

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION**

CHABAD OF KEY WEST, INC., and
CHABAD OF THE SPACE COAST,
INC.,

Plaintiffs,

v.

FEDERAL EMERGENCY
MANAGEMENT AGENCY; WILLIAM
B. LONG, Administrator of the Federal
Emergency Management Agency;
FLORIDA DIVISION OF
EMERGENCY MANAGEMENT; and
WES MAUL, Interim Director of the
Florida Division of Emergency
Management;

Defendants.

No. 17-cv-10092

Jury Demanded

COMPLAINT

Come now Plaintiffs, Chabad of the Space Coast, Inc., and Chabad of Key West, Inc., (collectively, the “Synagogues”), by and through their undersigned attorneys, and state as follows:

NATURE OF THE ACTION

1. This is a challenge to the policy of the Federal Emergency Management Agency (“FEMA”) that categorically excludes houses of worship, including synagogues, from equal access to disaster-relief grants because of their religious status. The policy violates the Free Exercise Clause of the First Amendment, including under *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012

(2017) and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

2. In the midst of a series of natural disasters for our nation, the people of Florida are recovering from a serious natural disaster in Hurricane Irma, with many deaths, thousands displaced, and billions of dollars in damage. Scores of homes, businesses, government buildings, and places of worship have been heavily damaged or destroyed.

3. To its credit, the federal government has stepped in to help the people of Florida who are already very busy helping one another with the recovery process. One of the leading resources for disaster relief has been houses of worship. Indeed, FEMA has rightly recognized that houses of worship have an essential role as nerve centers of recovery after storms.

4. One would think, then, that houses of worship would also get federal government disaster-relief help on an equal basis with other private nonprofit societal institutions such as community centers and zoos. Yet FEMA policy explicitly denies equal access to FEMA disaster relief grants for houses of worship solely because they are houses of worship—that is, because of their religious nature. If FEMA applies its policy to Hurricane Irma, as it did to Superstorm Sandy and Hurricane Katrina, hundreds of synagogues, churches, and other houses of worship will be denied equal access to FEMA relief.

5. Indeed, pursuant to discriminatory its policy, FEMA has already denied disaster relief grants to Plaintiff Chabad of the Space Coast in the wake of a previous natural disaster.

6. The Constitution does not allow this exclusionary policy to continue. Under the Free Exercise Clause of the First Amendment—particularly as interpreted by the Supreme Court decision in *Trinity Lutheran Church*—government may not discriminate against a synagogue or a church or a mosque simply because of its *status* as a place of religious teaching and worship.

7. Plaintiff Synagogues ask this Court to order FEMA to treat them on equal terms with other non-profit organizations in accepting, evaluating, and acting on their disaster relief applications. The Synagogues are not seeking special treatment; they are seeking a fair shake. And they need to know now whether they have any hope of counting on FEMA or whether they will continue to be excluded entirely from these FEMA programs.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1361. This action arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

9. Venue lies in this district pursuant to 28 U.S.C. § 1391(b)(2). A substantial part of the events or omissions giving rise to the claims occurred in this district, and Plaintiff Chabad of Key West is located in this district.

IDENTIFICATION OF PARTIES

10. Chabad of Key West is located in Key West, Florida, a town within Monroe County.

11. Chabad of the Space Coast is located in Satellite Beach, Florida, a town within Brevard County.

12. Defendants are United States and Florida governmental agencies responsible for creating and enforcing the challenged policy, and their appointed officials.

13. Defendant Federal Emergency Management Agency is an executive agency of the United States government housed within the Department of Homeland Security and is responsible for the promulgation, administration, and enforcement of the challenged policies.

14. Defendant William B. Long is the Administrator of FEMA. In this capacity, he has responsibility for the operation and management of FEMA. Administrator Long is sued in his official capacity only.

15. Defendant Florida Division of Emergency Management is an executive agency of the Florida state government and is responsible for the administration and enforcement of the challenged policies.

16. Defendant Wes Maul is the Interim Director of the Florida Division of Emergency Management. In this capacity, he has responsibility for the operation of the Florida Division of Emergency Management. Director Maul is sued in his official capacity only.

