

SOVEREIGN CITIZEN GURUS: INCITING A LAWLESS WORLD

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INTRODUCTION

Ronald Wright, a then 53-year-old, ran a Columbia-based financial services business, “Money Solutions.”¹ Unfortunately for customers, this business was illegitimate and ultimately cost them thousands of dollars.² Wright claimed that he knew a method to eradicate individuals’ debts by making financial claims against their birth certificates.³ Wright told his customers that these monetary claims against the birth certificates could then be used to satisfy the customers’ debt.⁴

Between 2013 and 2015, Wright targeted multiple individuals and vulnerable groups, such as the elderly, who were experiencing financial difficulties.⁵ Wright contacted these individuals via churches and other faith-based organizations.⁶

At trial, evidence showed Wright attempted to fraudulently discharge nearly \$15 million of consumer debt.⁷ Wright argued that his “sovereign” status exempted him from paying income taxes.⁸

In 2019, Wright was sentenced to 10 years in federal prison after a jury found him guilty of tax fraud and conspiracy to commit wire fraud.⁹ The reason behind Wright believing he could discharge debt using birth certificates? He is a sovereign citizen and believes that debts can be discharged by accessing secret government bank accounts.¹⁰

The phrase “sovereign citizen” refers to a variety of anti-government individuals and groups who share some common beliefs and behaviors, prominently including the “view that the existing American governmental structure, including the courts and law enforcement, is illegitimate and that they, the sovereign citizens, retain an individual common law identity

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¹ Press Release, U.S. Attorney’s Office District of South Carolina, “Sovereign Citizen” Sentenced to 10 Years in Federal Prison for Fraud Scheme (May 16, 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

exempting them from the authority of our government institutions.”¹¹ There are several organizations to which sovereign citizens can belong: the Moorish Nation, The Aware Group, the Washitaw Nation, the North Carolina American Republic, and Republic of United States of America.¹²

Although the sovereign citizen movement has been around for decades, there was an “explosion” of sovereign citizens during the COVID-19 pandemic.¹³ Influencers, often referred to as “gurus” within the movement, hold seminars around the country and online, compose filings and instruction manuals, and offer “legal” advice and guidance, all for a price.¹⁴ The gurus within the sovereign citizen community use pseudo-legal language to teach followers their theories and tactics.¹⁵

Despite the fact that Wright did not directly state he attended in-person or online seminars, he told the jury that he had done Internet research on paying off debt and believed that what he was doing was legal.¹⁶ Wright’s case demonstrates the dangerous influence of sovereign citizen gurus who give ineffective legal advice, ultimately inciting others to commit fraud against the government.

Sovereign citizen gurus who give ineffective legal advice, ultimately inciting others to commit fraud against the government, should be held legally responsible.

This Note argues that gurus who host seminars, specifically on the Internet, ultimately incite other individuals to commit fraud and, thus, should be held legally responsible. This Note will begin in Part I by exploring the history of the sovereign citizen movement in the United States and addressing how society views sovereign citizens. Part I will also address how sovereign

¹¹ UNC School of Government, *A Quick Guide To Sovereign Citizens*, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL (Nov. 2013), <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Sov%20citizens%20quick%20guide%20Nov%2013.pdf> [https://perma.cc/258L-8639].

¹² *Id.*

¹³ Mack Lamoureux, *Man Who Killed 6 at a Christmas Parade Now Says He’s a Sovereign Citizen*, VICE (Oct. 4, 2022), <https://www.vice.com/en/article/xgy4nw/darrell-brooks-trial-waukesha-christmas-parade-attack> [https://perma.cc/XW3M-MVDH]; Max Matza, *What Is the ‘Sovereign Citizen’ Movement?*, BBC NEWS (Aug. 5, 2020), <https://www.bbc.com/news/world-us-canada-53654318> [https://perma.cc/5XV7-PM62].

¹⁴ Lamoureux, *supra* note 13; *Sovereign Citizen Movement*, WIKIPEDIA, https://en.wikipedia.org/wiki/Sovereign_citizen_movement [https://perma.cc/X37W-YSL9]; *The Sovereign Citizen Movement in the United States*, ADL (Dec. 21, 2023), <https://www.adl.org/resources/background/sovereign-citizen-movement-united-states> [https://perma.cc/T7CR-VA8W].

¹⁵ *Sovereign Citizen Ideology Increasingly Seeping into QAnon*, ADL (Jan. 19, 2022), <https://www.adl.org/resources/blog/sovereign-citizen-ideology-increasingly-seeping-qanon> [https://perma.cc/VS9K-V98J].

¹⁶ John Monk, *Despite Dred Scott Claim, Columbia ‘Sovereign Citizen’ Convicted in Debt Scam*, INDEP. MAIL (Nov. 20, 2018), <https://www.independentmail.com/story/news/2018/11/20/south-carolina-sovereign-citizen-convicted-debt-scam/2066307002/> [https://perma.cc/3JTX-TGRG].

citizens conduct themselves within society and how they declare their sovereignty, the gurus' potential First Amendment claims, and the traditional definition of incitement. Next, Part II will address whether sovereign citizens' actions constitute incitement, specifically their activity online. Finally, Part III of this Note will propose a general call to action for Congress's Homeland Security Committee to investigate sovereign citizen gurus and the legality of their activities. Part III will also encourage legal scholars to continue researching sovereign citizen activities under an incitement analysis and share their scholarship with lawmakers.

I. BACKGROUND: SOVEREIGN CITIZENS & THE FIRST AMENDMENT

In order to extensively analyze incitement taking place within the sovereign citizen movement, it is vital to highlight the history of the movement in the United States, how sovereign citizens are viewed by society, and the way sovereign citizens conduct themselves in society. It is also important to highlight the First Amendment with respect to sovereign citizens. There is a rich and complex history involved with the sovereign citizen movement, which is important to understand in order to analyze incitement within the movement.

A. The Sovereign Citizen Movement

During the mid-to-late-20th century, it is believed that four far-right groups gradually merged to begin the rise of sovereign citizens; these groups include the Posse Comitatus, the 1980s militia movement, multiple Aryan Nations fractions, and tax protestors.¹⁷ Collectively, these groups shared racist and anti-Semitic beliefs, as well as anti-government sentiments.¹⁸

Each of the groups believed that the United States government was oppressing fundamental individual rights.¹⁹ The Posse Comitatus largely endorsed the beliefs of both the Christian Identity movement and the Constitutional Party.²⁰ The militia movement was founded on the principle that the United States government has been corrupted—"generally by the 'New World Order,' which secretly controls the federal government—and the revolutionary militiamen are the only capable saviors of true American values."²¹ The tax protestor movement has "no common theological,

¹⁷ Susan P. Koniak, *When Law Risks Madness*, 8 CARDOZO STUD. L. & LITERATURE 65, 65 (1996); Charles E. Loeser, *From Paper Terrorists to Cop Killers: The Sovereign Citizen Threat*, 93 N.C. L. REV. 1106, 1109 n. 16 (2015).

¹⁸ Koniak, *supra* note 17, at 69; Loeser, *supra* note 17, at 1118.

¹⁹ Koniak, *supra* note 17, at 69; *see generally* Loeser, *supra* note 17, at 1112.

²⁰ Koniak, *supra* note 17, at 98.

²¹ Loeser, *supra* note 17, at 1113.

philosophical, or racial beliefs[;]” instead, “they subscribe to anti-tax theories that are promulgated through books, manuals, and, more recently, the Internet by for-profit theorists.”²²

It was the farm crisis of the 1980s that gave rise and widespread expansion to the sovereign citizen movement.²³ While the 1970s brought unprecedented prosperity, many farmers took on debt to expand operations.²⁴ There were key factors that played into the farm crisis of the 1980s, including the raising of interest rates by the Federal Reserve, the decreased value of farmland, and the Soviet Union’s invasion of Afghanistan.²⁵ These factors made it incredibly hard for farmers to repay the loans they had taken in previous years, especially since low crop prices and low exports decreased income.²⁶ A 1984 report measured the United States farm debt at \$215 billion.²⁷ As farmers were struggling financially, government protestors exploited the farm crisis by selling fraudulent debt relief programs; a moment which experts have noted as the first major expansion of the sovereign citizen movement.²⁸ From the beginning of the movement, it appears gurus were inciting others, specifically those who were not followers of the movement, to commit illegal acts.²⁹

The movement expanded over time beyond its original white nationalist environment to people of all backgrounds.³⁰ As early as the 1990s, minority groups adopted sovereign citizen arguments, notably the African American Moorish sovereigns.³¹ Individuals claiming to be “Moor,” “Moorish,” or something similar, believe that “a fictitious 1787 treaty between the United States and Morocco grants them immunity from U.S. law.”³² The Washita Nation is the earliest sovereign citizen group to begin merging Moorish

²² *Id.* at 1112.

²³ Francis X. Sullivan, *The “Usurping Octopus of Jurisdiction/Authority”: The Legal Theories of the Sovereign Citizen Movement*, 1999 WIS. L. REV. 785, 787–88 n.14 (1999).

²⁴ Chandler Hansen, *Aftermath: The Farm Crisis of the 1980s*, MORNING AGCLIPS (Jan. 19, 2023), <https://www.morningagclips.com/aftermath-the-farm-crisis-of-the-1980s/> [https://perma.cc/AW75-CWG6].

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Joshua Miller, *Sovereign Citizen Movement Rejects Gov’t With Tactics Ranging From Mischief to Violence*, FOX NEWS (Nov. 21, 2015), <https://www.foxnews.com/us/sovereign-citizen-movement-rejects-govt-with-tactics-ranging-from-mischief-to-violence> [https://perma.cc/P3XF-EBZF].

²⁹ *Id.*

³⁰ Sara Green, *Fall City Extremist’s Eviction Throws Spotlight on Sovereign Citizen Movement*, SEATTLE TIMES (June 27, 2022), <https://www.seattletimes.com/seattle-news/law-justice/eviction-of-wa-anti-government-extremist-gives-window-into-sovereign-citizen-movement/> [https://perma.cc/588D-LQHP].

³¹ *Moorish Sovereign Citizens*, SPLC, <https://www.splcenter.org/fighting-hate/extremist-files/group/moorish-sovereign-citizens> [https://perma.cc/YL4X-SQD6].

