

THE MOORISH SCIENCE TEMPLE OF AMERICA AND
THE LEGAL SYSTEM: EXPLORING THE NEED TO TAKE
PROACTIVE MEASURES AGAINST RADICAL MEMBERS
OF AN INCORPORATED RELIGION

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Religious freedom and a fair judicial system are two distinct rights that Americans have expected and enjoyed for decades. Individuals have a right to practice their religion freely, and the judicial system is in place to maintain a lawful and safe environment. The union of religious freedom and the judicial system can be less than harmonious. This is exceptionally true when individuals defend their illegal actions with their religious beliefs and denounce state and federal laws in the United States. What is the solution when this exercise of religious freedom impairs the judicial system and harms its officers? Does one of these distinct and imperative rights take a back seat to the other? At some point, the answer must be yes – but when? In order to combat the criminal acts performed by radical members of the Moorish Science Temple of America, the answer is now.

The Moorish Science Temple of America is an incorporated religion with noble beginnings. Over time, radicals broke away from the Moorish Science Temple of America and began exploiting both the faith and state and federal laws. Prevention methods should be taken to stop the illegal actions of these radical groups. Although such measures raise the risk of religious infringement, proactive measures must be taken instead of the recent reactive measures. The ever-present concern is striking an acceptable balance between religious freedom and law enforcement. But where a balance is not possible, a line must be drawn – the point where proactive measures are necessary, regardless of religion infringement.

This line is not simple to draw. Extreme cases though, are clearer than others. This is an extreme case. The radical groups have strayed from the original, positive message of the Moorish Science Temple of America and its founders. Although the Moorish Science Temple of America is an incorporated religion that

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deserves the protections of religious freedom, the radicals stemming from the faith do not. The radical groups claim their authority from the Moorish American Peace and Friendship Treaty, which was drafted to protect ships from pirates. From the Treaty, they assert complete immunity from the state and federal courts after they commit illegal acts. Federal courts have responded by holding their sovereign immunity claims invalid. State courts have not been as vocal, though. By looking at the federal courts' treatment of the Moorish Science Temple of America radicals and the treatment of other religious radical groups by the courts, it is clear what the state courts should do in this situation. The state courts must draw the line. In addition to this judicial response, proactive measures from the legislature may also be a necessary response. A combination of judicial and legislative measures may adequately combat the radical groups stemming from the Moorish American Science Temple of America.

I. THE MOORISH SCIENCE TEMPLE OF AMERICA: FROM RELIGIOUS FREEDOM TO RELIGIOUS RADICALS

As an American religious organization, the Moorish Science Temple of America expects to enjoy the religious freedoms of numerous other religions. As residents of the United States, its people are expected to abide by the laws of the nation and states. Some of its people, like Lamont Butler and Tabitha Gentry, expect more from religious freedom. These individuals seem to expect immunity, as they claim that their affiliation with the Moorish Science Temple of America is a justification for their actions. They use the faith to assert "that land instruments such as mortgages are not valid and that local laws do not have to be obeyed."¹

In March 2013, Butler invited friends to his new home in Maryland.² He showed them imported marble floors, twelve bedroom suites, and six kitchens. He bragged that the home hosted numerous political gatherings in the past, including events for Bill Clinton and Al Gore.³ His six million dollar new home, the

¹ Dan Morse, *'Moorish American National' Charged With Trying to Take Mansion*, THE WASHINGTON POST (Mar. 18, 2013), http://www.washingtonpost.com/local/moorish-american-national-charged-with-trying-to-take-mansion/2013/03/18/b6d4524c-6ece-11e2-aa58-243de81040ba_story.html.

² *Id.*

³ *Id.*

Bethesda mansion, is the largest in its region.⁴ This seems normal and appropriate – if Butler actually owned the mansion.⁵ Butler believed that the mansion was his, but not through the known and accepted legal formalities.⁶ Butler said that the mansion belonged to him solely because he is a Moorish American.⁷ While his occupancy only lasted a few hours, Butler attempted to make his home ownership legitimate by drafting his own paperwork and relying on a 1787 peace treaty – the Moorish American Peace and Friendship Treaty.⁸ Unfortunately for the new homeowner, the police did not see the validity in his ownership claims. Butler was charged with breaking and entering, fraud, and attempted theft.⁹ Following his arrest, the officers called the incident “one of the most audacious local cases” and said that it is a “growing national trend where self-described ‘sovereign’ nationals try to move into homes they don’t own.”¹⁰

As the officers noted, Butler is not the only one subscribing to this sovereign immunity belief. In Memphis, Tennessee, also in March 2013, Tabitha Gentry moved into a 9,000-square-foot mansion that she said she owned.¹¹ Like Butler, she soon discovered that she was wrong. Gentry was charged with trespassing and burglary.¹² In court, she vehemently denied the legitimacy of the charges. She repeatedly interrupted the judges and “invoked her sovereign rights.”¹³

Moorish Americans like Butler and Gentry, who in part get their self-proclaimed authority from the Moorish Science Temple of America, are squatting in houses across the country.¹⁴ According to Kory Flowers, a national expert on sovereign groups and an investigator with the Greensboro, North Carolina police, “It’s going on in every state.”¹⁵ Although widespread, California, North Carolina, and Georgia have seen the greatest number of cases involving these Moorish American sovereigns.¹⁶

4 *Id.*
5 *Id.*
6 Morse, *supra* note 1.
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 Morse, *supra* note 1.
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 Morse, *supra* note 1.

While squatting in foreclosed or unoccupied houses is one of the “more visible ways” that these radicals break the law, there are numerous other violations.¹⁷ Moorish American radicals sometimes do not register their cars with the local motor vehicle department and target officials who are investigating them for retaliation purposes by filing million-dollar liens on their properties.¹⁸ According to several public officials, “police officers, judges, and other public officials have had to take time off work or turn to lawyers to untangle their land records”¹⁹

Although the filing of these liens for “outrageous sums or other seemingly frivolous claims might appear laughable,” it is “nightmarish” for those filed against.²⁰ The filing of these liens has become such a widespread issue that the FBI has labeled the strategy “paper terrorism.”²¹ Unfortunately for the victims of the filings, the Moorish American radicals and others who subscribe to the sovereign citizen movement are free to file these liens at will. Under the Uniform Commercial Code, “a lien can be filed by anyone”²²

Despite the radicals’ claims, the Moorish Science Temple of America vehemently denies any association with these radicals. The members of the faith hold that the Moorish Science Temple of America’s founder, initial purpose, and current goals are far different from the radicals’ current criminal acts.²³

II. THE MOORISH SCIENCE TEMPLE OF AMERICA: ITS FOUNDER AND ITS BEGINNINGS

The Moorish Science Temple of America was founded by Noble Drew Ali, born Timothy Drew, in the early 20th century.²⁴ Born in North Carolina in 1886, Drew considered himself a

17 *Id.*

18 *Id.*

19 *Id.*

20 Erica Goode, *In Paper War, Flood of Liens is the Weapon*, THE NEW YORK TIMES (Aug. 23, 2013), http://www.nytimes.com/2013/08/24/us/citizens-without-a-country-wage-battle-with-liens.html?pagewanted=all&_r=0.

21 *Id.*

22 *Id.*

23 The faith claims that they do not support any radical groups. *Moorish Leader's Historical Message To America*, MOORISH SCIENCE TEMPLE OF AMERICA, INC. (last modified Aug. 30, 2008), <http://www.moorishsciencetempleofamerica.com/index.html>.

24 *Online Forum: Marcus Garvey and Noble Drew Ali*, AMERICAN EXPERIENCE: PBS ONLINE, http://www.pbs.org/wgbh/amex/garvey/sfeature/sf_forum_2.html (last modified 2000).