FACTUAL ALLEGATIONS

I. The Synagogues

17. Chabad of Key West runs a Jewish community center, including a synagogue and “Chabad House.”

18. Founded in 1995 by Rabbi Jacob and Chanie Zucker, Chabad of Key West is a religious community devoted to serving the people of Key West and the Florida Keys. It has about 200 members.

19. The mission of the Chabad of Key West is to serve all the people of Key West and the Florida Keys by providing a place for Jewish teaching and tradition to flourish, including Shabbat and holiday services, Torah studies, and Hebrew school.

20. Chabad of the Space Coast likewise runs a small Jewish community center, including a synagogue and “Chabad House.”

21. The mission of the Chabad of the Space Coast is to develop a sense of community and enhance the experience of being Jewish. The Chabad of the Space Coast also provides Shabbat and holiday services, Torah classes, and a Hebrew school.

22. Both Synagogues are part of the Chabad-Lubavitch community, an Orthodox Jewish Hasidic movement that originated in Russia and moved its headquarters to the United States in the 1940s when Rabbi Yosef Yitzchak Schneersohn moved from Russia to Poland to the United States to escape persecution.

23. Each of the Synagogues is open to the public, is involved in its community, and performs a number of public services.

24. Both Synagogues' membership comes from a variety of walks of life, ethnic backgrounds, and economic brackets.

II. FEMA's Public Assistance Program

25. The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes "[t]he President" to "make contributions" to the owner or operator of "a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses." 42 U.S.C. § 5172(a)(1)(B).

26. To trigger the availability of federal assistance, the President must first declare that a major disaster exists in a State. FEMA then administers federal financial assistance in that State through its Public Assistance Program ("PA Program") in accordance with FEMA policies contained in FEMA's Public Assistance Program and Policy Guide, <http://bit.ly/2hte2R> ("FEMA Policy Guide").

27. The PA Program is FEMA's largest grant program under the Stafford Act. Its purpose is to assist communities responding to and recovering from major

disasters or emergencies declared by the President. The program provides emergency assistance to save lives and protect property, and it assists with permanently restoring community infrastructure harmed by a federally declared incident.

28. As relevant here, to be eligible for the disaster aid under the PA Program, a private nonprofit organization “must show that it has [a] current letter ruling from the U.S. Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954” and the organization must “own[] or operate[] an eligible facility.” FEMA Policy Guide at 12-13, 17 (citing 44 C.F.R. § 206.221(f)).

29. An “eligible facility” is either (1) “A facility that provides a critical service, which is defined as education, utility, emergency, or medical”; or (2) “A facility that provides non-critical, but essential governmental services AND is open to the general public.” *Id.* at 12 (emphasis in original).

30. Eligible “non-critical” services include “museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature.” 44 C.F.R. § 206.220(e)(7).

31. For “mixed-use facilities” “that provide both eligible and ineligible services,” eligibility “is dependent on the *primary* use of the facility,” which means “*more* than 50 percent of the physical space in the facility is dedicated” to eligible services. FEMA Policy Guide at 17. “In cases where the same physical space is used

for both eligible and ineligible services, the primary use is the use for which more than 50 percent of the operating time is dedicated in that shared physical space.” *Id.*

32. “If FEMA determines that 50 percent or more of physical space is dedicated to ineligible services, the entire facility is ineligible. If the facility is eligible, FEMA prorates funding based on the percentage of physical space dedicated to eligible services.” *Id.* at 17.

33. For eligible facilities, the PA Program provides funds for both “Emergency Work” and “Permanent Work.” *Id.* at 20.

34. Emergency Work is “that which must be done immediately to: Save Lives; Protect public health and safety; Protect improved property; or Eliminate or lessen an immediate threat of additional damage.” *Id.* at 43. Emergency work is divided into two categories: (A) “debris removal” and (B) “emergency protective measures.” *Id.* Debris removal may also be authorized “to ensure economic recovery of the affected community.” *Id.* at 44.