³² *Id.*

identity and heritage with sovereign citizen concepts.³³ Those in Washita Nation “may falsely claim to occupy United Nations Indigenous People’s Seat 215 ... and create their own birth certificates, passports, driver’s licenses and vehicle registrations.”³⁴

Again, in the late 2000s, the sovereign citizen movement expanded significantly in the United States due to the Great Recession and the mortgage crisis.³⁵ This gave the movement the opportunity to expand to new demographics. A senior research fellow with the Anti-Defamation League’s Center on Extremism, Mark Pitcavage, stated, “Historically, the sovereign citizen movement has been able to exploit bad economic times and use the pool of desperate people as a recruiting ground.”³⁶ During a time when many Americans were facing home foreclosure, sovereign citizens “offered the hope of avoiding mortgage payments by denying the legitimacy of bank claims based on a variety of pseudo-historical/legal propositions.”³⁷ The adoption of such arguments by people facing financial hardship demonstrates the work of gurus, who were instructive in making the availability of the sovereign citizen argument known.³⁸

For decades, gurus have dominated the movement by inventing and marketing the pseudo-legal theories and tactics of the movement to adherents.³⁹ While many gurus solicit their services online, gurus can also be found holding in-person seminars across the country or offering filings and instruction manuals for purchase.⁴⁰ Gurus entertain various audience sizes, some only having local followers, while “others enjoy celebrity status within the movement and are so influential that other sovereign citizen theorists advertise they are teaching the theories or methods of that sovereign guru.”⁴¹

Most recently, the COVID-19 pandemic increased the spread of the sovereign citizen movement in the United States and in other countries.⁴²

³³ *Id.*

³⁴ *Id.*

³⁵ *The Lawless Ones: The Resurgence of the Sovereign Citizen Movement*, ADL (2012), <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Lawless-Ones-2012-Edition-WEB-final.pdf> [<https://perma.cc/777Q-VHDJ>] [hereinafter *The Lawless Ones*].

³⁶ Dallas Morning News, ‘Sovereign Citizens’ Allegedly Filed \$3 Million Fake Award Against Judges to Harass Them, TEXARKANA GAZETTE (Mar. 28, 2021), <https://www.texarkanagazette.com/news/2021/mar/28/sovereign-citizens-allegedly-filed-3-million-fake-/> [<https://perma.cc/5GX4-FQPB>].

³⁷ Michelle Theret, *Not All Pro Se Litigants Are Created Equally: Examining the Need for New Pro Se Litigant Classifications Through the Lens of the Sovereign Citizen Movement*, 29 GEO. J. LEGAL ETHICS 1221, 1225 (2012).

³⁸ *Id.*

³⁹ *The Sovereign Citizen Movement in the United States*, *supra* note 14.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Katherine Denkinson, *Putting the UK on Notice: How US Legal Fiction Inspired Aggressive Action From UK Anti-Vaxxers*, INDEPENDENT (Oct. 31, 2021), <https://www.independent.co.uk/news/uk/home-news/sovereign-citizens-uk-antivaxxers-b1947186.html>

During the pandemic, sovereign citizens were associated with the broader anti-mask and anti-vaccine movements, while also partaking in protests against COVID-19 restrictions.⁴³ Though the catalyzing events vary throughout history, the beliefs of sovereign citizens remain very close to their original form. Today, however, a wider audience has been met due to use of the Internet, and the sovereign citizen movement continues to grow.

B. FBI Investigation: Sovereign-Citizen Extremists as Comprising a Domestic Terrorist Movement

Sovereign citizens have been around for decades, gaining widespread expansion as early as the 1970s and 1980s.⁴⁴ However, it was not until around 2010 that the Federal Bureau of Investigation (“FBI”) began to take a closer look at the sovereign citizen movement and declared their actions as “domestic terrorism.”⁴⁵ The FBI uses the definition as defined by 18 USC § 2331(5) for “domestic terrorism,” which includes activities:

involving acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; appearing to be intended to: intimidate or coerce a civilian population, influence the policy of government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination or kidnapping; and occurring primarily within the territorial jurisdiction of the United States.⁴⁶

As defined in simpler terms by the FBI, domestic terrorism is “Americans attacking Americans because of U.S.-based extremist ideologies.”⁴⁷ The FBI concluded there was a likelihood that the sovereign citizen threat would grow

[<https://perma.cc/5UD3-GH3V>]; Alistair Coleman & Shayan Sardarizadeh, *Anti-vax Protests: ‘Sovereign Citizens’ Fight UK Covid Vaccine Rollout*, BBC (Jan. 18, 2022), <https://www.bbc.com/news/59870550> [<https://perma.cc/S9A7-AEP5>].

⁴³ See Tyler Kingkade & Ben Collins, *‘Paper Terrorism’: Parents Against Mask Mandates Bombard School Districts with Sham Legal Claims*, NBC NEWS (Feb. 21, 2022), <https://www.nbcnews.com/news/us-news/parents-mask-schools-surety-bonds-rcna16872> [<https://perma.cc/959R-D8CZ>].

⁴⁴ Joshua P. Weir, *Sovereign Citizens: A Reasoned Response to the Madness*, 19 LEWIS & CLARK L. REV. 829, 836 (2015).

⁴⁵ *Domestic Terrorism: The Sovereign Citizen Movement*, FBI (Apr. 13, 2010), https://archives.fbi.gov/archives/news/stories/2010/april/sovereigncitizens_041310/domestic-terrorism-the-sovereign-citizen-movement [<https://perma.cc/78DZ-FUNA>] [hereinafter *Domestic Terrorism*].

⁴⁶ 18 U.S.C. § 2331; Federal Bureau of Investigation & Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, DNI (June 2023), https://www.dni.gov/files/NCTC/documents/news_documents/2023-7-19_FBI-DHS-Strategic-Intelligence-Assessment-and-Data-on-Domestic-Terrorism.pdf [<https://perma.cc/3Q2H-ZTKR>].

⁴⁷ *Domestic Terrorism*, *supra* note 45.

as a nationwide movement and accredited the likely growth to “the Internet, the economic downturn, and seminars held across the country that spread their ideology and show people how they can tap into funds and eliminate debt through fraudulent methods.”⁴⁸

More recently, the Biden–Harris administration recognized “anti-government violent extremists... as being one of the most lethal elements of today’s domestic terrorism threat.”⁴⁹ As recently as 2022, the sovereign citizen movement continued to see growth;⁵⁰ the Southern Poverty Law Center estimated that there are around 300,000 followers of Sovereign Citizen ideology in the United States.⁵¹ These recent statistics demonstrate the continued growth of the sovereign citizen movement, thus confirming the FBI’s predictions.⁵²

C. Sovereign Citizen Declaring Their Sovereignty & Conduct in Society

Through the evolution of the sovereign citizen movement, sovereign citizens began to believe, and still believe today, that there are really two governments: the “illegitimate” government that everyone else thinks is genuine and the “original” government that existed before the conspiracy allegedly infiltrated it.⁵³ Sovereign citizens claim allegiance to the original government, and to them, the original government was a utopian minimalist government which never interfered with the citizenry.⁵⁴

Individuals take certain steps to declare their sovereignty, thus renouncing their United States citizenship.⁵⁵ First, an individual must file documents with a Secretary of State Office declaring their sovereignty. The documents filed to denounce United States citizenship include an Act of State, UCC-1, a copy of a Birth Certificate, and a Social Security Card.⁵⁶ Once the office

⁴⁸ *Id.*

⁴⁹ Christine Sarteschi, *Sovereign Citizens: More Than Paper Terrorists*, JUST SECURITY (July 5, 2021), <https://justsecurity.org/77328/sovereign-citizens-more-than-paper-terrorists/> [<https://perma.cc/7QJ4-GCHM>]; see *Fact Sheet: National Strategy for Countering Domestic Terrorism*, WHITE HOUSE (June 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/fact-sheet-national-strategy-for-countering-domestic-terrorism/> [<https://perma.cc/CB8S-2NCB>].

⁵⁰ *Sovereign Citizens Movement*, SPLC, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement> [<https://perma.cc/RXZ3-4SWM>].

⁵¹ *Sovereign Citizens: Anti-Government Movement That Believes the US Government Illegitimately Rules Over Them*, ISD (Oct. 3, 2022), <https://www.isdglobal.org/explainers/sovereign-citizens/#:~:text=The%20Southern%20Poverty%20Law%20Center,Citizen%20ideology%20in%20the%20U.S> [<https://perma.cc/VL4P-84QG>] [hereinafter *Sovereign Citizens*].

⁵² See Federal Bureau of Investigation & Department of Homeland Security, *supra* note 46 at 9.

⁵³ *The Lawless Ones*, *supra* note 35.

⁵⁴ *Id.*

⁵⁵ See generally Domestic Terrorism Operations Unit II, *Sovereign Citizens: An Introduction for Law Enforcement*, FBI (Nov. 2010), <https://info.publicintelligence.net/FBI-SovereignCitizens.pdf> [<https://perma.cc/A7LU-U584>].

⁵⁶ *Id.*

files these documents, an Apostille is generated acknowledging the documents have been correctly filed.⁵⁷ The sovereign citizen views receipt of the Apostille as the United States Government's acknowledgement of their newly acquired sovereign status.⁵⁸

An Apostille is issued by a Secretary of State and intended to certify "the authenticity of three parts of an official document: the signature, the capacity in which the signatory acted, and the identity of any stamp or seal affixed," to indicate the government has recognized the filed document as a true copy.⁵⁹ An Apostille does not certify the validity or veracity of the contents of the original document, does not certify the legitimacy of the original document, and does not certify the legal status of the document.⁶⁰ The document is one page and is embossed with the Great Seal of the State and includes a facsimile signature of the individual issuing the Apostille.⁶¹ Each Apostille is individually numbered, sovereign citizens then use this number on future fraudulent documents.⁶² Sovereign citizens use this number on documents such as fraudulent diplomatic identification, passports, driver's licenses, vehicle license plates, and law enforcement documents as a way of indicating they no longer maintain citizenship with the United States Government.⁶³

Sovereign citizens believe an Apostille is only issued when the federal, state, or local government acknowledges a document is legitimate and, therefore, they believe it can be used as admissible evidence in court proceedings.⁶⁴ Often, sovereign citizens file numerous documents with the Secretary of State Offices, including documents declaring their sovereign status, fraudulent financial documents, UCC documents, and IRS documents.⁶⁵ As required by law, all Secretary of State Offices must file any document they receive that is in the correct format and has the appropriate monetary fee.⁶⁶ Therefore, so long as sovereign citizens follow the correct procedure, the Secretary of State Office will issue an Apostille.⁶⁷ However, the Apostille does not certify the validity or veracity of the contents of the

⁵⁷ *Domestic Terrorism*, *supra* note 45.