Moorish American.²⁵ Drew founded the Canaanite Temple in Newark, New Jersey in 1923.²⁶ After founding the Moorish Science Temple of America, Drew gained a strong following and became known as the Prophet Noble Drew Ali.²⁷ The members of the Moorish Science Temple of America have compared Noble Drew Ali to Jesus.²⁸ Members of the faith believe that Noble Drew Ali was sent to the Moors of America, who were African Americans, as a Prophet of Islam.²⁹ Noble Drew Ali came to the Moorish Americans in order to warn them of their sinful ways and redeem them from their past sins.³⁰

The Moorish faith, or “The Movement,” spread across the country during the 1920s.³¹ The Movement reached Detroit, Pittsburg,³² New York, Philadelphia, and then Chicago in 1925.³³ Within each city, the faith had several structured branches.³⁴ When the faith reached Chicago, Noble Drew Ali moved there and the Movement had its greatest force.³⁵ Drew donned a red fez and stood on the streets of Chicago.³⁶ He declared that people of color were not “Negroes, Colored Folks, Black People or Ethiopians.”³⁷ Rather, the people of color were Moorish. His proclamation

25 *Id.*

26 *Id.*

27 Noble Drew Ali has been compared with Marcus Garvey, founder of the Universal Negro Improvement Association (UNIA). *Id.* Drew considered Garvey an inspiration. *Id.* Drew thought of Garvey “as a voice in the wilderness on the issue of racial pride, an orator and prophet who had prepared black people to be receptive to Ali’s own message.” *Id.* Garvey was “specifically lauded as a John the Baptist who prepared the way for the coming of Noble Drew Ali at Moorish Science Temple meetings.” *Id.* Similar to the Garvey and the UNIA movement, Drew preached the importance of developing unity among all people of African descent. *Id.* While Drew used many of the same tactics to attract and maintain followers, there were differences between Drew and Garvey. *Id.* The UNIA, a black nationalist fraternal organization which sought to be social, friendly, and charitable, was predominantly Christian and adopted many Christian rituals in its meetings. *Id.* Drew focused on his belief that people of color – “all blacks, Asiatics, Turks, Arabs, and Latin Americans” – were all of Moorish origin. *Id.*

28 *Moorish American History*, MOORISH SCIENCE TEMPLE OF AMERICA, INC. (last modified Aug. 30, 2008), <http://www.moorishsciencetempleofamericainc.com/MoorishHistory.html>.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Online Forum: Marcus Garvey and Noble Drew Ali*, *supra* note 24.

33 *Moorish American History*, *supra* note 28.

34 *Online Forum: Marcus Garvey and Noble Drew Ali*, *supra* note 24.

35 *Id.*

36 *Moorish American History*, *supra* note 28.

37 *Id.*

gathered a crowd and then a following. Soon Noble Drew Ali obtained a meeting hall on Clayborne Avenue on the north side of Chicago.³⁸ Noble Drew Ali and his congregation began meeting there.³⁹ In addition to the meeting hall, the Moorish Science Temple had street orators, allowing the faith to reach people in different capacities.⁴⁰ The members of the faith had badges and membership certificates, which provided them with a feeling of belonging.⁴¹

The quick expansion of the Moorish Science Temple of America stemmed from the search for identity among black Americans.⁴² Under their leader, Noble Drew Ali, the congregation considered themselves to be Moorish Americans.⁴³ The Moorish Science Temple of America soon gained recognition and received validity from beyond just its members.⁴⁴ It also gained the religious freedom accorded to all recognized religions.

III. THE MOORISH SCIENCE TEMPLE OF AMERICA: AN INCORPORATED RELIGION

The Moorish Science Temple of America presents itself as a sect of Islam,⁴⁵ but also draws inspiration from “other faiths and philosophies, and has its own scriptures, generally called the Holy Koran or the Circle 7 Koran.”⁴⁶ Since the 1920s, the group has experienced various changes and decreased enrollment, but the Movement is still “alive” today.⁴⁷ There are various temples in the United States that follow the teachings of the Noble Drew Ali.⁴⁸ Moorish Americans identify themselves by their clothing and surnames. The star and crescent, fezzes, turbans, membership cards, buttons, and the Moorish Flag physically identify Moorish Americans.⁴⁹ The surnames “El” or “Bey” also signify Moorish

38 *Id.*

39 *Id.*

40 *Online Forum: Marcus Garvey and Noble Drew Ali, supra note 24.*

41 *Id.*

42 *Id.*

43 *Moorish American History, supra note 28.*

44 *Id.* “Finally by 1928, The Moorish Science Temple of America, Inc. was an established fact.” *Id.*

45 *Id.*

46 *Bogus Court Filings Spotlight Little-Known Sect, USA TODAY: RELIGION* (July 28, 2011 3:31 PM), http://usatoday30.usatoday.com/news/religion/2011-07-28-moorish-temple_n.htm.

47 *Moorish American History, supra note 28.*

48 *Id.*

49 *Id.*

American identity.⁵⁰ The mission of the faith was to uplift “fallen humanity and teach those things necessary to make our members better citizens.”⁵¹ The Moorish Science Temple of America continues to present an uplifting message and inspire pride, self-determination, personal transformation, and self-sufficiency – things necessary to make their members better citizens.⁵²

The Moorish Science Temple of America gained validation in 1928⁵³ when it was incorporated under the Illinois Religious Corporation Act.⁵⁴ Case law has confirmed that the courts also recognize the Moorish Science Temple of America as a religion. *Johnson-Bey v. Lane* held that the Moorish Science Temple is a “bona fide religion.”⁵⁵ In *Jones-El v. Davis*, the court defended the faith’s religious right to conduct congregational meetings.⁵⁶ Although the Moorish Science Temple of America is a legitimate religion worthy of certain protections and freedoms, the radical groups stemming from the faith are not worthy of the same protections and freedoms.

50 *Id.*

51 *Id.*

52 *Moorish American History*, *supra* note 28.

53 *Id.*

54 The Illinois Religious Corporation Act states:

Any church, congregation or society formed for the purposes of religious worship, may become incorporated in the manner following: By electing or appointing, according to its usages or customs, at any meeting held for that purpose, two or more of its members as trustees, wardens and vestrymen, (or such other officers whose powers and duties are similar to those of trustees, as shall be agreeable to the usages and customs, rules or regulations of such congregation, church or society), and may adopt a corporate name; and upon the filing of the affidavit, as hereinafter provided, it shall be and remain a body politic and corporate, by the name so adopted.

Religious Corporation Act, § 805 ILCS 110/35 (1872).

55 *Johnson-Bey v. Lane*, 863 F.2d 1308, 1309 (7th Cir. 1988).

56 *Jones-El v. Davis*, CA 89-0572-AH-C, 1992 U.S. Dist. LEXIS 12129, at *1 (S.D. Ala. Apr. 21, 1992). In the case, the plaintiff alleged that the defendants violated his First Amendment right to freely exercise his religion and Fourteenth Amendment right to equal protection of laws when the Moorish Science Temple of America membership at G. K. Fountain Correctional Center was told that the members were no longer allowed to conduct congregational meetings in the chapel. *Id.* The court agreed with plaintiff and held that it was a violation. *Id.*

IV. RADICAL GROUPS STEMMING FROM THE MOORISH SCIENCE TEMPLE OF AMERICA

While many members of the Moorish Science Temple of America abide by the values originally identified by the faith, the radical groups do not. The radicals claim that they act out of allegiance to their faith and attempt to justify their actions as being done with a religious purpose.⁵⁷ Recently, the radical groups and their sovereignty theory have had an impact on the court system and society. In addition to religious claims, the radical groups argue that they are immune to state laws⁵⁸ in the United States due to the Moorish American Peace and Friendship Treaty.⁵⁹ The radicals' reliance on the Moorish American Peace and Friendship Treaty can be deemed erroneous by reviewing its history and text.

A. The History of the Moorish American Peace and Friendship Treaty

The history of the Moorish American Peace and Friendship Treaty (Treaty) clearly shows its purpose. The Treaty stemmed from piracy concerns and a history of interaction between the Barbary States⁶⁰ and the United States. Many of the Barbary

⁵⁷ The faith claims to not teach, endorse, or support any "sovereign" theory or radical groups. *Moorish Leader's Historical Message To America*, *supra* note 23.

⁵⁸ It seems that the radicals often move their cases to federal court because they believe that federal courts are legitimate, while the states and their laws are a fiction. Gerald Morgan, *Encountering the Shaykamaxum Republic*, DAILY RECORD (Jan. 10, 2014), <https://www.dailyrecord.us/default/view?id=21380>. Extreme radicals claim that they are immune to state laws and federal laws and find both court systems to be fictional. *Id.* Regardless, they still believe that they should be immune to all laws, state and federal, due to the Moorish American Peace and Friendship Treaty.