35. Permanent work “is work required to restore a facility to its pre-disaster design (size and capacity) and function in accordance with applicable codes and standards.” *Id.* at 20.

36. To qualify for the PA Program, repair work must (1) “Be required as a result of the declared incident;” (2) “Be located within the designated area, with the exception of sheltering and evacuation activities;” and (3) “Be the legal responsibility of an eligible Applicant.” *Id.* at 20.

37. Eligible private nonprofit facilities that provide eligible non-critical services must apply for a Small Business Administration (“SBA”) disaster loan before seeking PA Program funds for Permanent Work. PA Program funds are available only for the portion of Permanent Work that an SBA loan does not cover, or if the SBA loan application is denied. However, nonprofits may seek and receive PA Program funds for Emergency Work regardless of whether they have applied for an SBA loan. *Id.* at 18.

38. Eligible facilities must submit a Request for Public Assistance form to FEMA within 30 days of the President’s disaster proclamation, unless the deadline is extended. *Id.* at 131.

III. FEMA’s discrimination against houses of worship

39. A broad range of nonprofit facilities are eligible for the PA Program. FEMA’s definition of eligible “community centers” is particularly expansive.

40. The types of eligible activities include:

- “art services,” including “arts administration, art classes, [and] management of public arts festivals”;
- “educational enrichment activities,” such as “car care, ceramics, gardening, . . . , sewing, stamp and coin collecting”;
- “social activities,” such as “community board meetings, neighborhood barbeques, [and] various social functions of community groups”; and
- “performing arts centers with the primary purpose of producing, facilitating, or presenting live performances.”

FEMA Policy Guide at 14.

41. Yet, for houses of worship, FEMA’s policy, “is simple: No [synagogues] need apply.” *Trinity Lutheran Church*, 137 S. Ct. at 2024.

42. FEMA's policy provides that "[f]acilities established or primarily used for . . . religious . . . activities are not eligible." FEMA Policy Guide at 12. "Religious activities" is defined to include "worship, proselytizing, religious instruction, or fundraising activities that benefit a religious institution and not the community at large." FEMA Policy Guide at 15.

43. By their very nature, houses of worship are established and primarily used for religious activities. The FEMA policies described in the previous paragraph thus amount to a categorical ban on disaster relief under the PA Program to houses of worship. Indeed, they are a form of religious disqualification.

44. FEMA has repeatedly enforced its exclusion policy against houses of worship. Its policy guides since at least 1998 have explicitly and consistently informed the public that houses of worship are ineligible to receive PA Program grants.

45. FEMA has also repeatedly upheld its policy against houses of worship that applied to FEMA for PA Program grants, received initial denials, and appealed the denials within FEMA's internal appeal process.

46. In fact, when Chabad of the Space Coast applied in 2009 for public assistance after its facility was damaged by Tropical Storm Faye, FEMA denied it relief. FEMA found it ineligible because "the Center's activities appeared to be geared to the development of the Jewish faith" and "all of the programs offered are based on or teach Torah values and Jewish tradition, customs, and laws." Final Decision,

Chabad of the Space Coast (June 27, 2012), https://www.fema.gov/appeal/219590?appeal_page=letter.

47. FEMA has issued numerous similar rulings against other houses of worship. For example, although a Unitarian Universalist church in New Orleans that was destroyed by Hurricane Katrina had been used for “community center types of activities,” FEMA found it ineligible because it believed that the building was “established for religious purposes, regardless of other secular activities held at the facility.” See Final Decision, Community Church Unitarian Universalist (Dec. 31, 2015) https://www.fema.gov/appeal/288379?appeal_page=analysis.

