diminished police presence in the subway system and reduced capability to deter terrorist attacks. It should go without saying that no one should be put in jeopardy from terrorism over a political dispute. And the Secretary's move is a remarkably clumsy means of trying to win the dispute in any event. The effects of her decision will not be visited on policy makers alone, or even only the residents of the City or the State, but could be felt by people from every state and from all over the world who visit the City for work or pleasure, and who have no connection to the policies that drew the Secretary's ire. Instead of using the ordinary and proper democratic means to change policy—persuading New York voters that other policies are better—the Secretary seeks to coerce through fear and intimidation.

CONCLUSION

For the reasons set forth in this brief, as well as those set forth by the State, this Court should grant the State's motion for injunctive relief.

Dated: New York, New York
October 7, 2025

Respectfully submitted,

MURIEL GOODE-TRUFANT
*Corporation Counsel
of the City of New York*

By: /s/Jamison Davies
JAMISON DAVIES
Assistant Corporation Counsel

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jdavies@law.nyc.gov

RICHARD DEARING
CLAUDE S. PLATTON
MACKENZIE FILLow
JAMISON DAVIES

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 2,071 words, not including the table of contents, table of authorities, this certificate, and the cover.

/s/Jamison Davies
JAMISON DAVIES