⁵⁹ "According to the Moors, the [Moorish American Peace and Friendship] Treaty subjects them only to the laws of Morocco, including the taxing provisions." *The Great Seal of the Moorish Sci. Temple of America, Inc., v. New Jersey*, No. Vic. A. 05-CV-345, 2005 WL 2396311, at *1 n. 1 (E.D. Pa. Sept. 28, 2005). Moreover, the Moors do not believe that African Americans are technically citizens of the United States within the meaning of the United States Constitution as a result of many of the Moors' predecessors being brought to the United States as slaves; "Thus, they contend that descendants of slaves are not subject to the laws established pursuant to the Constitution." *Id.*

⁶⁰ The Barbary States were a collection of North African states. *Barbary Wars, 1801-1805 and 1815-1816*, U.S. DEPARTMENT OF STATE: OFFICE OF THE

States practiced state-supported piracy over the weaker Atlantic powers.⁶¹ Prior to the United States' independence, the American colonists had "enjoyed the protection of the British Navy."⁶² Once the United States declared independence, British diplomats informed the Barbary States that the United States ships were open to attack.⁶³ While the United States disputed with the Algiers,⁶⁴ it negotiated with Morocco.⁶⁵ In 1786, the United States entered into a treaty with Morocco.⁶⁶ The Treaty and additional articles were ratified by the United States on July 18, 1787.⁶⁷

B. The Text of the Moorish American Peace and Friendship Treaty

Similar to its history, the text of the Treaty shows its intention to combat piracy. Both the text of the Treaty and its history are clear evidence that its purpose and intention is vastly different from its claimed purpose by the radicals. The United States and Morocco drafted the Treaty with the intention to regulate ships and minimize piracy in the waters. The language of the Treaty shows that its purpose was to guarantee that ships could travel freely without the fear of piracy. Nothing about the history or the language of the Treaty insinuates that the purpose and intention of the drafters was anything different.

HISTORIAN, <http://history.state.gov/milestones/1801-1829/BarbaryWars> (last visited Oct. 8, 2014).

61 *Id.* The state-supported piracy and ransoming of captives was not unusual at this time. *Id.*

62 *Id.*

63 *Id.*

64 Congress was unable to raise enough funds to satisfy Dey Muhammad of Algiers and was unable to protect United States' ships. *Id.* The United States continued to have problems with the Algiers. *Id.* Under the control of Dey Omar, the United States and Algiers reached an agreement. *Id.* Upon realizing that he could no longer rely on the support of the British against the Americans, Dey Omar reluctantly accepted the treaty proposed by Commodore Decatur that called for an exchange of United States and Algerian prisoners and an end to the practices of tribute and ransom, and "Having defeated the most powerful of the Barbary States, Decatur sailed to Tunis and Tripoli and obtained similar treaties." *Id.* Dey Omar repudiated the treaty after it was ratified in 1815. *Id.* A new treaty was then dictated and Congress finally ratified it in 1822, due to an accidental oversight that led to the nearly 10-year delay. *Id.* The Barbary States resumed raids in the Mediterranean, but left the United States' ships alone. They did not end their piracy practices until the French conquest of Algeria in 1830. *Id.*

65 *Barbary Wars, 1801-1805 and 1815-1816, supra* note 60.

66 *Id.*

67 *The Barbary Treaties 1786-1816, Treaty with Morocco June 28 and July 15, 1786*, YALE LAW SCHOOL: THE AVALON PROJECT, http://avalon.law.yale.edu/18th_century/bar1786t.asp (last modified 2008).

The radicals though, have taken the language of the Treaty and twisted it for their own purposes – avoiding punishment for illegal acts. It seems that they gain the most support for their argument from Article 6, which states:

6. If any Moor shall bring Citizens of the United States or their Effects to His Majesty, the Citizens shall immediately be set at Liberty and the Effects restored, and in like Manner, if any Moor not a Subject of these Dominions shall make Prize of any of the Citizens of America or their Effects and bring them into any of the Ports of His Majesty, they shall be immediately released, as they will then be considered as under His Majesty's Protection.⁶⁸

The notable language in Article 6 states that any citizens of the United States and their belongings should be immediately released.⁶⁹ The Moorish American radicals are using this language to argue that if they are brought before a court in the United States, that they too should be immediately released and should be free from prosecution. Using the context of the other articles of the Treaty, it is clear that this interpretation is inaccurate. Numerous other articles discuss vessels, ports, and being at war.⁷⁰ It is evident that the Treaty was enacted in order for ships to feel safe in the waters, especially during war. Article 6 references individual capture regarding ships,⁷¹ presumably during war, making it clear that the radicals' interpretation is wholly inaccurate and inapplicable.

68 *Id.*

69 *Id.*

70 The other articles of the Treaty are clear evidence that Article 6 is in reference to piracy and ships. Article 5 states:

5. If either of the Parties shall be at War, and shall meet a Vessel at Sea, belonging to the other, it is agreed that if an examination is to be made, it shall be done by sending a Boat with two or three Men only, and if any Gun shall be Bred and injury done without Reason, the offending Party shall make good all damages.

Id. Similarly, Article 7 states: "7. If any Vessel of either Party shall put into a Port of the other and have occasion for Provisions or other Supplies, they shall be furnished without any interruption or molestation." *Id.*

71 *Id.*

Further evidence of the Treaty's invalidity for the radicals' proposed purpose is the Treaty's expiration. Prior to the twenty-five articles of the Treaty, it states:

This is a Treaty of Peace and Friendship established between us and the United States of America, which is confirmed, and which we have ordered to be written in this Book and sealed with our Royal Seal at our Court of Morocco on the twenty fifth day of the blessed Month of Shaban, in the Year One thousand two hundred, trusting in God it will remain permanent.⁷²

However, Article 25 of the Treaty also states, "This Treaty shall continue in full [f]orce, with the help of God for Fifty Years."⁷³ It is well beyond the fifty-year reference, as the Treaty was ratified in 1787.⁷⁴ If the time reference of Article 25 holds, it is irrelevant if the Treaty would apply to sovereign citizens or not. It appears that the intention of the Treaty was for it to remain permanent within that fifty-year period, not remain permanent for all of time. A translation of the Treaty by the Avalon Project states:

The twenty-fifth article is that this treaty of peace shall remain permanent, if God please, by God's might and power, a period from [of is evidently meant] fifty years. We have delivered this book to the above-mentioned Thomas Barclay on the first day of the blessed Ramadan of the year two hundred and thousand.⁷⁵

This confirms that "permanent"⁷⁶ was in reference to continual peace within that fifty-year time period, and not for it to be permanent in general.

While it seems apparent that the Treaty has long expired, even assuming that the Treaty is permanent, it is clearly not applicable. The Treaty's aim was to end piracy between the

⁷² *The Barbary Treaties 1786-1816*, *supra* note 67.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *The Barbary Treaties 1786-1816, Treaty with Morocco- The English Translation of 1786*, YALE LAW SCHOOL: THE AVALON PROJECT, http://avalon.law.yale.edu/18th_century/bar1786e.asp (last modified 2008).

⁷⁶ *The Barbary Treaties 1786-1816*, *supra* note 67.

Moorish and the Americans. Its goal was to maintain peaceful and friendly waters, and nothing more than that. The Treaty was merely applicable for the fifty years following 1787 ratification and was only in reference to ships and piracy.⁷⁷ Any argument regarding the applicability of the Treaty in the radicals' proposed context is misplaced and irrelevant.

C. The Radical Groups' Claims of Sovereign Immunity Through the Moorish American Peace and Friendship Treaty

Despite the clear intention and text of the Treaty, the radical members of the faith subscribe to the theory of sovereignty that allegedly stems from the Treaty.⁷⁸ The radicals claim that they are ruled by the Treaty because they are Moorish Americans.⁷⁹ Thus, they are sovereign and are not dictated by the laws of the states in the United States.⁸⁰ Extreme radicals also claim that they are not dictated by federal laws.⁸¹ Rather, they are ruled by the Treaty.⁸² Although the Treaty clearly intended for vessels to mean ships, these radicals hold that their bodies are "vessels"⁸³ for their spirit,⁸⁴ making their bodies analogous with the vessels in the Treaty. While this is an illogical interpretation, it is a common belief held by and claimed by Moorish American radicals.

The Moorish American radicals' misinterpretation has proven to be far-reaching and troublesome. Through illegal activity, the placement of legal hurdles, and the claims of sovereign immunity, these radical members are manipulating the Treaty and causing problems in the legal community across the United States.

⁷⁷ *Id.*

⁷⁸ The Great Seal of the Moorish Sci. Temple of America, Inc., v. New Jersey, No. Vic. A. 05-CV-345, 2005 WL 2396311, at *1 n. 1 (E.D. Pa. Sept. 28, 2005).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *The Barbary Treaties 1786-1816*, *supra* note 67.