48. FEMA determined the church’s purpose by reference to the church’s articles of incorporation, bylaws, IRS tax exemption letter, business filing with the Louisiana secretary of state, and insurance policies. *Id.* Because those documents listed it as a “church” that was meant to practice “the principles of the Unitarian Universalist faith,” FEMA found the church ineligible. FEMA explained that it was irrelevant that the church also provided “secular” activities: “FEMA has found ineligible, as community centers, facilities established for religious purposes, regardless of other secular activities held at the facility.” *Id.* FEMA accordingly disregarded the church’s “claimed secular events”—such as potluck dinners, dance programs, and a camera club—because it perceived them as secondary to “the church’s religious operations.” *Id.*

49. In another example, Mount Nebo Baptist Church was a historic African-American church located in the Lower Ninth Ward and, after Hurricane Katrina, was buried in 20 feet of water. Boats were tied to its steeple. But while the church provided “literacy programs, clothing distribution, food and nutrition programs, teen retreats, health and wellness programs, and operat[ed] as a wellness center,” FEMA denied aid to its Katrina-destroyed facilities because the church did not prove to FEMA’s satisfaction that “over fifty percent” of its activities were non-religious. Final Decision, Mount Nebo Bible Baptist Church (Mar. 13, 2014), https://www.fema.gov/appeal/283775?appeal_page=analysis. Moreover, FEMA stated that “the policy defines ‘established’ as ‘the purpose for which a facility was instituted,’ which FEMA determines by reference to an applicant’s “pre-disaster charter, bylaws, or other well-documented evidence to determine the facility’s purpose.” FEMA concluded that the church was established for a religious purpose because its articles of incorporation stated that its purpose was “to promote the teachings of the Gospel of Jesus Christ” and its incorporation letter from the secretary of state identified it as a “Non-Profit Religious Corporation.” *Id.*

50. The common thread in each denial is that “a church does not meet FEMA’s definition of an eligible PNP facility.” See Final Decision, Middleburgh Reformed Church (Nov. 12, 2013) <https://www.fema.gov/appeal/283579>; see also Final Decision, Philadelphia Ministries <https://www.fema.gov/appeal/286079> (Apr. 7, 2015) (denying aid to church because the “main feature” of the facility was a “church

sanctuary” and “the facility was established as a church,” despite the fact that about a third of the facility was “dedicated for homeless shelter services”); *accord* Final Decision, Victory Temple Worship Center (July 8, 2003), <https://www.fema.gov/appeal/218874> (ruling against church because its facilities were “not primarily used for eligible secular services”).¹

51. As houses of worship, each of the Synagogues was established for religious purposes. The Synagogues are therefore categorically banned by the FEMA exclusion policy from receiving disaster relief under the PA Program based solely on their religious status.

52. As houses of worship, each of the Synagogues uses more than 50% of its physical space more than 50% of the time for religious activities, as understood by FEMA. The Synagogues are therefore categorically banned by the FEMA exclusion policy from receiving disaster relief under the PA Program based solely on their religious status.

53. But for being houses of worship—that is, places established for religious purposes in which people gather to engage in religious activities—both of the

¹ FEMA uses the term “church” somewhat loosely to refer to all sorts of houses of worship.

Synagogues would be eligible for FEMA disaster relief grants. Both own their damaged buildings and are non-profits that have received I.R.C. § 501(c)(3) recognition from the IRS. Both are in counties—Brevard and Monroe—that have been declared by the President to be a disaster area eligible for federal funds. Both open their buildings to the general public and provide services that, but for their religious character and purpose, are considered eligible community services by FEMA.

54. Were the Synagogues not religious, their prohibited “worship” services would instead be eligible as “social activities to pursue items of mutual interest”; the impermissible “religious instruction” during religious services would be permissible as “educational enrichment activity”; Hebrew School and Torah study classes would qualify as a “service or activity intended to serve a specific group of individuals”; and meetings between the Rabbis and other leaders of the Synagogues would be a “community board meeting.”

55. On information and belief, if the Synagogues were to cease all religiously based or motivated activity in their houses of worship, those buildings would become assistance-eligible.

56. The FEMA exclusion policy thus discriminates against otherwise eligible houses of worship simply because they are religious, which thereby “put[s] them] to a choice between being a [synagogue] and receiving a government benefit.”

Trinity Lutheran Church, 137 S. Ct. at 2024.