⁵⁸ *Domestic Terrorism Operations Unit II*, *supra* note 55, at 5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

original document, it does not certify the legitimacy of the original document, and it does not certify the legal status of the document.⁶⁸

Once sovereign citizens have publicly declared their sovereignty, they continue partaking in behavior and illegal activities that follow the sovereign ideology.⁶⁹ Although being disruptive in a courtroom or falsifying license plates or driver's licenses are minor crimes, an in-depth look shows that more severe crimes are being committed by sovereign citizens.⁷⁰ Among the more severe crimes include financial scams and the impersonation or threatening of law enforcement officials.⁷¹ The tactics and methods sovereign citizens use to harass and intimidate law enforcement, court, and government officials, as well as financial institutions' employees range from "refusing to cooperate with requests, demanding an oath of office or proof of jurisdiction, filming interactions with law enforcement that they later post on the Internet, and filing frivolous lawsuits or liens against real property."⁷² Measures have been set in order to protect the individuals sovereign citizens often target, such as the Court Security Improvement Act of 2007.⁷³ The Court Security Act of 2007 created a new criminal offense for false liens against the real or personal property of officers or federal government employees, including judges and prosecutors, and further created as a new crime the disclosure of

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ FBI's Counterterrorism Analysis Section, *Sovereign Citizens a Growing Domestic Threat to Law Enforcement*, LEB (Sept. 1, 2011), <https://leb.fbi.gov/articles/featured-articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement> [<https://perma.cc/568L-YXJN>].

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

personal, identifying information to intimidate or incite violence against officers or federal government employees.⁷⁴

Even though it is impossible to compile a comprehensive list of indicators of sovereign citizen activity, the FBI lists some activities in which sovereign citizens often partake, including:⁷⁵

- Documentation may be mailed and addressed to the Secretary or the Treasury Department or the Depository Trust Company;
- Documentation includes an “Apostille Number;”
- Documents contain the phrase “Accepted for Value;”
- Documents are notarized, even if not required;
- International postage rates are applied even for domestic mailings;
 - All paperwork will be mailed using registered mail
 - Stamps will be affixed near the signature line or at the bottom corner of the page
- Name written in all capital letters;
 - Example: JOHN SMITH
- Name will be written last name: first name;
 - Example: Smith: John or Smith: Family of John
- Zip codes enclosed in brackets;
 - Example: [11233]
- Presence of thumbprints on documents; and
 - Typically in red or blue ink
 - Typically on or near a signature or seal
- “SLS” (“Sovereign Living Soul”) may follow signature.⁷⁶

It should be noted, however, that these activities may indicate lawful, innocent conduct and, in some instances, may constitute the exercise of rights guaranteed by the United States Constitution.⁷⁷ Accordingly, these indicators should be considered in the context of other suspicious behavior and the totality of the circumstances in which they are observed or reported.⁷⁸ The Department of Homeland Security defines “suspicious activity” as “any observed behavior that may indicate pre-operational planning associated with terrorism or terrorism-related crime.”⁷⁹ Signs of suspicious activity include

⁷⁴ *Id.*

⁷⁵ *Sovereign Citizens*, *supra* note 51.

⁷⁶ Domestic Terrorism Operations Unit II, *supra* note 55.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Department of Homeland Security, *Recognize Suspicious Activity*, HOMELAND SEC. <https://www.dhs.gov/see-something-say-something/recognize-the-signs#:~:text=Suspicious%20activity%20is%20any%20observed,terrorism%20or%20terrorism%2Drelated%20crime> [https://perma.cc/98FH-2TKL].

misrepresentation; photographing facilities, buildings, or infrastructure in a covert manner; collecting and storing unusual amounts of weapons; testing or probing of security, et cetera.⁸⁰

D. Gurus

The theories and tactics taught by gurus of the sovereign citizen movement have no basis in real law, many are illegal.⁸¹ For example, the Redemption Scheme, often unknowingly leads sovereign citizens to defraud banks, credit institutions, and the United States government.⁸² Under this scheme, sovereign citizens are misled that when the United States government removed itself from the gold standard, it rendered United States currency as a valueless credit note, exchanging one credit document for another.⁸³ Now, sovereign citizens contend that the United States government uses citizens as collateral, issuing social security numbers and birth certificates to register people in trade agreements with other countries.⁸⁴ This scheme leads sovereign citizens to believe that each citizen has a monetary net worth, kept in the United States Treasury Direct account, valued from \$630,000 to more than \$3 million.⁸⁵ Ultimately, the scheme is extorting money from the United States Treasury Department.⁸⁶ Sovereign citizens “file legitimate IRS and Uniform Commercial Code forms for illegitimate purposes, believing that correctly doing so will compel the U.S. Treasury to fulfill its debts, such as credit card debts, taxes, and mortgages.”⁸⁷

Although this creates a voluminous influx of documents that clog the courts and other government agencies, this act itself is not illegal.⁸⁸ However, “the idea behind the Redemption Theory also leads sovereign citizens to find criminal sources of income as they travel the country, teach fraudulent tactics to others for a fee, and participate in white collar crimes.”⁸⁹ The latter offenses include mail, bank, mortgage, and wire fraud; money laundering;

⁸⁰ *Id.*

⁸¹ *The Sovereign Citizen Movement in the United States*, *supra* note 14.

⁸² FBI’s Counterterrorism Analysis Section, *supra* note 70.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

tax violations; and illegal firearms sales and purchases, which is often where sovereign citizen guru teachings come in.⁹⁰

Therefore, one of the hazards of being a guru, and teaching fraudulent tactics, is the risk of arrest.⁹¹ Those who acquired larger audiences in the 2010s and were high-profile gurus, mostly all ended up behind bars before the end of the decade.⁹² These gurus received sentences that ranged from 10 years for charges related to tax evasion and fictitious financial instruments to 38 years for charges of racketeering, tax evasion, retaliation against judges, and other charges.⁹³ Some examples include the following:

- James Timothy Turner, convicted in 2013 on fraud and conspiracy charges for his seminars that taught people how to use fictitious financial instruments to pay off taxes, mortgages, and other debts;⁹⁴
- James T. McBride, convicted in 2014 for a \$500,000 scheme in which he sold thousands of bogus diplomatic identification documents that he claimed would allow purchasers to avoid arrests and taxes;⁹⁵
- Bruce Doucette, charged with 34 counts of racketeering, tax evasion, retaliation against judges and other charges;⁹⁶ and
- Winston Shrout, sentenced on charges related to tax evasion and fictitious financial instruments.⁹⁷

Despite these convictions of influential gurus, some sovereign citizen influencers have managed to avoid prosecution, while new gurus have stepped forward to fill the gaps left by those sent to prison.⁹⁸

David and Bonnie Straight and Bobby and Teah Lawrence have been among the most popular sovereign citizen gurus since 2021.⁹⁹ These two couples routinely bring hundreds of paying attendees to their frequent seminars around the country and sell a variety of sovereign-related products, such as books,¹⁰⁰ to their followers.¹⁰¹ “They have done more than any other

⁹⁰ *Id.*

⁹¹ *The Sovereign Citizen Movement in the United States*, *supra* note 14.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ David Gilbert, *America's Most Influential Sovereign Citizen Was Arrested, and He's Already Grifting Off It*, VICE (Apr. 12, 2023), <https://www.vice.com/en/article/g5ygby/david-straight-arrest-sovereign-citizen-movement> [<https://perma.cc/NWP8-JGJS>].

¹⁰¹ *The Sovereign Citizen Movement in the United States*, *supra* note 14.

recent sovereign influencers to recruit from among QAnon adherents, the MAGA movement and the anti-vax movement.”¹⁰²

E. Possible Defenses Used by Sovereign Citizens: First Amendment

When prosecuted, gurus typically use the “flesh-and-blood” defense.¹⁰³ The “flesh-and-blood” defense is marked by claims challenging the trial court’s jurisdiction and “theorizing that [American] citizenship is grounded in a contract between each citizen and the federal government—a contract that may be canceled by renouncing citizenship.”¹⁰⁴ The “flesh-and-blood” defense is not effective because “in the court’s eyes, it is as if the proponent had advanced no argument at all,”¹⁰⁵ and therefore, sovereign citizen gurus would have a better chance arguing for First Amendment protection for their speech that encourages others to partake in illegal activities.¹⁰⁶ The First Amendment provides robust protection for speech, including the freedom to invite dispute and assure the unfettered interchange of ideas for political and social changes.¹⁰⁷ For example, in *United States v. Alvarez*, the Supreme Court held that false statements of fact do not merit First Amendment protection in their own right, but prohibiting all false statements could chill other protected speech.¹⁰⁸ In other words, the Supreme Court has stated that lies are not categorically unprotectable by the First Amendment.¹⁰⁹

Sovereign citizens, however, branch away from the sensical First Amendment defense. If, for example, a guru was charged with incitement, to make a First Amendment defense, they would need to demonstrate that the speech in question does not meet the criteria for incitement as established by the Supreme Court.¹¹⁰ However, fulfillment of all three factors is required for speech to be deemed incitement under traditional standards: the speech must “explicitly or implicitly encourage lawless action,” the “speaker must intend that his speech will result in lawless action,” and the “imminent use of lawless action must be the likely result of his speech.”¹¹¹ Therefore, for a

¹⁰² *Id.*

¹⁰³ *State v. Thomas*, 2019-Ohio-132, ¶ 6 (Ct. App.) (citing Evans, *The Flesh & Blood Defense*, 53 WM. & MARY L. REV. 1361, 1371 (2012)).

¹⁰⁴ *Id.*

¹⁰⁵ James Evans, *The Flesh & Blood Defense*, 53 WM. & MARY L. REV. 1361, 1363 (2012).

¹⁰⁶ *Id.*

¹⁰⁷ U.S. CONST. amend. I.

¹⁰⁸ *United States v. Alvarez*, 567 U.S. 709, 723 (2012).

¹⁰⁹ *Id.*

¹¹⁰ *Brandenburg v. Ohio*, 395 U.S. 444, 446 (1969).

¹¹¹ *Higgins v. Ky. Sports Radio, LLC*, 951 F.3d 728, 736 (6th Cir. 2020) (citing *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 246 (6th Cir. 2015)).

successful First Amendment claim, sovereign citizen gurus would have to show their speech does not meet at least one of the incitement factors.