⁸⁴ See *Tirado v. New Jersey*, No 10-3408 (JAP), 2011 U.S. Dist. LEXIS 32337, at *10 (D.N.J. Mar. 28, 2011) (Tirado suggested that he had sovereign immunity because he was separate from the fictional man called Graciano Tirado).

D. The Radical Groups' Impact on Society Through Illegal Activity and Manipulation of the Moorish American Peace and Friendship Treaty

The Moorish Science Temple of America found itself in the news when several members of the faith, like Lamont Butler,⁸⁵ were accused of squatting in empty multimillion-dollar homes that were up for sale.⁸⁶ The squatters claimed that their faith was the reason for their rejection of the United States laws.⁸⁷ They claimed that they had property rights to the property of others.⁸⁸ In addition to committing felonies and denying charges, the radicals have proven troublesome post-arrest, post-indictment, and even in the courtroom with various judges.

Following an arrest, the radical members of the Moorish Science faith have filed false legal documents in numerous municipalities in the United States.⁸⁹ These documents claim that the court system has no jurisdiction over them due to their sovereignty because they are governed by the Treaty.⁹⁰ The documents include fake liens against judges and property claims to various homes not in their possession.⁹¹

In connection with the term “vessel”⁹² in the Treaty, the radicals claim that they are not themselves. This complex and strange issue works in the following way: when a judge asks the defendant to say his name for the record, the defendant claims that they are not that named person; rather, they are a vessel that contains the spirit for that named defendant.⁹³ Thus, they refuse to answer the judge. This refusal leads to the judge holding the defendant in contempt of court, to which the radicals have a surprising response. The now incarcerated defendant claims that the judge has kidnapped him and that the judge must be charged with kidnapping or should be liable under false imprisonment.⁹⁴

85 See *supra* pp. 508-10.

86 Morse, *supra* note 1.

87 *Id.*

88 *Id.*

89 *Id.*

90 Moorish Americans claim that the Moorish American Peace and Friendship Treaty allows them to act freely without fear of prosecution, similar to the freedom of ships to travel without fear of piracy. See “*Black Moors and the USA Constitution Treaty*,” THE LAST “ECHO,” (Feb. 20, 2011), <http://thelastechomovement.blogspot.com/2011/02/black-moors-and-usa-constitution-treaty.html>.

91 Morse, *supra* note 1.

92 *The Barbary Treaties 1786-1816*, *supra* note 67.

93 See *Tirado*, 2011 U.S. Dist. LEXIS 32337, at *5.

94 *Id.* at *6.

While the kidnapping and false imprisonment arguments, liens, and property rights are mere threats with no legal strength, the documents have been bogging down the court system, causing problems in the courts, and giving headaches to numerous judges in the wake of the claims and as the subject of the fake liens. In the midst of the illegality and irrational claims, the non-radical members of the Moorish Science Temple of America vehemently maintain that they do not support or associate with the radical groups.⁹⁵ This is supported by religious scholars, who also maintain that the Moorish Science faith is not involved in any criminal activity.⁹⁶

V. POSITIVE BEGINNINGS TO NEGATIVE ENDS: HOW MUCH IS TOO MUCH?

A faith that began as a way for black individuals to find a place to feel welcome and a Treaty that was meant to promote peace among ships are being manipulated in a way that insults both the faith and the document. The core members of the Moorish Science Temple of America have rejected any association with the radicals. History and logic reject any association between the radicals and the Treaty. This has not stopped Moorish American radicals from manipulating both, and it does not appear that they have any intention of stopping in the future.

At this point, the courts must step in to stop them. The federal court system has responded, but the state courts have not been nearly as vocal. The state courts will continue to be tormented by the repeated filing of documents regarding sovereign citizenship and liens until a decision is handed down to act as precedent or proactive measures are taken. The state courts can turn to the federal courts and history⁹⁷ for guidance.

VI. LEGAL VALIDITY OF THE MOORISH AMERICAN PEACE AND FRIENDSHIP TREATY IN FEDERAL COURT

There have been numerous cases in federal court in New Jersey involving Moorish Americans that have claimed to be dictated by the Moorish American Peace and Friendship Treaty.

⁹⁵ *Bogus Court Filings Spotlight Little-Known Sect*, *supra* note 46.

⁹⁶ The radicals' arguments tend to show an alignment with Moorish Americans and the Moorish Science Temple of America.

⁹⁷ *See infra* p. 526.

The general consensus in these cases is that the claim is nonsense. The courts generally outright dismiss the cases with prejudice.

In some cases though, the courts have held that there is no jurisdiction over the claims in federal court. These cases are then remanded to state court.⁹⁸ The federal courts have addressed, and continue to address, the claims of these individuals. Through remanding the cases, the claims must be addressed on a case-by-case basis by both the federal and state courts. This bogs down the entire judicial system.

A. The Federal Courts' Dismissal of the Claims as Nonsensical

In many cases, the federal courts have dismissed the Moorish American radicals' claims as being nonsensical and irrational. The federal court in New Jersey has heard a number of these cases and has responded by dismissing the illogical claims. In *Tirado v. New Jersey*, the court held that there was no legal basis for an argument of sovereign citizenship.⁹⁹ It said that it was "evident that Petitioner is attempting to void his state court judgment of conviction"¹⁰⁰ by suggesting that he had "sovereign immunity as a 'man' separate from the fictional entity of Graciano Tirado"¹⁰¹ The court said that Tirado's argument that state laws did not apply to him had "absolutely no legal basis."¹⁰² Similar to *Tirado*, the court in *Bey v. United States Dep't of Homeland Sec. Immigration* found the claims to be nonsensical.¹⁰³ The court said that Bey's use of the Treaty as a defense was a "delusory contrivance."¹⁰⁴

⁹⁸ Some cases are remanded to municipal court.

⁹⁹ *Tirado*, 2011 U.S. Dist. LEXIS 32337, at *18. Tirado filed a habeas petition around July 6, 2010. *Id.* at *2. He paid the filing fee for the petition on July 15, 2010. *Id.* Tirado alleged that he was challenging his New Jersey state court conviction and sentence that was entered on or about December 12, 2003, before the Superior Court of New Jersey, Law Division, Middlesex County. *Id.* He was charged with murder and possession of a weapon for an unlawful purpose. *Id.* He was found guilty by jury trial. *Id.*

¹⁰⁰ *Id.* at *10.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Bey v. United States Dep't of Homeland Sec. Immigration*, No. 10-46 (FSH), 2010 U.S. Dist. LEXIS 40112, at *8 (D.N.J. Apr. 23, 2010). The court called the claims "a wide-spread criminal scheme based on the scheme participants' self-legitimization of their names for the purposes of initiating fraudulent legal transactions, by filing fraudulent UCC financing forms to perfect security interests in property." *Id.* at *7.

¹⁰⁴ *Id.* at *6.

In addition to a delusion, the court called the Moorish American radicals' actions "Paper Terrorism."¹⁰⁵ In *Murakush Caliphate of Amexen Inc. v. New Jersey*, this characterization referred to the instances when the sovereign citizens¹⁰⁶ "waged war against the government and other forms of authority using paper terrorism harassment and intimidation tactics"¹⁰⁷ through the filing of legal documents and liens. They also occasionally resorted to physical violence.¹⁰⁸ The court addressed the numerous pleadings filed by the radicals in *Burpee-El v. Warden*.¹⁰⁹ The court titled a heading in its opinion, "Pattern of Frivolous or Obstructive

105 *Murakush Caliphate of Amexen Inc. v. New Jersey*, 790 F. Supp. 2d 241, 243 (D.N.J. 2011) (internal citations and quotations omitted).

106 The Moorish Americans refer to themselves as sovereign citizens, meaning that they are free of the laws of the United States and that the courts have no jurisdiction over them. *Id.*

107 *Id.* (internal citations and quotations omitted).

108 *Id.* The court further stated:

It does not appear that one's Moorish ethnic roots (or Moorish religious convictions, or both) have any reason to go hand-in-hand with one's adhesion to the sovereign citizenship movement (or with one's professing the theory of redemptionism, or with one's practice of "paper terrorism," claims of self-granted "diplomatic immunity," etc.). However, and unfortunately enough, certain groups of individuals began merging these concepts by building on their alleged ancestry in ancient Moors (and/or on their alleged or actual adhesion to Moorish religious convictions) for the purposes of committing criminal offenses and/or initiating frivolous legal actions on the grounds of their self-granted "diplomatic immunity," which these individuals deduce either from their self-granted "Moorish citizenship" and from their correspondingly-produced homemade "Moorish" documents (or from correspondingly-obtained "world passports") or from a multitude of other, equally non-cognizable under the law, bases, which these individuals keep creating in order to support their allegations of "diplomatic immunity."