57. This discrimination is particularly irrational in the disaster relief context. As FEMA and its officials have stated in the past, “[c]hurches . . . serve an essential role in disaster recovery” and, indeed, “the local church, the local synagogue, the local faith based community, the local mosque” are often among the “real first responders” to disasters. See <https://www.fema.gov/news-release/2011/07/08/sba-may-help-churches-nonprofits-associations> and https://www.fema.gov/media-library-data/1386343317410-9c998ad2f85ba25a3f93ca5fbce8df65/ThinkTank_July2013.txt (2013 speech by then-FEMA Deputy Director Rich Serino).

58. That has been just as true in the aftermath of Hurricane Irma. Houses of worship and religious organizations are playing a key role in emergency relief and recovery efforts. See, e.g., <https://www.usatoday.com/story/news/politics/2017/09/10/hurricane-irma-faith-groups-provide-bulk-disaster-recovery-coordination-fema/651007001/> (discussing the critical role that faith groups have played in recovery from Hurricanes Harvey and Irma). President Trump rightly lauded this service recently, noting how “[h]ouses of worship have organized efforts to clean up communities and repair damaged homes.” President Donald J. Trump, *A Proclamation: Nat’l Day of Prayer for the Victims of Hurricane Harvey* (Sept. 1, 2017).

59. The Synagogues have themselves helped their communities get back on their feet following the hurricane. For example, Rabbi Jacob Zucker of Chabad of Key West led two convoys of supplies down Highway 1 into Key West, distributed

provisions to those in need, and helped identify relatives and loved ones for those not on the island, all while dealing with the damage to his own synagogue. And Chabad of the Space Coast, even though it was without power in the aftermath of the storm, gathered its resources and hosted a large barbecue on its grounds for anyone in need in the surrounding area.

60. On September 8, 2017, President Trump criticized FEMA's Exclusion Policy and declared that "Churches . . . should be entitled to reimbursement from FEMA Relief Funds for helping [hurricane victims] . . . (just like others)." Donald J. Trump (@realDonaldTrump), Twitter (September 8, 2017, 8:56 PM), <https://twitter.com/realDonaldTrump/status/906320446882271232>.

61. On Friday, November 17, the White House submitted to Congress a request for ongoing relief efforts stating that the administration supports "legislation that would make houses of worship eligible for disaster relief funding (provided they meet other relevant criteria for private non-profit facilities)." Office of Management and Budget, *Letter regarding additional funding and reforms to address impacts of recent natural disasters* (Nov. 17, 2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/Letters/fy_2018_hurricanes_supp_111717.pdf.

62. Further, on Wednesday, November 29, FEMA announced that it submitted a revised policy to the Office of Information and Regulatory Affairs within the Office of Management and Budget. Pending EO 12866 Regulatory Review for

Public Assistance Program and Policy Guide, <https://www.reginfo.gov/public/do/eoDetails?rrid=127742>. FEMA has not divulged the content of that revision, including whether it will eliminate the policy of discrimination against houses of worship, nor has FEMA given a firm date as to when the policy will be implemented.

63. In sum, FEMA's policy of exclusion remains unchanged.

64. In the meantime, FEMA currently is indefinitely placing on hold all applications for PA Program grants from houses of worship. Thus, houses of worship are forced into limbo, unable to even obtain a final answer from FEMA, much less equal access to either the application-processing system given to other nonprofits or to the grants that are often awarded to other nonprofit applicants.

65. This categorical refusal to process applications by houses of worship creates significant harms, since FEMA policy makes PA grant funding contingent upon FEMA's pre-clearance of certain types of projects. For instance, FEMA must review even emergency demolition to ensure compliance with environmental and historical preservation laws. FEMA Policy Guide at 75. Similarly, before construction, PA grant applications must allow FEMA to ensure compliance with environmental and historical preservation laws. *Id.* at 87 (noting that the review must occur "before the Applicant begins work" and that failure to ensure FEMA's pre-project review "will jeopardize PA funding"). Thus, FEMA's current policy places houses of worship in an untenable position, where they must delay performing

necessary repairs in order to preserve a chance at obtaining funding, even while FEMA policy categorically bans them from accessing that funding.