However, since its enactment, “the First Amendment has permitted restrictions on a few historic categories of speech—including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct—that ‘have never been thought to raise any Constitutional problem.’”¹¹² Hence, a First Amendment argument would likely fail if used by a sovereign citizen guru because their teachings go beyond First Amendment protections, and instead constitute incitement.¹¹³

F. Incitement With Respect to Sovereign Citizens

“Incitement remains one of the few existing exceptions to First Amendment protection that has been consistently upheld by the Supreme Court.”¹¹⁴

In its early stages, incitement was used against individuals accused of obstructing the draft who were being prosecuted under the Espionage Act.¹¹⁵ During that time, the Supreme Court was using the “clear and present danger” test, with words ultimately constituting incitement if such a test was met.¹¹⁶ The threshold to meet the clear and present danger test was initially low, illustrated by *Schenck v. United States* and reinforced by the Supreme Court in *Debs v. United States*.¹¹⁷ In *Schenck*, the Court held that a leaflet advocating for citizens to exercise their right to assert opposition to the draft constituted a clear and present danger, and therefore fell outside the scope of First Amendment protections.¹¹⁸ A week later, the Court reinforced the low threshold for the clear and present danger test in *Debs*.¹¹⁹ In *Debs*, the defendant was indicted under the Espionage Act after he gave a speech to a crowd in which he advocated socialism and expressed opposition to Prussian militarism in a way that naturally might have been thought to have been intended to include the mode of proceeding in the United States.¹²⁰ The Court

¹¹² *United States v. Stevens*, 559 U.S. 460, 460 (2010) (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942)).

¹¹³ See generally *id.*

¹¹⁴ JoAnne Sweeny, *Incitement in the Era of Trump and Charlottesville*, 47 CAP. U. L. REV. 585, 591 (2019) (citing Lyrrisa Barnett Lidsky, *Incendiary Speech and Social Media*, 44 TEX. TECH L. REV. 147, 152 (2011)).

¹¹⁵ Mark Strasser, *Incitement, Threats, and Constitutional Guarantees: First Amendment Protections Pre- and Post-Elonis*, 14 U. N.H. L. REV. 163, 164–71 (2016).

¹¹⁶ *Id.*

¹¹⁷ *Schenck v. United States*, 249 U.S. 47, 39 (1919); *Debs v. United States*, 249 U.S. 211, 213 (1919).

¹¹⁸ John P. Cronan, *The Next Challenge for the First Amendment: The Framework for an Internet Incitement Standard*, 51 CATH. U. L. REV. 425, 432 (2002) (citing *Schenck v. United States*, 249 U.S. 47 (1919)).

¹¹⁹ *Id.* at 432–33 (citing *Debs v. United States*, 249 U.S. 211 (1919)).

¹²⁰ *Debs*, 249 U.S. at 253.

concluded that when the delivery of the speech in such words and such circumstances had the probable effect to prevent recruiting, it was punishable under the Espionage Act.¹²¹ While the Supreme Court was making decisions in these cases, it did not define incitement, giving protestors scant First Amendment protection.¹²²

In the following years, there was a major jurisprudential shift as to the clear and present danger test, accredited to Justice Holmes' dissent in *Abrams v. United States*.¹²³ Although Justice Holmes easily found incitement in *Schenck v. United States*, he wrote a persuasive dissent cutting against his opinion in *Abrams*.¹²⁴ In his *Abrams* dissent, Justice Holmes disagreed with the Court's liberal application of the clear and present danger standard and argued that a stricter standard should apply to ensure adequate protection of the First Amendment, ultimately causing the Court to shy away from the clear and present danger test altogether.¹²⁵

Eventually, the *Brandenburg* test evolved out of the clear and present danger test, which focuses on both imminence and the intent to cause harm.¹²⁶ In the case, *Brandenburg v. Ohio*, the Supreme Court held that hateful speech is protected by the First Amendment and incitement, though not protected speech, exists only when the speech calls for immediate unlawful action.¹²⁷ The Supreme Court decided that a speaker stating, "[w]e're not a revengent [sic] organization, but if our President, our Congress, our Supreme Court, continues to suppress the White, Caucasian race, it's possible that there might have to be some revengeance taken," at a Ku Klux Klan rally was not incitement because the speaker did not call for violence at the time of the rally, only at some vague future point if the speaker's conditions were not met.¹²⁸ *Brandenburg* itself defined incitement as "directed to inciting or producing imminent lawless action" and "likely to incite or produce such action."¹²⁹ It is important to note that *Brandenburg* and the cases that follow do not just pertain to inciting violence, but also to inciting "imminent lawless action" as well.¹³⁰ Therefore, under *Brandenburg*, "even speech that

¹²¹ *Id.* at 254.

¹²² Sweeny, *supra* note 114, at 592 (citing Lyrisa Barnett Lidsky, *Incendiary Speech and Social Media*, 44 TEX. TECH L. REV. 147, 152 (2011)).

¹²³ *Abrams v. United States*, 250 U.S. 616, 628 (1919) (Holmes, J., dissenting).

¹²⁴ *See id.*

¹²⁵ Legal Information Institute, *Schenck v. United States (1919)*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/schenk_v_united_states_\(1919\)#:~:text=United%20States%2C%20Justice%20Holmes'%20dissenting,protection%20of%20the%20First%20Amendment](https://www.law.cornell.edu/wex/schenk_v_united_states_(1919)#:~:text=United%20States%2C%20Justice%20Holmes'%20dissenting,protection%20of%20the%20First%20Amendment) [https://perma.cc/L88G-2T9Y]; Cronan, *supra* note 118, at 433–34.

¹²⁶ Strasser, *supra* note 115, at 164.

¹²⁷ *Brandenburg v. Ohio*, 395 U.S. 444, 447–49 (1969) (per curiam).

¹²⁸ *Id.* at 446.

¹²⁹ *Id.*

¹³⁰ *Id.*

advocates unlawful or violent acts is not incitement; the speech must call for imminent action and be likely to produce that action.”¹³¹

Brandenburg was later expanded by two cases, *Hess v. Indiana*¹³² and *N.A.A.C.P. v. Claiborne Hardware Company*.¹³³ In *Hess*, the Supreme Court overturned Gregory Hess’s disorderly conduct conviction, stating that the words he shouted to a crowd during an antiwar demonstration were not incitement.¹³⁴ The words Hess shouted were, “‘We’ll take the fucking street later,’ or ‘We’ll take the fucking street again.’”¹³⁵ The Court decided Hess’s words were not incitement because his words “[were] not directed to any person or group of persons . . . [so] it cannot be said that he was advocating, in the normal sense, any action.”¹³⁶ *Hess* expanded on the *Brandenburg* definition and held that in order to determine incitement, courts should examine both to whom the words were directed, which will show whether there was advocacy of action, and the words themselves, which will show whether there was any evidence or rational inference that the words were intended to produce immediate action.¹³⁷

In *N.A.A.C.P. v. Claiborne Hardware Company*, Charles Evers, a boycott organizer for the N.A.A.C.P., threatened boycott violators with “discipline” and stated, “If we catch any of you going in any of them racist stores, we’re gonna break your damn neck.”¹³⁸ The Court decided that there were acts of violence reported against boycott violators before Evers made his speech but not after, meaning Evers words could not have caused or incited that violence.¹³⁹ The Court held that Evers’ threats, which were part of an “impassioned plea for black citizens to unify, to support and respect each other, and to realize the political and economic power available to them,” were not incitement because they were mere “advocacy” of violence.¹⁴⁰

When looking at sovereign citizen gurus’ conduct, they are often inciting lawlessness and not just violence. In *Communist Party of Indiana v. Whitcomb*, the Supreme Court held that an Indiana statute requiring a loyalty oath for a political party to get on the ballot was unconstitutional.¹⁴¹ The Court stated that the First Amendment does not allow states to prohibit advocacy of lawless action “except where such advocacy is directed to

¹³¹ Sweeny, *supra* note 114, at 593 (citing *Brandenburg*, 395 U.S. at 447–49 (per curiam)).

¹³² *Hess v. Indiana*, 414 U.S. 105 (1973).

¹³³ *NAACP v. Claiborne Hardware Co. et al.*, 458 U.S. 886 (1982).

¹³⁴ *Hess*, 414 U.S. at 107–09.

¹³⁵ *Id.* at 107.

¹³⁶ *Id.* at 108–09.

¹³⁷ *Id.* at 107–09.

¹³⁸ *Claiborne Hardware Co.*, 459 U.S. at 902.

¹³⁹ *Id.* at 902–03.

¹⁴⁰ Sweeny, *supra* note 114, at 594 (citing *Claiborne Hardware Co.*, 458 U.S. at 928).

¹⁴¹ *Communist Party of Ind. v. Whitcomb*, 414 U.S. 441, 447 (1974).

inciting or producing imminent lawless action and is likely to incite or produce such action.”¹⁴²

Due to concerns of unduly restricting speech, incitement is a narrow doctrine that has rarely been used successfully by prosecutors or plaintiffs seeking a judgment based on a defendant’s speech.¹⁴³ Many scholars have weighed in on why incitement is not protected by the First Amendment.¹⁴⁴ Ultimately, incitement is viewed as low-value speech, not necessarily because of the words used, but because the cost of the speech is so high.¹⁴⁵

Now, years later, the Supreme Court has not directly addressed incitement since the cases discussed above. Although lower courts have attempted to apply *Brandenburg* in various situations, it has only led to an inconsistent and rarely used doctrine.¹⁴⁶

Dr. JoAnne Sweeny defines incitement using three factors: “1) imminence, 2) call to action (as opposed to mere advocacy), and 3) intent.”¹⁴⁷ She argues that courts are ill-equipped to deal with the modern manifestations of the angry riot, but further argues that the use of technology creates an odd fit for the more traditional incitement definition stated in *Brandenburg*.¹⁴⁸

The FBI was correct in its prediction that the sovereign citizen movement would grow and it was further correct in attributing that prediction to the Internet.¹⁴⁹ Therefore, with the continued growth of the movement, it is crucial that sovereign citizen conduct is examined and courts are equipped to deal with situations as they arise on the Internet by using an incitement analysis when necessary. By bringing incitement charges against gurus, thus halting their teachings, the amount of fraud against the government and other entities such as banks would decrease drastically.

II. ANALYSIS

Below, Dr. Sweeny’s three-factor analysis will be used to further analyze incitement and what it means today in the digital era pertaining to sovereign citizen guru’s teachings. Because her approach addresses the issues

¹⁴² *Id.*

¹⁴³ Ronald D. Rotunda, *A Brief Comment on Politically Incorrect Speech in the Wake of R.A.V.*, 47 SMU L. REV. 9, 12 (1993).