Id. at 245. "[S]uch claims of 'diplomatic immunity' are without merit." *Id.* at 245 n. 4.

109 *Burpee-El v. Warden*, Fort Dix, No. 10-2200 (JBS), 2010 U.S. Dist. LEXIS 118307, at *1 (D.N.J. Nov. 8, 2010). After being charged with the manufacture, possession and sale of a controlled substance and conspiracy to commit those criminal acts, Burpee-El filed numerous motions. *Id.* at *3. The motions that he filed were of his own volition; they were the following: Motion for Proof Power, Standing, and Jurisdiction in the Particulars, Notice of Default, Motion to Vacate Void Judgment, Declaration of Objection to Sentencing in the Nature of Writ of Error, and Motion to Dismiss for lack of In Personam and Subject Matter Jurisdiction. *Id.* at *6.

Pleadings.”¹¹⁰ It further commented on the uncertainty of the mental competence of the individuals asserting the defense.¹¹¹ The liens filed by the radicals were specifically addressed in *Monroe v. Beard*.¹¹² The court, referring to numerous other cases,¹¹³ said, “In federal criminal and civil prosecutions of inmates filing false commercial liens against prosecutors, judges, corrections officers and other government employees, courts have uniformly declared those liens null and void.”¹¹⁴

B. The Federal Courts’ Dismissal of the Claims for Lack of Jurisdiction

In addition to the many cases that are dismissed for being irrational, the federal court in New Jersey has remanded a number of cases to state court or municipal court for lack of jurisdiction in federal court. In *Bowles v. New Jersey*, the plaintiff sought to remove a municipal summons that was issued by the Neptune Township Municipal Court.¹¹⁵ She alleged that her status as an “Aboriginal Indigenous Moorish American [did] not confer jurisdiction” in municipal court and that the matter was properly moved to federal court.¹¹⁶ The court disagreed and remanded the action to municipal court, holding that the federal court did not have jurisdiction over the matter.¹¹⁷ The court said, “[A] federal

110 *Id.* at *13.

111 The court said, “In light of the foregoing, it is hardly surprising that government officials, be they law enforcement officers, prosecutors, public defenders or members of the judiciary, experienced uncertainty as to these litigants’ mental capacity . . .” *Id.* at *17.

112 *Monroe v. Beard*, 536 F.3d 198 (3d Cir. 2008). In 2004, William Fairall, DOC Deputy Chief Counsel, learned that inmates at prisons across the country were filing fraudulent liens and judgments against prosecutors and prison officials. *Id.* at 202-03. The fraudulent documents included liens and judgments, which are accessible on financing statement forms. *Id.* at 203. Such forms are easy to file, but once registered, the fraudulent liens are very burdensome to remove. *Id.*

113 *Id.* at 202 n.2 (referencing various cases that have declared the liens null and void).

114 *Id.*

115 *Bowles v. New Jersey*, No. 11-05253 (CCC), 2012 U.S. Dist. LEXIS 8706, at *1 (D.N.J. Jan. 25, 2012).

116 *Id.* at *2 (citing *Pa. St. Police v. Vora*, 140 Fed. Appx. 433, 433 (3d Cir. 2005)).

117 *Id.* at *1

district court may not exercise jurisdiction over a municipal court proceeding.”¹¹⁸ This required her case to be heard multiple times.

The court explored the jurisdiction issue further in *El Bey v. N. Brunswick Mun. Court*.¹¹⁹ The plaintiff argued that his alleged status as an “Aboriginal Indigenous Moorish American” authorized a review and reversal of municipal charges in the federal court.¹²⁰ The court held that a “federal district court may not exercise jurisdiction over a municipal court proceeding”¹²¹ The court remanded the case, stating that plaintiff’s “alleged status as an ‘Aboriginal Indigenous Moorish American’ creates no jurisdiction here [in federal court].”¹²² Similarly, in *Abdullah v. New Jersey*, the plaintiff submitted a request to remove a state proceeding to federal court.¹²³ The court said, “A party to a state action cannot, at a mere whim, remove his/her state proceedings to the federal forum; rather Removal of a state court action to federal court is proper only if the federal court would have had original jurisdiction over the matter.”¹²⁴

The federal court in New Jersey and numerous other states¹²⁵ have been disposing the Moorish American radicals’ claims, considering them irrational and dismissing the claims with prejudice. The federal courts have determined that the sovereignty claim has no legal basis and that the application of the Treaty is merely a delusion.

While the federal courts have held that these alleged sovereign citizens are using this defense solely to avoid prosecution under the laws of the state or of the country, the state courts have seemingly not been as vocal. Recently though, the state courts have begun to answer the radicals’ claims. It has become clear that this defense contains no legally acceptable argument and should be dismissed by all courts. The issue now is

118 *Id.* (citing *El Bey v. N. Brunswick Mun. Ct.*, No. 08-2825, 2008 U.S. Dist. LEXIS 47647, at *3 (D.N.J. June 19, 2008)).

119 *El Bey*, 2008 U.S. Dist. LEXIS 47647, at *1.

120 *Id.* at *2.

121 *Id.* at *3.

122 *Id.*

123 *Abdullah v. New Jersey*, No. 12-4202 (RBK), 2012 U.S. Dist. LEXIS 99021, at *1-2 (D.N.J. July 16, 2012).

124 *Id.* at *2.

125 *See, e.g.*, *Moorish Sci. Temple of Am. v. City of Berwyn*, No. 11-cv-3519, 2011 U.S. Dist. LEXIS 99923 (N.D. Ill. Sept. 6, 2011) (granting the motion to dismiss plaintiff’s complaint); *Bey v. Am. Tax Funding*, 11-CV-6458-CJS, 2012 U.S. Dist. LEXIS 59341 (W.D.N.Y. Apr. 27, 2012) (holding that the “allegations in the complaint did not raise a plausible claim.”).

how the state courts should respond, as the federal courts are remanding the cases.

VII. THE STATE COURTS' RESPONSE TO MOORISH AMERICAN RADICAL GROUPS

The recent onslaught of claims by the radicals has required the state courts to answer on a case-by-case basis.¹²⁶ The court in *Gutloff v. State* shared the sentiment of many other courts when it called the jurisdictional arguments “non-meritorious” and “annoying.”¹²⁷ Despite this, the state courts are much less vocal than the federal courts,¹²⁸ and New Jersey state case law on the issue seems relatively absent. In determining the best approach for future cases, it is important to explore how the courts have handled similar issues in the past.

VIII. DRAWING PARALLELS BETWEEN THE MOORISH AMERICANS AND OTHER RADICAL GROUPS

History is possibly the best teacher. This is especially true in the judicial system regarding precedential case law among jurisdictions. When handling complex legal issues, judges may look to the past for guidance when distinct similarities exist. In addition to federal case law, the answer to handling the Moorish American radicals lies in history. Specifically, how the courts have approached polygamy, Peyotism, and Christian Terrorism may provide some answers.

¹²⁶ In terms of civil liability, in *Bank of Am., N.A. v. Derisme*, the defendant argued that the court did not have jurisdiction over her because of her status as a Moorish American. *Bank of Am., N.A. v. Derisme*, CV096004583S, 2010 Conn. Super. LEXIS 119, at *1 (Conn. Super. Ct. Jan. 21, 2010). The court held that she could be deemed civilly liable and could be sued in both federal and state courts. *Id.* at *4.

¹²⁷ *Gutloff v. State*, 51 A.3d 775, 792, 204 (Md. Ct. Spec. App. 2012).

¹²⁸ This can partly be explained by the fact that the Moorish American radicals attempt to have their cases heard in federal court and not state court. It is a common belief among the radicals that the states are a fiction and that the United States is a real entity. Only extreme radicals believe that both the states and the country are a fiction. Thus, all of the radicals do not want their claims heard in state court, as the entity and its law are allegedly a fiction. Regardless, both the federal courts and the state courts need a more productive way to handle these cases. This is especially true for the state courts, as the cases are being remanded to state court and the state courts appear to have less experience than the federal courts with these cases. *See Morgan, supra* note 58.