66. By subjecting houses of worship to a disadvantage in the application process, even apart from its ultimate denial of access to funding, FEMA injures the Synagogues. *N.E. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 665-66 (1993) (“When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group,” the relevant injury “is the denial of equal treatment resulting from the imposition of the barrier . . . not the ultimate inability to obtain the benefit.”).

67. Discriminating against houses of worship based on their religious status is “odious” to the First Amendment and causes irreparable harm that “triggers the most exacting scrutiny.” *Trinity Lutheran*, 137 S. Ct. at 2021.

IV. The Synagogues’ need for Emergency Work and Permanent Work

68. On, September 10, 2017, the President declared that Hurricane Irma had caused a major disaster in Florida. See FEMA Release No. HQ-17-106, <https://www.fema.gov/news-release/2017/09/10/president-donald-j-trump-approves-major-disaster-declaration-florida>. On September 21, 2017, the President amended the declaration to announce that certain counties were eligible for public assistance funding, including Monroe Country where Chabad of Key West is located. See Amendment No. 9 to Notice of a Major Disaster Declaration, Internal Agency Docket

No. FEMA-4337-DR <https://www.fema.gov/disaster/notices/amendment-no-9-0>. On October 5, 2017, additional counties, including Brevard County where Chabad of the Space Coast is located, became eligible for public assistance. Amendment No. 11 to Notice of a Major Disaster Declaration, Internal Agency Docket No. FEMA-4337-DR <https://www.fema.gov/disaster/notices/amendment-no-11>.

69. Hurricane Irma made landfall in the Florida Keys on September 10, 2017. It severely damaged both of the Synagogues.

70. Chabad of Key West is located in Key West, which bore the brunt of the storm, including 130 mph sustained winds.

71. Chabad of Key West sustained damage to its roof and interior water damage from the rain, including to two out of four of its air conditioning units. This damage requires emergency and permanent repairs, including mold remediation.

72. Everything on the outside of the Chabad of Key West's property was damaged, including a children's playground, the Chabad of Key West's fence and gate, and the Chabad of Key West's car.

73. Numerous trees on the property were felled by the wind.

74. The hurricane meant that the staff of the Chabad of Key West were forced to evacuate, and when they returned, the holiday meals they had bought for Rosh Hashana (observed on September 20-22, 2017) and the following holidays had to be thrown out because it had spoiled after electricity went out, and Chabad of Key West's oven was damaged and will have to be replaced. Another synagogue 200 miles

north offered to host the Chabad of Key West's members for a Rosh Hashana celebration.

75. Chabad of Key West continues to be surrounded with significant debris from the storm, including fallen trees and tree limbs.

76. Chabad of Key West may be facing structural damage that requires emergency repair.

77. Without prompt emergency debris removal and repairs, people using the Chabad of Key West's facilities and grounds could face an immediate threat to their health and safety as result of broken glass, sharp metal and wood, downed trees, falling limbs, mold and mildew, slick surfaces, and structures that are weakened by high winds.

78. Without prompt emergency debris removal and repairs, the Chabad of Key West's facilities will suffer even more damage. For instance, the Chabad of Key West needs to repair the significant moisture infiltration problem, which will otherwise cause mold and mildew issues. Also, the Chabad of Key West needs to repair its roofs and external structures to avoid additional water damage. Inspection and repair is also necessary to address structural weakness concerns.

79. Chabad of the Space Coast was likewise extensively damaged by the Hurricane. The membrane protecting the Chabad of the Space Coast's roof was perforated by debris in over a dozen places, and several fixtures on the roof, including drain filters, were blown off of the roof, requiring extensive repairs to the roof. That

damage allowed water to infiltrate the building. Several rooms, including the sanctuary and at least two of the offices, suffered water damage, requiring mold remediation. The high winds also caused the stucco façade of the building to become loose, causing a potential safety hazard. If it is not fixed, it could fall and cause additional property damage or even injure community members.

80. Chabad of the Space Coast was surrounded with significant debris from the storm, including fallen trees and tree limbs.