¹⁴⁴ See generally Alexander Tsesis, *Inflammatory Speech: Offensive versus Incitement*, 97 MINN. L. REV. 1145, 1147 (2013); S. Elizabeth Wilborn Malloy & Ronald J. Krotoszynski, Jr., *Recalibrating the Cost of Harm Advocacy: Getting Beyond Brandenburg*, 41 WM. & MARY L. REV. 1159, 1213 (2000); Rotunda, *supra* note 143, at 12–13; David Crump, *Camouflaged Incitement: Freedom of Speech, Communicative Torts, and the Borderland of the Brandenburg Test*, 29 GA. L. REV. 1, 67 (1994).

¹⁴⁵ Malloy & Krotoszynski, Jr., *supra* note 144, at 1165.

¹⁴⁶ Sweeny, *supra* note 114, at 594 (citing *NAACP v. Claiborne Hardware Co. et al.*, 458 U.S. 886, 928 (1982)).

¹⁴⁷ Sweeny, *supra* note 114, at 596.

¹⁴⁸ *Id.* at 585.

¹⁴⁹ *Domestic Terrorism*, *supra* note 45.

surrounding the use of technology, it is better equipped than the more traditional incitement definition laid out in *Brandenburg* for the discussion of a guru's online activity and how it constitutes incitement. By using examples of sovereign citizen gurus and their presence in digital media, the definition of incitement will be pushed further than the traditional *Brandenburg* definition.

A. Imminence

As laid out by Dr. Sweeny, the first essential requirement for incitement is imminence.¹⁵⁰ Constitutional law scholar R. Kent Greenawalt has further recommended a test using the requirement that the unlawful action happen in the “very near future.”¹⁵¹ According to Greenawalt, the phrase “‘very near future’ is meant to have a modest degree of flexibility, account being taken of the seriousness of the crime, opportunities for intervening speech, and the likelihood that the audience will have opportunity for critical reflection before the crime is to be committed.”¹⁵² Historically, however, even a few hours into the future does not satisfy the imminence requirement, as seen in *Hess*, where the Supreme Court noted that Hess's “later” comment likely meant that the violence would happen later that day, and therefore held that his statements did not advocate for imminent lawlessness.¹⁵³ The Court merely stated that incitement does not exist where there is a call for “illegal action at some indefinite future time.”¹⁵⁴ Imminence can be seen in the incitement standard because it “demands that the speech cause an individual to act without rational thought,” or “time . . . to digest” any information that would cause them to refrain from violence or illegal activity.¹⁵⁵ This element of time additionally “ensures that the danger is in fact not speculative and that the government's interest in preventing the violence is not pretextual.”¹⁵⁶

Courts have not fully defined this requirement, as neither *Hess* nor *Brandenburg* set a timeframe for what makes something imminent in terms of incitement.¹⁵⁷ *Claiborne* only noted that the alleged incitement must happen before the violence or unlawful acts.¹⁵⁸ Lower courts have followed

¹⁵⁰ Sweeny, *supra* note 114, at 597.

¹⁵¹ KENT GREENAWALT, SPEECH, CRIME, AND THE USES OF LANGUAGE 267 (MAIMON SCHWARZSCHILD ed., 1st ed. 1992).

¹⁵² *Id.*

¹⁵³ Mark Rohr, *Grand Illusion? The Brandenburg Test and Speech That Encourages or Facilitates Criminal Acts*, 38 WILLAMETTE L. REV. 1, 11–12 (2002).

¹⁵⁴ *Id.* (citing MARTIN H. REDISH, FREEDOM OF EXPRESSION: A CRITICAL ANALYSIS 190 (1984)).

¹⁵⁵ Malloy & Krotoszynski, Jr., *supra* note 144, at 1169.

¹⁵⁶ *Id.* at 1196–97.

¹⁵⁷ See *Hess v. Indiana*, 414 U.S. 105 (1973). See also *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

¹⁵⁸ *NAACP v. Claiborne Hardware Co. et al.*, 458 U.S. 886, 927 (1982).

Claiborne and likewise refused to set a timeframe for imminence.¹⁵⁹ In a case decided in the Ninth Circuit, *McCoy v. Stewart*, the court held that a defendant's advice to aspiring gang members was unlikely to be acted upon imminently because the advice was "interspersed at a barbeque and a social party, while [gang] members were drinking, chatting and listening to music," which indicated to the court that any actions by the gang members were not likely to happen quickly.¹⁶⁰

However, Professor David Crump argued that imminence actually refers to the "predictability of the result" and argued that the likelihood of violence is a holdover from the clear and present danger test.¹⁶¹ For example, in *Rice v. Paladin Enterprises, Inc.*, the Fourth Circuit found that the book *Hit Man*, which gave instructions regarding how to commit murder-for-hire without being caught by police, could incite violence even though the book was written long before it was fatefully read by an aspiring hitman.¹⁶² The court included selected passages from the book, which include, "[But] within the pages of this book you will learn one of the most successful methods of operation used by an independent contractor" and "Step by step you will be taken from research to equipment selection to job preparation to successful job completion."¹⁶³ *Paladin* stipulated both that "it had knowledge and that it intended that *Hit Man* would immediately be used by criminals and would-be criminals in the solicitation, planning, and commission of murder and murder for hire."¹⁶⁴ Therefore, it is ultimately the certainty of the act occurring upon reading the book that allows the Fourth Circuit to find the book could incite violence long after being written.¹⁶⁵

By examining these various sources, imminence appears to rely on both timing and likelihood of violence.¹⁶⁶ Therefore, the context of speech can replace the immediacy element historically imposed on incitement's imminence requirement.¹⁶⁷

Looking at the actions of sovereign citizen's, sovereign citizen gurus not only post seminars online but also hold in-person seminars across the country, meeting the imminence requirement as their teachings cause people to break the law at the seminars.¹⁶⁸ One guru who held in-person seminars teaching about "secret bankruptcy," "the people-as-collateral," and

¹⁵⁹ See, e.g., *McCoy v. Stewart*, 282 F.3d 626, 631–32 (9th Cir. 2002); *People v. Rubin*, 158 Cal. Rptr. 488, 492 (Cal. App. 2d Dist. 1979).

¹⁶⁰ *McCoy v. Stewart*, 282 F.3d 626, 631–32 (9th Cir. 2002).

¹⁶¹ Crump, *supra* note 144.

¹⁶² *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 264–65 (4th Cir. 1997).

¹⁶³ *Id.* at 236.

¹⁶⁴ *Id.* at 266–67.

¹⁶⁵ *Id.*

¹⁶⁶ Sweeny, *supra* note 114, at 601.

¹⁶⁷ *Id.*

¹⁶⁸ *The Sovereign Citizen Movement in the United States*, *supra* note 14.

“fractionalizing” is Brandon Adams.¹⁶⁹ Adams told groups of people they could reclaim funds from banks via Form 1099-OID.¹⁷⁰ The audience lapped it up, and Adam’s talks drew large enough crowds that he moved to a bigger venue and sold private coaching sessions for \$200 an hour.¹⁷¹ Another sovereign citizen guru, David Morton, stated “it became a movement, really.”¹⁷²

Under the guardianship of Adams, Mr. Morton and his wife tried the Form 1099-OID scheme themselves.¹⁷³ Mr. Morton filed four years of returns and claimed nearly \$4 million in refunds, his wife filed a return and claimed about \$12,000.¹⁷⁴ Later, Mr. Morton claimed, “I never, ever, ever in any of this thought that I was breaking a law.”¹⁷⁵ When looking at Adam’s seminars, imminence seems apparent due to the immediacy of the audience to sign up for private coaching and to commit fraud against the Internal Revenue Service and banks, as seen in the example of Mr. Morton and his wife.

Adam’s in-person seminars more closely fit the traditional approach to imminence in that the audience’s activity typically happened quickly, but also fits the *Rice* certainty of action approach, as he gave detailed instructions on how to fraudulently reclaim funds via Form 1099-OID, therefore, constituting incitement.

Shifting to online videos and seminars, a simple Google search allows individuals to come across a YouTube channel titled “SovereignProductions369.”¹⁷⁶ On this channel, one can find a specific video titled *How to Discharge Debt – How to Enforce Your Instruments Full Disclosure – Explained*.¹⁷⁷ By listening to the first few minutes of this YouTube video, one quickly learns the YouTuber making the video, Anthony Figueroa, has his own book on how to discharge debt titled *Magic Money Mechanics: Money Orders*.¹⁷⁸ However, despite having his own book on how

¹⁶⁹ Ashley Powers, *How Sovereign Citizens Helped Swindle \$1 Billion From the Government They Disavow*, N.Y. TIMES (Mar. 29, 2019), <https://www.nytimes.com/2019/03/29/business/sovereign-citizens-financial-crime.html/> [<https://perma.cc/T8GH-CFUP>].

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Lyrisa Barnett Lidsky, *Incendiary Speech and Social Media*, 44 TEX. TECH L. REV. 147, 162 (2011); SovereignProductions369, YOUTUBE (Dec. 12, 2023), <https://www.youtube.com/@TONY-TOONE-SP369> [<https://perma.cc/GE5Z-GWZL>].

¹⁷⁷ SovereignProductions369, *How to Discharge Debt – How to Enforce Your Instruments [sic] Full Disclosure – Explained*, YOUTUBE (Dec. 12, 2023), https://www.youtube.com/watch?v=AVSp6daLPpE&ab_channel=SovereignProductions369 [<https://perma.cc/DLU8-LM6T>].

¹⁷⁸ SovereignProductions369, *supra* note 177. See also ANTHONY FIGUEROA, SELF PUBLISHED, *MAGIC MONEY MECHANICS: MONEY ORDERS* (Nov. 25, 2022) (evidence that Anthony Figueroa is familiar with the topic and likely viewed as a guru within the sovereign citizen ideology).

to discharge debt, Figueroa is teaching from a free PDF available online titled *FAST TRACK FILE: The Admin Process & Getting Out of Debt Edition*.¹⁷⁹ Through this method of learning from gurus, there is no certain way of knowing how much time passes between interaction of content by an individual and the illegal action itself. Under this argument, a different definition of imminence would be used and determined by factors other than the passage of time.¹⁸⁰

Because gurus often share videos on the Internet, there will likely be an inquiry into the context of the speech, particularly whether the speech is likely to be taken seriously or seen as a joke.¹⁸¹ One scholar, Professor Lyrisa Barnett Lidsky, has come up with several factors that would modify the imminence standard for Internet speech, including “the likely make-up of the target audience, whether there was a prior history of violence by members of that audience . . . [and] whether the violence took place with little delay upon receiving the inciting speech.”¹⁸² The last two factors, prior history of violence by members of the audience and the lack of delay upon receiving the inciting speech, should further be modified to allow for illegal situations, not just violence. This would more closely fit with the traditional *Brandenburg* definition,¹⁸³ while still expanding the definition to Internet speech.