A. Polygamy: Reynolds v. United States

1. The Mormon Faith and its Radical Sects

Polygamy is the practice of having more than one wife or husband at the same time.¹²⁹ Polygamy is generally associated with the Mormon faith¹³⁰ and the state of Utah. While the association exists, Mormons do not condone polygamy.¹³¹ Mormons abandoned polygamy in the 1890s “when church leaders renounced it as a condition for Utah statehood.”¹³² The faith even threatened excommunication if individuals continued to practice polygamy. Some of the individuals who wanted to continue practicing polygamy were ultimately excommunicated from the church.¹³³ Others who wanted to continue practicing polygamy chose to leave the church voluntarily.¹³⁴ These Mormon “radicals” broke off into sects and continued their polygamist lifestyles.¹³⁵ The largest sect is the Fundamentalist Church of Jesus Christ of Latter Day Saints, or FLDS.¹³⁶ FLDS, led by Warren Jeffs,¹³⁷ is based in Colorado City, Arizona.¹³⁸ Its location outside of Utah is arguably because of the Mormon faith’s objection to the polygamy that is practiced by FLDS.

Mormons maintain that they do not condone polygamy. Similar to members of the Moorish American Science Temple of America, Mormons do not consider these radical sects to be part of their religion.

129 See generally JUDITH C. AREEN, MARC SPINDELMAN & PHILOMILA TSOUKALA, *FAMILY LAW: CASES AND MATERIALS* (6th ed. 2012).

130 Mormons are members of the Church of Jesus Christ of Latter-day Saints. Joel Arak, *Polygamist Guilty of Child Rape*, CBS NEWS (June 24, 2002), <http://www.cbsnews.com/news/polygamist-guilty-of-child-rape/>.

131 See generally AREEN, *supra* note 129.

132 Aak, *supra* note 130.

133 *Id.*

134 AREEN, *supra* note 129.

135 *Id.*

136 *Id.*

137 Warren Jeffs continues to lead the church from prison, where he is currently serving a life sentence for sexually assaulting children. Cecilia Vega, *Warren Jeffs’ Nephews Say FLDS Church Leader Uses ‘God’s Name to Brainwash’*, ABC NEWS (Dec. 5, 2013), <http://abcnews.go.com/US/warren-jeffs-nephews-flds-church-leader-gods-brainwash/story?id=21105965>.

138 *Id.*

2. The Mormon Radical Sects in Court

In addition to Mormons' disapproval of polygamy, the courts have also shown stark disapproval by upholding the law against polygamy since 1878. In *Reynolds v. United States*, the Supreme Court of the United States held that plural marriages should not be allowed.¹³⁹ Polygamist George Reynolds was charged with bigamy,¹⁴⁰ which is the act of entering into marriage with one person who is still legally married to another.¹⁴¹ Bigamy falls under the umbrella of polygamy.¹⁴² During his trial, he informed the Court that he was a member of the Mormon Church and that polygamy was an accepted doctrine in the church.¹⁴³ He insisted that if the jury found that he was married, the verdict must be not guilty because he was simply fulfilling his religious duty.¹⁴⁴ The case turned on the issue of religious freedom. In holding that polygamy should not be allowed, the Court determined that religious beliefs cannot be governed, but religious practices can be governed.¹⁴⁵ Individuals are entitled to have their own beliefs and faith. Beliefs belong to the church and not the government. The government may not take action against beliefs, but may take action when one's religion causes them to act illegally or violate social duties and societal order.¹⁴⁶

The courts have upheld the illegality of polygamy. Tom Green, a polygamist, was convicted of child rape for having sex with a 13-year-old girl, Linda Kunz,¹⁴⁷ who became his "spiritual wife."¹⁴⁸ He also had a child with the young girl.¹⁴⁹ Green had four other wives and thirty children, seven of which were with Kunz.¹⁵⁰ In addition to his conviction of child rape, Green was previously convicted of bigamy and criminal nonsupport.¹⁵¹

With polygamy, it is clear that the claim of religious freedom does not stand against illegality. As *Reynolds* clearly

139 *Reynolds v. United States*, 98 U.S. 145, 167-68 (1878).

140 *Id.*

141 *See generally* AREEN, *supra* note 129.

142 *Id.*

143 *Reynolds*, 98 U.S. at 161-62.

144 *Id.*

145 *Id.* at 166.

146 *Id.* at 164.

147 Arak, *supra* note 130.

148 During Green's trial, Kunz was also his legal wife. *Id.*

149 *Id.*

150 *Id.*

151 *Id.*

showed, while man is free to have his own beliefs, man cannot use faith as an excuse for illegal acts and socially unacceptable behavior. This can be and should be applied to the Moorish American radical groups.

B. Peyotism: Employment Div., v. Smith and Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal

1. Peyotism as a Religious Movement

The Native American Church, which is also called Peyotism or Peyote Religion, is the “most widespread indigenous religious movement among North American Indians and one of the most influential forms of Pan-Indianism.”¹⁵² There are various forms of Peyotism, which all combine different degrees of Indian and Christian elements.¹⁵³ Typically, peyotists believe in one supreme God, “the Great Spirit.”¹⁵⁴ This one supreme God then “deals with men through various spirits, which include the traditional waterbird or thunderbird spirits that carry prayers to God.”¹⁵⁵

The faith gets its name from its followers’ use of peyote. Peyote is a cactus that contains mescaline, a drug that can cause hallucinations.¹⁵⁶ In many Peyotism tribes, peyote itself is personified as “Peyote Spirit.”¹⁵⁷ The tribes consider the Peyote Spirit to be equal to either God or to Jesus.¹⁵⁸ Peyote, when eaten for spiritual or ritual purposes, enables the tribe members to connect with God and the spirits and those that are deceased.¹⁵⁹ The connection is claimed to be both mental and visual and provides the tribe members with “spiritual power, guidance, reproof, and healing.”¹⁶⁰

¹⁵² *Native American Church Definition*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/405965/Native-American-Church> (last visited Oct. 11, 2014).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Native American Church Definition*, *supra* note 152.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

2. Peyotism in the Judicial System

Peyotism found itself in court in 1990.¹⁶¹ In *Employment Div., v. Smith*, the United States Supreme Court held that the Free Exercise Clause of the First Amendment “does not prohibit governments from burdening religious practices through generally applicable laws.”¹⁶² The Court determined that the state could deny unemployment benefits to an individual who was fired for violating the state prohibition on the use of peyote, regardless if the peyote was used as part of a religious ritual.¹⁶³

Congress responded to *Employment Div.*, by enacting the Religious Freedom Restoration Act of 1993 (RFRA).¹⁶⁴ Under the RFRA, the federal government may not substantially burden a person's exercise of religion, “even if the burden results from a rule of general applicability.”¹⁶⁵ The only exception recognized by the statute, as explained by the Supreme Court in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, requires the government to satisfy the compelling interest test.¹⁶⁶ The government must demonstrate that the “application of the burden to the person -- (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”¹⁶⁷ When an individual's religious practices are burdened in violation of the RFRA, he or she “may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.”¹⁶⁸

It seems then, that religious groups today do not have ultimate freedom to act in whatever manner they choose. They can, though, bring a claim if legal action is taken against them.

¹⁶¹ See *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990).

¹⁶² *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424 (2006).

¹⁶³ *Employment Div.*, 494 U.S. at 890.

¹⁶⁴ 43 U.S.C. § 2000bb-1 (1993). The RFRA was held unconstitutional as applied to the states in *City of Boerne v. Flores*, 521 U.S. 507 (1997). The RFRA continues to be applied by the federal government. After *Flores*, some states adopted state versions of the RFRA. Thus, the RFRA is constitutional as applied by the federal government and some states. See *City of Boerne v. Flores*, 521 U.S. 507 (1997).

¹⁶⁵ *Gonzales*, 546 U.S. at 424 (citing the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a) (1993)).

¹⁶⁶ *Id.* at 423.

¹⁶⁷ *Id.* at 424 (citing 42 U.S.C. § 2000bb-1(b)).

¹⁶⁸ *Id.* (citing 42 U.S.C. § 2000bb-1(c)).