81. Chabad of the Space Coast may be facing structural damage that requires emergency repair.

82. Without prompt emergency repairs, people using the Chabad of the Space Coast's facilities and grounds could face an immediate threat to their health and safety as a result of structures that are weakened by the high winds.

83. Without prompt repairs, the Chabad of the Space Coast's facilities will suffer even more damage. For instance, the Chabad of the Space Coast needs to repair the significant moisture infiltration problem, which will otherwise cause mold and mildew issues. Also, the Chabad of the Space Coast needs to repair its roof and external structures to avoid additional water damage. Inspection and repair is also necessary to address structural weakness concerns.

84. To mitigate and repair the storm's damage, both of the Synagogues immediately need Emergency Work.

85. Each has applied to FEMA for disaster aid under the PA Program. However, each remains categorically excluded from the PA Program by the FEMA exclusion policy.

86. The Synagogues also need significant Permanent Work to restore their property to their pre-disaster design and function.

87. The Synagogues will need repairs such as new roof fixtures, drywall, insulation, doors, paint, carpets, flooring, and electrical wiring.

88. The Synagogues are also required to apply for SBA loans to cover part of the cost of the Permanent Work that needs to be done, and both have done so. But it is possible that they will not be approved for an SBA loan, or that the cost of restoring their damaged facilities will exceed what an SBA loan will cover. Furthermore, the Synagogues cannot wait until after the SBA processes their loan applications before seeking relief from the FEMA exclusion policy because the Synagogues need to make plans for funding the full cost of restoring their damaged facilities.

CLAIMS

COUNT I

42 U.S.C. § 1983

**Violation of the First Amendment to the United States Constitution
(Free Exercise Clause; discrimination on the basis of religion
(Trinity Lutheran Church; Lukumi)**

89. The Synagogues incorporate by reference all preceding paragraphs.

90. But for the FEMA exclusion policy, the Synagogues are otherwise eligible to receive disaster assistance under the PA Program.

91. The FEMA exclusion policy expressly discriminates against otherwise eligible recipients like the Synagogues by disqualifying them from a public benefit because of their religious status and beliefs, and the religious nature of their activities.

92. The FEMA exclusion policy imposes a penalty on the Synagogues for engaging in religious exercise.

93. The FEMA exclusion policy places a substantial burden on the Synagogues' free exercise of religion.

94. The FEMA exclusion policy chills the Synagogues' religious exercise.

95. The FEMA exclusion policy causes the Synagogues substantial financial harm by rendering them categorically ineligible for the PA Program because of their religious status and religious activities.

96. The FEMA exclusion policy imposes stigmatic injury on the Synagogues.

97. The FEMA exclusion policy disadvantages the Synagogues relative to other nonprofit applicants.

98. The FEMA exclusion policy violates the Synagogues' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

99. Neither the PA Program nor the FEMA exclusion policy is neutral.

100. Neither the PA Program nor the FEMA exclusion policy is generally applicable.

101. Further, the FEMA exclusion policy cannot be justified by a compelling governmental interest, nor is it the least restrictive means of furthering such a governmental interest. Indeed, it does not further the governments' interests at all.

102. Absent injunctive and declaratory relief against the FEMA exclusion policy, the Synagogues have been and will continue to be harmed.

COUNT II

42 U.S.C. § 1983

Violation of the First Amendment to the United States Constitution **(Free Exercise and Establishment Clauses; coercive government entanglement with religion)**

103. The Synagogues incorporate by reference all preceding paragraphs.

104. The Free Exercise Clause and the Establishment Clause of the First Amendment prohibit intrusive government inquiries into the religious beliefs of individuals and institutions, discriminatory governmental judgments about the content or intensity of religious belief, and other forms of excessive entanglement between religion and government.

105. This prohibition on excessive entanglement protects organizations as well as individuals, and prevents governmental intrusion into or coercion regarding religious beliefs.

106. The FEMA exclusion policy requires the Synagogues to submit their religious activities, religious speech, founding documents, and bylaws to FEMA,

which FEMA then uses to determine whether the Synagogues are “too religious” to qualify for FEMA aid.