When looking to the history of the sovereign citizen movement, and how the FBI has labeled sovereign citizens as domestic terrorist,¹⁸⁴ the second factor of Lidsky’s standard for imminence for Internet speech is undoubtedly met.¹⁸⁵ There are multiple examples of prior history of violence by sovereign citizen members, including armed standoffs, shootouts, murders, and terrorist plots.¹⁸⁶ Further, even when expanding Lidsky’s model to include illegal acts, this prong is still met because there is evidence of illegal behavior by sovereign citizens, such as falsifying license plates or driver’s licenses.¹⁸⁷

Although the prior history of violence does not speak directly to the imminence prong of inciting others to illegitimately discharge debt and ultimately defraud the government, it does establish that this “target audience,” sovereign citizens, is capable of extreme violence and further capable of committing illegal acts upon receiving the inciting speech. Ronald

¹⁷⁹ Chief Courtland Kelani El & ISelfLawAmMaster.com, *FAST TRACK FILE: The Admin Process & Getting Out of Debt Edition*, PDFCOFFEE <https://pdfcoffee.com/discharge-the-debt-pdf-free.html> [<https://perma.cc/Q4GY-CC9P>].

¹⁸⁰ Sweeny, *supra* note 114, at 600.

¹⁸¹ *Id.* at 585.

¹⁸² Lidsky, *supra* note 176, at 162.

¹⁸³ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

¹⁸⁴ *Domestic Terrorism*, *supra* note 45.

¹⁸⁵ Lidsky, *supra* note 176, at 162.

¹⁸⁶ *The Sovereign Citizen Movement in the United States*, *supra* note 14.

¹⁸⁷ FBI’s Counterterrorism Analysis Section, *supra* note 70.

Allen Wright, a sovereign citizen guru convicted of tax fraud and conspiracy to commit wire fraud,¹⁸⁸ is the perfect example of a member of the target audience who committed illegal acts upon receiving the speech. Wright discussed doing his own research on the Internet and believing what he was doing was legal.¹⁸⁹ However, Wright did not believe he had to pay income taxes due to his “sovereign” status.¹⁹⁰ It is almost guaranteed that during the “research” Wright conducted, he came across another guru’s teachings on how to discharge debt.

However, when using Lidsky’s model to establish imminence, the YouTube video *How to Discharge Debt – How to Enforce Your Instruments Full Disclosure – Explained*, more closely fits and speaks to Lidsky’s model pertaining to Internet speech than does a general overview of sovereign citizens and their conduct. Further, the YouTube video parallels *Paladin Enterprises* due to the amount of detail given by Figueroa in the YouTube video and the PDF he was teaching from.

The first prong of Lidsky’s model, the likely make-up of the target audience, is achieved by individuals trying to discharge their debt using illegitimate means, namely sovereign citizens. Based on the information provided in the YouTube video and the free PDF, this information is specifically targeted at sovereign citizens because it refers to “Strawman,” and there are other indicators of sovereign activity throughout, such as names being written in all capital letters.¹⁹¹ Further, sovereign citizens are predisposed to break the law and are therefore more likely to listen to and follow the gurus’ teachings than individuals who are not sovereign citizens. This prong also follows the *Paladin* case, as there, the author knew the book would “immediately be used by criminals and would-be criminals,” and here, based on specific terms Figueroa uses, such as Strawman, Figueroa knows the information will be used by sovereign citizens or would-be sovereign citizens.

The second prong, a prior history of violence, can be shown due to the fact sovereign citizens have been labeled as domestic terrorists by the FBI.¹⁹² Further, under the expanded view of this model that includes illegal activity, this prong is still met by using evidence of sovereign citizens illegitimately discharging debt and defrauding the government, as taught by Figueroa.

The third prong, whether the violence took place with little delay upon receiving the inciting speech, should not only be expanded to include acts

¹⁸⁸ Monk, *supra* note 16.

¹⁸⁹ *Id.*

¹⁹⁰ “Sovereign Citizen” Sentenced to 10 Years in Federal Prison for Fraud Scheme, *supra* note 1.

¹⁹¹ El & I SelfLawAmMaster.com, *supra* note 179; Domestic Terrorism Operations Unit II, *supra* note 55.

¹⁹² *Domestic Terrorism*, *supra* note 45.

that are illegal but should further be expanded to fit a more flexible timeline. Based on the standards set out above, “little delay” could have different meanings.¹⁹³ As shown by the *Paladin* case, certainty that an act will occur upon digesting the information, even years after the information was published, is sufficient.¹⁹⁴ Figueroa sets out what steps should be taken, including what forms should be filed.¹⁹⁵ The United States Department of the Treasury has identified scams that vary in methods for citizens to gain control of their alleged assets, such as filing a UCC-1 financial statement, which is one of the avenues Figueroa and the PDF teach.¹⁹⁶ Here, the targeted audience would need time to research this matter and find the YouTube video or PDF; collect the appropriate materials, such as the UCC-1 and UCC-3 forms; fill them out; and then file them.¹⁹⁷ Therefore, and similar to the *Paladin* case, there is still buffer time needed in order to collect materials and prepare before the act is committed, violent or not.

Therefore, the courts’ timeframe analysis allows a majority of incitement activity to go unchecked, as guru’s seminars likely fail on the timeframe basis.¹⁹⁸ As a result, by expanding Lidsky’s model and allowing a broader definition of imminence as it applies to Internet speech, the work of gurus easily fits, as the videos and instructions provided are incredibly detailed and, further, gurus often offer to help individuals when there is confusion on how to successfully fill out various forms.¹⁹⁹

B. Call to Action

After imminence has been satisfied, the next key requirement is that the speaker do more than merely advocate for violence or illegal acts.²⁰⁰ Scholars have argued what exactly this means,²⁰¹ but the courts address this requirement more closely than imminence, although ultimately being silent as to what constitutes a “call to action.”²⁰² However, it seems that scholars and case law agree that there is a distinction between mere advocacy and incitement. As far back as 1917, Judge Learned Hand stated, “If one stops

¹⁹³ Lidsky, *supra* note 176, at 162.

¹⁹⁴ See generally *Rice v. Paladin Enters., Inc.*, 128 F.3d 233 (4th Cir. 1997).

¹⁹⁵ Figueroa, *supra* note 178.

¹⁹⁶ U.S. Department of the Treasury, *Birth Certificate Bonds*, TREASURYDIRECT, <https://www.treasurydirect.gov/laws-and-regulations/fraud/birth-certificate-bonds/> [<https://perma.cc/8DZV-BQA2>]; SovereignProductions369, *supra* note 177; El & ISelfLawAmMaster.com, *supra* note 179.

¹⁹⁷ SovereignProductions369, *supra* note 177; El & ISelfLawAmMaster.com, *supra* note 179.

¹⁹⁸ *McCoy v. Stewart*, 282 F.3d 626, 631–32 (9th Cir. 2002).

¹⁹⁹ El & ISelfLawAmMaster.com, *supra* note 179; SovereignProductions369, *supra* note 177.

²⁰⁰ Sweeny, *supra* note 114, at 604.

²⁰¹ See e.g., Rohr, *supra* note 153, at 14; Crump, *supra* note 144; Malloy & Krotoszynski, Jr., *supra* note 144, at 1168.

²⁰² Sweeny, *supra* note 114, at 607.

short of urging upon others that it is their duty or their interest to resist the law, it seems to me one should not be held to have attempted to cause its violation.”²⁰³

Looking back to *Brandenburg*, the Supreme Court held that the speech was not actually inciting violence because it used conditional language: “revengence” was “possible” and “might” be needed.²⁰⁴ Further, in *Hess*, the speech was not incitement because it was found to be merely “an emotional exclamation rather than a potentially effective exhortation to action directed specifically at a particular group of persons”²⁰⁵

The Fourth Circuit has weighed in on the matter and ultimately agrees with the sentiments in *Brandenburg*.²⁰⁶ Limited by the Fourth Circuit, incitement only applies to situations where the speech that “prepared” and “steered the audience to action” was not “part and parcel of political and social discourse”²⁰⁷

Words that merely encourage or assist someone in committing violence, therefore, do not constitute incitement; the words need to make “susceptible” people change their behavior.²⁰⁸ *People v. Bohmer* gives a clear example of the difference between mere approval of unlawful acts and incitement to commit them:

The man who advocates death for all rapists may do so. However, when he stands before a crowd that holds a like view and also holds a confessed rapist prisoner and he shouts, ‘Let’s lynch him,’ he will not

²⁰³ *Masses Publ’g Co. v. Patten*, 244 F. 535, 540 (S.D. N.Y. 1917), rev’d, 246 F. 24 (2d Cir. 1917).

²⁰⁴ Clay Calvert, *Reconsidering Incitement, Tinker and the Heckler’s Veto on College Campuses: Richard Spencer and the Charlottesville Factor*, 112 Nw. U. L. REV. ONLINE 109, 120 (2018) (quoting ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 1049 (5th ed. 2015)).

²⁰⁵ Malloy & Krotoszynski, Jr., *supra* note 144, at 1194.

²⁰⁶ *United States v. Buttorff*, 572 F.2d 619, 624 (8th Cir. 1978); *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 264–65 (4th Cir. 1997).

²⁰⁷ *Rice*, 128 F.3d at 264–65.

²⁰⁸ Malloy & Krotoszynski, Jr., *supra* note 144, at 1191.

be shielded by the First Amendment if the prisoner is then and there lynched.²⁰⁹

Although the courts are quick to establish what is not a “call to action,” they remain silent as to what is. As Dr. Sweeny explained, two areas are distinguishable: detailed instructions and indirect incitement.²¹⁰

1. Detailed Instructions

Under Dr. Sweeny’s model, giving specific instructions to an audience is also likely to be incitement.²¹¹ Incredibly important to the discussion of sovereign citizen gurus and the seminars they host in-person and online, caselaw establishes that giving specific advice on how to break tax laws is incitement when it results in individuals breaking the law exactly how they were advised to do so.²¹² Giving specific instructions on how to commit murder was also found to be incitement for the same reasons.²¹³ The Fourth Circuit has provided the most in-depth analysis of what kind of instructions will lead to a finding of incitement in *Paladin Enterprises*.²¹⁴

Paladin Enterprises looks at the book *Hit Man* and emphasizes that the specific instructions contained within constitute incitement because there was “not so much as a hint of the theoretical advocacy of principles divorced from action that is the hallmark of protected speech.”²¹⁵ Instead, the defendant publisher had stipulated that its intent in publishing the book was to instruct readers on how to commit murder-for-hire and the court noted that that stipulation

coupled with the extraordinary comprehensiveness, detail, and clarity of *Hit Man*’s instructions for criminal activity and murder in particular, the boldness of its palpable exhortation to murder, the alarming power and effectiveness of its peculiar form of instruction, the notable absence from its text of the kind of ideas for the protection of which the First Amendment exists, and the book’s evident lack of any even arguably

²⁰⁹ *People v. Bohmer*, 46 Cal. App. 3d 185, 198 (1975).