Thus, if the radical groups of the Moorish Science Temple of America were legally reprimanded for their actions, they would be able to assert a claim under the RFRA where it applies. They are not guaranteed relief though, as there must be an analysis under the compelling interest test.¹⁶⁹

C. Christian Terrorism – Ku Klux Klan: Capitol Square Review and Advisory Bd. v. Pinette

Christian Terrorism comes in various different forms, but all stem from religious beliefs that are based in Christianity. Christian Terrorism is commonly associated with single terrorists, such as Timothy McVeigh,¹⁷⁰ but it also includes groups.¹⁷¹ Christian terrorists are radicals of Christian faiths that “want to provoke a cosmic war to save Christendom and rescue society from multicultural religious pluralism.”¹⁷²

The KKK is commonly associated with racism, but it had three uprisings.¹⁷³ Two of the three uprisings of the KKK began from Christian faiths.¹⁷⁴ Like the Moorish American radicals, the radicals in the KKK derived from a religious group. Similar to the Moorish Science Temple of America, the Christian faith has acted legally and did not promote or support the extreme actions of the KKK and its individual members.

169 In states without the RFRA, the radicals would not be able to bring such a claim. Thus, a compelling interest test would not be necessary.

170 On April 19, 1995, Timothy McVeigh parked a vehicle containing a bomb in front of the Alfred P. Murrah Federal Building in downtown Oklahoma City. McVeigh, an ex-Army soldier and a security guard, ignited multiple timed fuses. *Terror Hits Home: The Oklahoma City Bombing*, THE FBI: FAMOUS CASES & CRIMINALS, <http://www.fbi.gov/about-us/history/famous-cases/oklahoma-city-bombing> (last visited Oct. 11, 2014). At 9:02 a.m., the bomb exploded. *Id.* The surrounding area looked like a “war zone.” *Id.* Numerous floors in the building collapsed, dozens of cars caught fire, and over 300 surrounding buildings were damaged or destroyed. *Id.* Several hundred people were injured in the blast and 168 people were killed, including 19 children. *Id.* It was “the worst act of homegrown terrorism in the nation’s history.” *Terror Hits Home: The Oklahoma City Bombing*, THE FBI: FAMOUS CASES & CRIMINALS, <http://www.fbi.gov/about-us/history/famous-cases/oklahoma-city-bombing> (last visited March 5, 2014).

171 Rita Nakashima Brock, *The Ideological Roots of Christian Terrorism*, HUFFPOST RELIGION (July 28, 2011), http://www.huffingtonpost.com/rita-nakashima-brock-ph-d/the-ideological-roots-of-_b_910023.html.

172 *Id.*

173 *Jim Crow Stories: Ku Klux Klan*, PBS, http://www.pbs.org/wnet/jimcrow/stories_org_kkk.html (last visited Oct. 11, 2014).

174 *Id.*

1. The Historical and Religious Roots of the Ku Klux Klan

The KKK is predominately associated with racial attacks, hatred, and the Confederate Army, not religious roots.¹⁷⁵ This association is logical, as the original KKK was formed as a social club by a group of Confederate Army veterans in the winter of 1865-1866 in Tennessee.¹⁷⁶ Soon though, members of the KKK began burning churches and schools and “drove thousands from their homes.”¹⁷⁷ Their goal was to “destroy Congressional Reconstruction by murdering blacks – and some whites – who were either active in Republican politics or educating black children.”¹⁷⁸ Although this is primarily how the KKK is remembered, this was just the beginning.

William J. Simmons, a former Methodist preacher, separated himself from the church and organized “a new Klan” in 1915 in Georgia.¹⁷⁹ The “new Klan” was different.¹⁸⁰ It had religious roots and more widespread prejudices.¹⁸¹ This Klan was organized as a “patriotic, Protestant fraternal society” and “directed its activity against not just blacks, but immigrants, Jews, and Roman Catholics.”¹⁸² This new KKK grew rapidly and had more than two million members across the country by the mid-1920s.¹⁸³ Eventually, the new organization lost members and power due to disagreements among the leaders and public criticism of the Klan’s violent acts.¹⁸⁴ By 1944, the KKK had “lost most of its influence and membership.”¹⁸⁵

The KKK was again revived for a third time during the Civil Rights era.¹⁸⁶ This third group of the KKK exists today “as a small organization that continues to stage demonstrations in favor of white supremacy and fundamentalist Christian theology.”¹⁸⁷

175 *Id.*

176 *Id.*

177 *Id.*

178 *Jim Crow Stories: Ku Klux Klan, supra* note 173.

179 *Id.*

180 Membership in the KKK peaked during the “new Klan’s” existence. *Id.* In the mid-1920s, the group had four to five million members. *Id.* Today, there are “an estimated 5,500 to 6,000 Klan members among roughly 100 groups.” *Id.*

181 *Id.*

182 *Id.*

183 *Jim Crow Stories: Ku Klux Klan, supra* note 173.

184 *Id.*

185 *Id.*

186 *Id.*

187 *Id.*

The second and third groups of the KKK both had religious roots in Christianity.¹⁸⁸ The second was rooted in the Protestant faith and the third was rooted in the “fundamentalist Christian” faith.¹⁸⁹ This did not change the way that the court viewed their actions.

2. The Ku Klux Klan Finds No Validation in Court

Despite being a supposed offshoot of the Protestant and then Christian faiths, the courts have questioned the KKK’s religious roots.¹⁹⁰ In *Capitol Square Review and Advisory Bd. v. Pinette*, the Supreme Court of the United States did afford the KKK some protection under the Establishment Clause.¹⁹¹ In *Pinette*, the KKK attempted to erect an unattended cross on Capitol Square.¹⁹² The Advisory Board denied the KKK’s application to erect the cross.¹⁹³ The Court held that this denial was a violation of free speech under the First Amendment.¹⁹⁴ The Court determined that the “display was private religious speech that is as fully protected under the Free Speech Clause as secular private expression.”¹⁹⁵ Further, because “Capitol Square is a traditional public forum, the Board may regulate the content of the Klan’s expression there only if such a restriction is necessary, and narrowly drawn, to serve a compelling state interest.”¹⁹⁶

Although Justice Thomas agreed with the majority’s holding and its conclusion that the Advisory Board’s “exclusion of the Ku Klux Klan’s cross cannot be justified on Establishment Clause grounds” in his concurrence, he had his reservations about the group’s religious purposes.¹⁹⁷ In his concurrence, Justice Thomas did not even recognize the KKK as acting religiously.¹⁹⁸ He noted that the involvement of the Establishment Clause “should not lead anyone to think that a cross erected by the Ku

188 *Jim Crow Stories: Ku Klux Klan*, *supra* note 173.

189 *Id.*

190 *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 771 (1995) (Thomas, J., concurring).

191 *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753 (1995).

192 *Id.* at 758.

193 *Id.*

194 *Id.* at 760.

195 *Id.*

196 *Pinette*, 515 U.S. at 761.

197 *Pinette*, 515 U.S. at 770 (Thomas, J., concurring).

198 *Id.*

Klux Klan is a purely religious symbol.”¹⁹⁹ Justice Thomas stated that the KKK’s cross was not a Christian one and the erection of the cross was not a religious act, but rather a “political act.”²⁰⁰ Justice Thomas said:

There is little doubt that the Klan's main objective is to establish a racist white government in the United States. In Klan ceremony, the cross is a symbol of white supremacy and a tool for the intimidation and harassment of racial minorities, Catholics, Jews, Communists, and any other groups hated by the Klan. The cross is associated with the Klan not because of religious worship, but because of the Klan's practice of cross burning.²⁰¹

Additionally, the courts have not recognized religious roots as a justification for the actions of the KKK’s individual members.²⁰² Bobby Frank Cherry, a former “Klansman”²⁰³ was sentenced to life in prison on May 22, 2002 for “the 1963 Alabama church bombing that killed four African-American girls.”²⁰⁴ The religious roots of his racially fueled crime received no consideration.

While the KKK was afforded some protection from the Court under the Establishment Clause for religious expression, they have not received any protection for their actions. Rightly so, the crime committed by Cherry received no religious protection.²⁰⁵ This seems appropriate when again considering *Reynolds*.²⁰⁶ As

199 *Id.*

200 *Id.*

201 *Id.*

202 The courts’ refusal to recognize the 1915 organization of the KKK coincides with both logic and societal norms. If the court were to recognize such a group, it would defy logic and cause a societal uproar. Both the law and public policy support the court’s decision.

203 *Jim Crow Stories: Ku Klux Klan*, *supra* note 173.