107. The FEMA exclusion policy requires FEMA to engage in invasive inquiries and judgments regarding the religious beliefs or practice of the Synagogues.

108. The FEMA exclusion policy puts coercive pressure on the Synagogues to diminish or alter their religious observance or religious belief.

109. The FEMA exclusion policy results in a coercive entanglement between religion and government.

110. The FEMA exclusion policy is therefore unconstitutional and invalid.

111. Absent injunctive and declaratory relief against the FEMA exclusion policy, the Synagogues have been and will continue to be harmed.

COUNT III

Violation of the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb et seq. (Substantial Burden)

112. The Synagogues incorporate by reference all preceding paragraphs.

113. The FEMA exclusion policy requires the Synagogues to choose between being a synagogue and being eligible for PA grants.

114. These PA grants are crucial to protecting public health and safety, and to restoring the Synagogue’s meeting places.

115. The FEMA exclusion policy thus creates government-imposed coercive pressure on the Synagogues to change or suppress their religious beliefs.

116. The FEMA exclusion policy chills the Synagogues' religious exercise.

117. The FEMA exclusion policy denies a public benefit to the Synagogues because of their religious exercise.

118. The FEMA exclusion policy discriminates against the Synagogues because of their religious exercise.

119. The FEMA exclusion policy requires that the Synagogues' applications for a public benefit be placed on hold while other applications proceed because of the Synagogues' religious exercise.

120. The FEMA exclusion policy thus imposes a substantial burden on the Synagogues' religious exercise.

121. The FEMA exclusion policy furthers no compelling government interest.

122. The FEMA exclusion policy is not narrowly tailored to any compelling government interest.

123. The FEMA exclusion policy is not the least restrictive means of furthering FEMA's interests.

124. The FEMA exclusion policy violates the Synagogues' rights secured to them by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*

125. Absent injunctive and declaratory relief against the FEMA exclusion policy, the Synagogues have been and will continue to be harmed.

COUNT IV

42 U.S.C. § 1983

Violation of the First Amendment to the United States Constitution
(Freedom of Assembly Clause)

126. The Synagogues incorporate by reference all preceding paragraphs.

127. By denying the Synagogues aid because of their religious status and activities, FEMA infringes upon the Synagogues' First Amendment right, "peaceably to assemble" their members to engage in otherwise lawful religious teaching and worship. *See Thomas v. Collins*, 323 U.S. 516, 532-40 (1945).

128. FEMA allows aid to go to facilities used for a wide range of assemblies, including, for example, "social activities to pursue items of mutual interest" and "educational enrichment activity."

129. Yet FEMA denies aid to the Synagogues because they are places established for the purpose of religious assemblies, such as religious teaching and worship.

130. Without FEMA aid, the Synagogues are denied resources crucial to restoring their meeting places, and thus to continuing to assemble together with their members for religious teaching and worship.

129. Absent injunctive and declaratory relief against the FEMA exclusion policy, the Synagogues have been and will continue to be harmed.

PRAYER FOR RELIEF

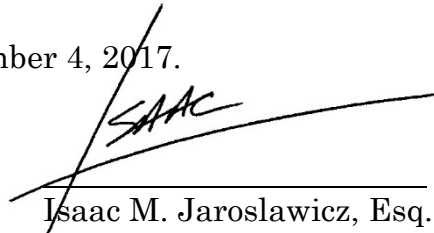
Wherefore, the Synagogues respectfully request that the Court:

- a. Declare that the FEMA exclusion policy and FEMA's enforcement of the exclusion policy against the Synagogues violate the United States Constitution and the Religious Freedom Restoration Act;
- b. Issue a permanent injunction prohibiting Defendants from enforcing the FEMA exclusion policy against the Synagogues and other houses of worship;
- c. Award the Synagogues all applicable damages, including actual and nominal damages;
- d. Award the Synagogues the costs of this action and reasonable attorney's fees; and
- e. Award such other and further relief as it deems equitable and just.

JURY DEMAND

The Synagogues request a trial by jury on all issues so triable.

Respectfully submitted on December 4, 2017.



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**Admission pro hac vice to be requested*