²¹⁰ Sweeny, *supra* note 114, at 607.

²¹¹ *Id.* at 608.

²¹² *United States v. Buttorff*, 572 F.2d 619, 622–23 (8th Cir. 1978).

²¹³ *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 242–43 (4th Cir. 1997) (explaining that the publisher also stipulated that he intended for readers to become successful contract killers from reading the book).

²¹⁴ Sweeny, *supra* note 114, at 608.

²¹⁵ *Rice*, 128 F.3d at 267.

legitimate purpose beyond the promotion and teaching of murder, render this case unique in the law.²¹⁶

Similarly, incitement was found in *United States v. Buttorff*, in early 1975, in which the defendants addressed at least four public gatherings in northeastern Iowa and western Wisconsin.²¹⁷ Attendees testified and recalled the speeches given by Gordon Buttorff and Charles Dodge consisted of the Constitution, the Bible, and the unconstitutionality of the graduated income tax.²¹⁸ All of the attendees who testified stated that they submitted false or fraudulent income tax-related forms because of the defendants' recommendations, advice, or suggestions.²¹⁹ Ultimately, the Court stated:

Although the speeches here do not incite the type of imminent lawless activity referred to in criminal syndicalism cases, the defendants did go beyond mere advocacy of tax reform. They explained how to avoid withholding and their speeches and explanations incited several individuals to activity that violated federal law and had the potential of substantially hindering the administration of the revenue. This speech is not entitled to First Amendment protection....²²⁰

The creation of source materials by sovereign citizen gurus, such as the free PDF available online,²²¹ or the YouTube channel, SovereignProductions369,²²² most closely resembles this type of "call to action." In these source materials or videos, sovereign citizen gurus give specific instructions to their audiences on different ways to defraud the government.²²³

For example, in his YouTube video, *How to Discharge Debt – How to Enforce Your Instruments Full Disclosure – Explained*, Figueroa almost immediately states: "get this information to as many people as you can."²²⁴ Further, in the description box under the video, Figueroa states:

I AM Running through this book "HOW TO DISCHARGE DEBT"
Going over how to discharge debt, how to enforce your instruments,

²¹⁶ *Id.* at 266–67.

²¹⁷ *Buttorff*, 572 F.2d at 622.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 624.

²²¹ El & ISelfLawAmMaster.com, *supra* note 179.

²²² SovereignProductions369, *supra* note 177.

²²³ El & ISelfLawAmMaster.com, *supra* note 179; SovereignProductions369, *supra* note 177; DISCHARGE DEBT, <https://discharge-debt.com/> [<https://perma.cc/9QP2-RUA4>].

²²⁴ SovereignProductions369, *supra* note 177.

where to send your documents, how to setup your UCC contract trust, and how to sue and charge these agencies using the law, that is on your side as a sovereign Individual.²²⁵

This most clearly follows *Buttorff* in that it is an individual whose speech does not incite “the type of imminent lawless activity referred to in criminal syndicalism cases,”²²⁶ but goes beyond mere advocacy of discharging debt.

Not only does Figueroa discuss the free PDF available online, but he also further promotes his own book and even further offers to assist people in filing various forms if they email him with questions.²²⁷ Multiple times throughout the video, Figueroa states he has these materials available and is willing to help any individual who reaches out to him.²²⁸ He outright offers to assist individuals in committing fraud against the government, therefore going beyond mere advocacy as discussed in *Buttorff*, further supporting the fact that his teachings and actions constitute incitement.²²⁹

2. Indirect Incitement

In contrast to detailed instructions, indirect incitement has been analyzed most often in connection with anti-terrorism laws and hate speech.²³⁰ According to one scholar, Kent Greenawalt, the speech must have a “reasonable likelihood” of encouraging the “commission of the crime” and this requirement “is also meant to be moderately flexible in relation to the

²²⁵ *Id.*

²²⁶ *United States v. Buttorff*, 572 F.2d 619, 624 (8th Cir. 1978).

²²⁷ *SovereignProductions369*, *supra* note 177.

²²⁸ *Id.*

²²⁹ *Buttorff*, 572 F.2d at 624.

²³⁰ *See e.g.*, John C. Knechtle, *When to Regulate Hate Speech*, 110 PENN ST. L. REV. 539, 539 (2006); Joseph Jaconelli, *Incitement: A Study in Language Crime*, 12 CRIM. L. & PHIL. 245, 248 (2017); Gregory S. Gordon, *Music and Genocide: Harmonizing Coherence, Freedom and Nonviolence in Incitement Law*, 50 SANTA CLARA L. REV. 607, 623–24 (2010); Neha Bhat, *‘My Name Is Khan’ and I Am Not A Terrorist: Intersections of Counter Terrorism Measures and the International Framework for Refugee Protection*, 15 SAN DIEGO INT’L L.J. 299, 311–12 (2014).

seriousness of the crime.”²³¹ Under this definition, incitement must include an inquiry into what effect the words are likely to have on their audience.²³²

Historically, courts have disagreed as to whether indirect incitement could be punished under the First Amendment.²³³ Another law scholar, Joseph Jaconelli, has distinguished between direct and indirect incitement by stating:

But, generally, it may be said that direct incitement is explicitly to urge another person to commit the predicate offence. Indirect incitement is more circumspect, consisting of such forms as to state that committing a particular crime is morally justified or to be applauded, the message possibly being communicated even by the use of metaphor.²³⁴

Constitutional law scholar Martin Redesh has cautioned that only words are “sufficiently likely to cause immediate harm” and when “listeners’ reactions are easily predictable” should courts uphold the “suppression of a statement which does not on its face urge unlawful conduct.”²³⁵ According to Redesh, a classic example of indirect incitement is when someone shouts “‘the man in that jail tortured and killed my mother’ in front of an unruly mob outside a jail.”²³⁶

Under indirect incitement, the court must:

objectively look at what inferences the hearer would rationally make from the utterance. An utterance has an indirect, directive illocutionary force if, given the circumstances under which the speaker made the utterance, the hearer would rationally infer from the words used that the speaker is urging her to engage in lawless action.²³⁷

Directing the focus to sovereign citizens, although Figueroa notes in the YouTube video that individuals should take the time to do their own

²³¹ GREENAWALT, *supra* note 151, at 267–68.

²³² Cronan, *supra* note 118, at 457.

²³³ See David G. Barnum, *The Clear and Present Danger Test in Anglo-American and European Law*, 7 SAN DIEGO INT’L L.J. 263, 268 (2006); Michael Vitiello, *What Marc Antony, Lady Macbeth, and Iago Teach Us About the First Amendment*, 2 NEV. L.J. 631, 644–45 (2002). A similar historical example is Henry II’s statement, “will no one rid me of this meddlesome priest,” which caused his nobles to assassinate Thomas Beckett, the priest in question. See also Eric Bradner, *Comey goes medieval: ‘Will no one rid me of this meddlesome priest?’*, CNN (June 8, 2017), <https://edition.cnn.com/2017/06/08/politics/will-no-one-rid-me-of-this-meddlesome-priest/index.html> [<https://perma.cc/UQ2E-C3VZ>].

²³⁴ Jaconelli, *supra* note 230, at 248.

²³⁵ Martin H. Redish, *Advocacy of Unlawful Conduct and the First Amendment: In Defense of Clear and Present Danger*, 70 CAL. L. REV. 1159, 1178 (1982).

²³⁶ *Id.* at 1179.

²³⁷ Bradley J. Pew, *How to Incite Crime with Words: Clarifying Brandenburg’s Incitement Test with Speech Act Theory*, 2015 BYU. L. REV. 1087, 1098 (2015).

research and decide what works best for them, as there are different ways debt can be “discharged” under these models, he makes other statements that fit the indirect incitement definition.²³⁸

For example, Figueroa states, approximately five and a half minutes into the video, “you got to get familiar with the administrative process because this is how sovereigns hold court. We don’t walk into these people’s buildings, we send them certified mail and affidavits and put them in their fucking place. Real, real simple.”²³⁹

This pushes past the example Redesh gave of the statement of the murder of his mother in front of a mob outside a jail. Figueroa knows that this statement will be heard by individuals who watch the YouTube video, and by stating individuals need to “get familiar with the administrative process” in order to “put them in their fucking place,” the reaction of hearers seems easily predictable, as sovereign citizens are predisposed to breaking the law.²⁴⁰

At the very end of Figueroa’s video, he says “It is a game of chess, stop playing checkers with these clowns.”²⁴¹ This statement, taken with the statements from the beginning of the video, are words that would allow the hearer to rationally infer that the speaker is “urging her to engage in lawless action.”²⁴²

The hearer must first infer who “these people” and “these clowns” are, and then must further infer what is means to “put them in their fucking place” and to “stop playing checkers with these clowns.”²⁴³

Even further, Figueroa urges people to “take back what the government owes us from taking from our parents.”²⁴⁴ The manner in which Figueroa makes these statements in the video, coupled with the words themselves, makes it seem as though individuals need to do this as soon as possible, therefore urging engagement in lawless actions.²⁴⁵

By making these inferences, a hearer could easily conclude gurus are urging them to partake in some sort of lawless action, in this case to

²³⁸ SovereignProductions369, *supra* note 177.

²³⁹ *Id.*

²⁴⁰ See Redish, *supra* note 235, at 1179; SovereignProductions369, *supra* note 177.

²⁴¹ SovereignProductions369, *supra* note 177.

²⁴² Pew, *supra* note 237, at 1098.

²⁴³ SovereignProductions369, *supra* note 177.

²⁴⁴ *Id.*

²⁴⁵ Pew, *supra* note 237.

defraud the government, therefore meeting the test courts must use when determining indirect incitement.²⁴⁶

C. Intent

The final requirement for incitement is intent.²⁴⁷ Similar to imminence and advocacy, courts have struggled with what intent is actually required to create incitement.²⁴⁸

Different courts emphasize different aspects, often taking broad views of intent when defining incitement. For example, a California court of appeals defined intent as speech that “(1) was directed and intended toward the goal of producing imminent lawless conduct and (2) was likely to produce such a result.”²⁴⁹ In contrast, a Georgia court found that a radio station committed incitement with its dangerous radio contest, which required participants to find the radio station’s star disc jockey who was broadcasting his location from a moving vehicle, because it “intentionally created the dangerous circumstances” even though there was no evidence that the station wanted anyone to be harmed, and the station certainly did not single out a target for harm.²⁵⁰ In another California court of appeals case, the court emphasized looking at the emotional state of the crowd, holding that when a speaker urges political assassination in front of a large unruly crowd, “the threat to civil order” is great despite the speaker’s actual intent.²⁵¹

Moving back to examining Figueroa’s YouTube video, Figueroa states, within the first 50 seconds of the video, “like this, share this, get this out to as many people as you can.”²⁵² Going a step further, Figueroa offers to personally help individuals fill out the different paperwork he discusses in the video, indicating his desire for individuals to follow through with the instructions he has taught them.²⁵³ These statements made by Figueroa, coupled with the anti-government views of sovereign citizens,²⁵⁴ meet the intent standard set forth by the California Court of Appeals. First, teaching individuals how to illegally discharge debt and defraud the government is “directed and intended toward the goal of producing imminent lawless conduct” on its own definition.²⁵⁵ Second, results have been produced by gurus and individuals charged with fraud and other crimes. Other courts

²⁴⁶ *Id.*

²⁴⁷ Sweeny, *supra* note 114, at 624.

²⁴⁸ *Id.*

²⁴⁹ *McCollum v. CBS, Inc.*, 249 Cal. Rptr. 187, 193 (App. 1988).

²⁵⁰ *Weirum v. RKO General, Inc.*, 539 P.2d 36 (1975).

²⁵¹ *People v. Rubin*, 158 Cal. Rptr. 488, 490–91 (Cal. App. 2d Dist. 1979).

²⁵² *SovereignProductions369*, *supra* note 177.

²⁵³ *Id.*

²⁵⁴ UNC School of Government, *supra* note 11.

²⁵⁵ *McCollum v. CBS, Inc.*, 249 Cal. Rptr. 187, 193 (App. 1988).

should follow more closely to that of the California Court of Appeals, as to create a standardized definition of intent.

When looking at the intent requirement, it would further be highly beneficial to look at the history of groups that individuals are a part of. In this case, the gurus are members of a larger community and movement that is anti-government and predisposed to break the law. This is useful in establishing the intent of certain individuals and what they believe and would assist courts in their analysis as well.

Figueiro is only one example of how sovereign citizen gurus use the Internet to their advantage to get their messages out to a wider audience. Under this example, imminence, call to action, and intent are met by statements made by Figueiro through the YouTube video and by examining the sovereign citizen movement as a whole. Although gurus are meeting the incitement standards, they are not being prosecuted under an incitement theory. In order to stop gurus from inciting lawless behavior, such as defrauding the government as Figueiro teaches, Congress's Committee on Homeland Security and legal scholars should take a closer look at the teachings of sovereign citizen gurus.

III. RESOLUTION: CONGRESSIONAL ACTION AND MORE RESEARCH BY LEGAL SCHOLARS

While there is some structure for federal courts to follow in defining incitement, expanded consideration beyond violence and to lawlessness—such as illegally discharging debt demonstrated in the case of Figueiro—would allow prosecutors to pursue more fraud or other more traditional criminal charges. Further, an investigation of the legality of sovereign citizen activity would reveal that gurus are not only doing illegal things but that they are also inciting others to do the same. Although sovereign citizens typically do not use First Amendment defenses,²⁵⁶ it is a potential shield they could use if faced with litigation due to the loose standards for incitement and Internet speech. Therefore, continued research would set a standard for incitement and speech on the Internet and not allow First Amendment protections where they are not warranted.

In defining incitement on a broader scale as it pertains to speech on the Internet, Dr. Sweeny and Professor Lidsky have begun to push the boundaries of when courts can apply incitement to certain speech.²⁵⁷ Dr. Sweeny focuses on imminence, call to action, intent, and how courts can be flexible in these

²⁵⁶ See generally Evans, *supra* note 105 (outlining the defense sovereign citizens typically use, the flesh-and-blood defense).

²⁵⁷ Sweeny, *supra* note 114, at 637; Lidsky, *supra* note 176, at 163-64.

requirements,²⁵⁸ whereas Professor Lidsky dives into the specific requirement of imminence and how it can be modified to fit speech on the Internet.²⁵⁹ Both scholars are correct that in the modern era, the definition of incitement must be expanded and adapted to fit technological advances. Scholars should continue to research sovereign citizen activity online and share their scholarship with lawmakers in order to stop and bring awareness to online lawless activity.

This Note has shown that sovereign citizen gurus' actions on the Internet meet the standard for incitement by fitting imminence, call to action, and intent, yet nothing is being done to stop their actions of inciting others. As shown through the history of the sovereign citizen movement, gurus have been inciting others even before the emergence of the Internet. The only difference now is that it is easier for their teachings to make their way to larger audiences.

Fourteen years ago, the FBI concluded the sovereign citizen threat would grow as a nationwide movement, basing their conclusion on "the Internet, the economic downturn, and seminars held across the country that spread their ideology and show people how they can tap into funds and eliminate debt through fraudulent methods."²⁶⁰

Based on the evidence provided in the above portions of this Note, it is clear that gurus are using the Internet to their advantage as predicted by the FBI, as they have different websites, templates, and videos posted for people around the world to view. Figueuro alone has thousands of subscribers and receives thousands of views on his content. It is not a hard task to find these materials online using simple searches on Google or YouTube, and it is likely an even easier task if an individual has connections within the sovereign citizen community.

The 2023 FBI report discussed above reveals that the FBI is aware of the continuing threat sovereign citizens pose, but often focuses on the violent acts these individuals commit and partake in. The report briefly mentions threats of fraud or theft and states:

The FBI and Department of Homeland Security Office of Intelligence and Analysis (DHS I&A) assess sovereign citizen violent extremists (SCVE) and ideologically motivated threats and crimes of fraud or theft may increase if economic circumstances within the United States result

²⁵⁸ See Sweeny, *supra* note 114, at 637.

²⁵⁹ Lidsky, *supra* note 176, at 162.

²⁶⁰ *Domestic Terrorism*, *supra* note 45.

in widespread housing or property losses, to include widespread evictions.²⁶¹

However, the report mainly focuses on and places sovereign citizens in a threat category that “encompasses the potentially unlawful use or threat of force or violence, in violation of federal law, in furtherance of political and/or social agendas, which are deemed to derive from anti-government or anti-authority sentiment, including opposition to perceived economic, social, or racial hierarchies, or perceived government overreach, negligence, or illegitimacy.”²⁶²

What sovereign citizen gurus are doing does not always fall into the threat category that the FBI has recently placed them. However, there is a major threat that gurus will continue using the knowledge they have and share such knowledge with others to swindle billions of dollars from the government²⁶³ or commit other lawless acts. By taking a closer look into the actions of sovereign citizen gurus, crimes such as swindling money from the government, fraudulently discharging debt, and evading taxes could be managed and stopped before becoming a bigger issue. Incitement encompasses lawless behavior and therefore gurus’ behaviors and activities, such as the creation of source materials²⁶⁴ or YouTube channels,²⁶⁵ should be examined under an incitement analysis.

Thus, it is necessary for Congress’s Committee on Homeland Security to investigate sovereign citizens and the legality of their activities when it comes to nonviolent crimes, ultimately examining their activities under an incitement analysis. Further, legal scholars should continue examining sovereign citizen activities as incitement and share their scholarship with lawmakers.

IV. CONCLUSION

A closer look at sovereign citizen gurus’ activity is crucial in a world where technology continues to evolve, but the law remains stagnant.

Throughout the years, the sovereign citizen movement has expanded, reaching past what was once limited to a “white nationalist” audience.²⁶⁶ Now, the movement reaches more minority groups, ultimately leading to a larger following of the ideology.²⁶⁷ As the movement has grown, the FBI has

²⁶¹ Federal Bureau of Investigation & Department of Homeland Security, *supra* note 46.

²⁶² *Id.*

²⁶³ Powers, *supra* note 169.

²⁶⁴ El & ISelfLawAmMaster.com, *supra* note 179.

²⁶⁵ SovereignProductions369, *supra* note 177.

²⁶⁶ *Aftermath: The Farm Crisis of the 1980s*, *supra* note 24.

²⁶⁷ *Moorish Sovereign Citizens*, *supra* note 31.

taken a closer look at sovereign citizen's activities and deemed them "domestic terrorists."²⁶⁸ However, the FBI focuses mainly on the violent acts sovereign citizens commit and less on the non-violent, yet still illegal, acts that sovereign citizens commit.²⁶⁹

Although scholars have often grappled with the exact requirements for incitement, Dr. Sweeny lays out a straightforward list of requirements, specifically pertaining to speech on the Internet: imminence, call to action, and intent.²⁷⁰ Courts have further grappled with the definitions for each requirement, and have not dealt with the definitions as they pertain to the Internet. Dr. Sweeny's three requirement list deals with speech on the Internet, but the definitions of each requirement should be pushed further to include speech that is solely on the Internet and does not result in any in-person meetings.

By using this outline and pushing it further to specifically deal with speech on the Internet, sovereign citizen gurus fit perfectly into the framework. Further, courts would have more structured definitions for each requirement, as dealing with situations on the Internet is a tougher challenge than standard situations where incitement applies. The videos, free PDFs, and templates gurus post and create for sovereign citizens to learn from constitute incitement based on the imminence, call to action, and intent these gurus have.

Because of this, it is critical that the FBI and Congress's Committee on Homeland Security dig deeper into gurus' actions, and appropriately charge these individuals with incitement, along with other crimes they have actively committed. It is equally important that legal scholars continue examining sovereign citizen activities as incitement and share their scholarship with lawmakers.

²⁶⁸ *Domestic Terrorism*, *supra* note 45.

²⁶⁹ 18 U.S.C. § 2331; *see also* Federal Bureau of Investigation & Department of Homeland Security, *supra* note 46.

²⁷⁰ *See Sweeny*, *supra* note 114, at 596.