204 *Id.*

205 While the KKK does historically commit more extreme crimes than the Moorish American radicals, the parallels cannot be dismissed. The second coming of the KKK was started by a former Methodist preacher and had Protestant roots and the third KKK had Christian roots, *see Jim Crow Stories: Ku Klux Klan*, *supra* note 173. This can easily be compared to Moorish American radicals that have roots in the Moorish American Science Temple. Regardless of the severity of the illegal act, a crime is a crime and all crimes must be handled accordingly by the legal system.

206 *Reynolds*, 98 U.S. 145.

was held in *Reynolds*, the government may not take action against beliefs, but may take action when one's religion causes them to act illegally or violate social duties and societal order.²⁰⁷

Despite the protection that the KKK received, there are still doubts and concerns. Justice Thomas had apprehensions believing that the KKK's motives were religious.²⁰⁸ The same could be said for the Moorish American radicals. It is difficult to believe that the radicals are acting with a religious purpose or expressing a religious belief. Even assuming that the radicals are expressing a religious belief and that there should be some type of religious freedom afforded to them, there may be restrictions as long as those restrictions are necessary and narrowly drawn to serve a compelling state interest.²⁰⁹ The courts can determine if restrictions are appropriate for the Moorish American radicals though this test.

IX. HOW SHOULD THE JUDICIAL SYSTEM RESPOND AND WHAT SHOULD THE STATE COURTS DO?

In order to combat the criminal acts performed by radical members of the Moorish Science Temple of America, the federal courts must continue to consider the radicals' claims nonsensical and the state courts must follow suit. Like many other radical groups, it is clear that the Moorish American radicals will not stop until they are stopped by the judicial system. As has been done in the past with polygamy, Peyotism, and Christian Terrorism, including the Ku Klux Klan, preventive methods need to be taken to stop the illegal acts of the radical groups stemming from the Moorish Science Temple of America.

The courts have historically considered polygamy illegal and have shown that illegal actions are not protected by religious freedom. *Reynolds* shows that an individual cannot use faith as an excuse for illegal acts and socially unacceptable behavior.²¹⁰ Notably, religious beliefs cannot be governed, but religious practices can be governed.²¹¹ The actions of the Moorish American radicals, not their beliefs, must be combatted by the court system. The illegal and troubling acts that the radicals are committing – squatting, filing motions, and filing liens – are the problem. Their

207 *Id.* at 164.

208 *Pinette*, 515 U.S. at 770.

209 *Id.* at 761.

210 *See Reynolds*, 98 U.S. 145.

211 *Id.*

beliefs are not the problem. Regulating the actions of the Moorish American radicals would logically follow from how the judicial system has handled polygamy and from *Reynolds*.

The Court and Congress acted with regard to Peyotism in a notable way. When Congress responded to *Employment Div.*, by enacting the RFRA, the government was instructed not to burden a person's exercise of religion.²¹² The Court in *Gonzales* established an exception to the RFRA with a compelling interest test.²¹³ This test can be applied to the current issue with the Moorish American radicals. First, the government must show that the application of the burden to the Moorish American radicals is in furtherance of a compelling government interest. Safety is always a compelling interest. Applying state and federal laws to all members of society is also a compelling interest. By allowing certain individuals to break laws, there is a risk for the safety of individuals and a risk of general discord in society. Freedom to break laws for anyone – a religious group or otherwise – could be a slippery slope that leads to illegality among a larger population. More religious-rooted radicals could come forward, claiming freedom for their illegal acts. It could lead to a chaotic and unsafe environment. This alone is a compelling interest that should meet the first prong of the test. Second, the measures must be the least restrictive means of furthering that compelling government interest. Applying the laws that are applicable to every state and the nation is not restrictive by any means. In determining if enforcing the laws is the least restrictive means, it is important to note that the religious freedoms of the individuals are not being restricted, nor is the freedom to practice their religion legally. The actions that are at issue are the illegal actions and intrusive filings in the court system. Applying the laws to these individuals, in the same manner as every other person in society, would be the least restrictive means of furthering this compelling interest. In satisfying both prongs of the compelling interest test, the actions of the Moorish American radicals would meet the exception to the RFRA. Therefore, the courts can burden their illegal acts, regardless of the religious roots. Notably, this analysis would only be necessary if the radicals filed a claim under the RFRA in the states where it applies or in federal court. In the states that do not have the RFRA, this analysis would not be necessary, as there would be no available RFRA claim to the Moorish American

²¹² *Gonzales*, 546 U.S. at 424 (citing the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a) (1993)).

²¹³ *Id.* at 436.

radicals. The radicals' actions could be regulated in these states without the application of this compelling interest test.

The KKK's actions²¹⁴ have been punished by the judicial system with no consideration for their religious roots, but their beliefs have received some protection. The majority in *Pinette* afforded the KKK some protection for their religious expression,²¹⁵ while Justice Thomas did not even recognize the KKK as acting religiously in his concurrence.²¹⁶ The majority did provide a means for applying some restrictions to religious groups and their radicals. Restrictions may be applied if those restrictions are necessary and narrowly drawn to serve a compelling state interest.²¹⁷

In applying the narrowly drawn prong of the test, the restriction must not be overbroad or too limited to achieve the compelling state interest. The compelling state interest in the instant case is to stop the Moorish American radicals from bogging down the judicial system with their sovereignty claims and harassing its officers with their incessant filings. The restriction is directly related to the goal. The restriction is the following: apply the laws to everyone equally, regardless of their Moorish American Science Temple roots, and stop the troublesome filings. Applying state and federal laws to all individuals is necessary. It is also a compelling state interest. Allowing certain individuals to break laws, regardless of religious roots, risks the safety of individuals and risks the general discord in society. This discord could lead to chaotic and unsafe conditions. In considering the filings, it is important to acknowledge the necessity of the judicial system. A fair and efficient judicial system is necessary and a right that is expected by society. It also maintains that individuals may enjoy a

214 It is true that the KKK has historically acted more violently than the Moorish American radicals. Never has a religious freedom argument withstood violent illegal actions and it should not withstand non-violent illegal actions either. Illegal actions are illegal no matter the severity. Laws provide for different degrees of punishment to match the severity of the crime for this reason, and these laws must be applied to the Moorish American radicals. Further, if the Moorish Americans are able to continue committing illegal acts, there is a risk that the severity of the actions will increase. As the radicals' actions become more widespread and more frequent, there is the concern that if they are able to continue committing illegal acts that the power will encourage them to commit more severe acts. The court system should not wait for the actions of the Moorish American radicals to potentially become more severe and violent. Even if the chance is slim, any risk to the safety of society should be proactively eliminated.

215 See *Pinette*, 515 U.S. 753 (1995).

216 See *Pinette*, 515 U.S. 753, 770 (1995) (Thomas, J., concurring).

217 *Id.* at 761.

lawful and safe environment. The filings inhibit the officers of the judicial system from performing their duties to the best of their ability, which is detrimental to the judicial system as a whole. Further, safety is always a compelling interest and the judicial system helps to maintain that safety. This compelling state interest is necessary and narrowly drawn. Thus, the test set forth in *Pinette* is met.

In addition to learning from the judicial system's past holdings, the current courts' dismissal of the Moorish American radicals' claims should be noted. The federal courts should continue to dismiss the Moorish American radicals' claims. The state courts should also continue to dismiss the claims, but must dismiss them more aggressively.

The federal courts in New Jersey and across the country have called the Moorish American radicals' claims a delusionary contrivance and said that the sovereignty claims have absolutely no legal basis.²¹⁸ The federal courts have dismissed the claims with prejudice and have often remanded the cases to state or municipal court.²¹⁹ While this is an excellent step to eliminating the current problem, the court system is still bogged down with these cases, especially those that are remanded.

Similar to the federal courts, the state courts have called the claims annoying and said that they are without merit.²²⁰ The state courts though, have been far less vocal than the federal courts. This is arguably due to the fact that many Moorish American radicals choose to be in federal court over state court. Regardless, when the cases are remanded by the federal courts, the cases must be heard by the state or municipal courts. These cases are being heard multiple times, solely to say that the claims are nonsensical. This means that the state courts need to be more vocal and there must be a more efficient way to handle the sovereignty claims and the incessant filing of court documents.

A clear policy of dismissing the claims with prejudice may be the answer. An administrative or court policy providing that all claims of sovereignty based on Moorish affiliation must be dismissed could provide the solution. As history and past decisions from the courts have shown with polygamy, Peyotism, and Christian Terrorism including the KKK, this would not infringe on religious beliefs, would fall under the exception of the RFRA, and would pass compelling interest tests.

218 *See supra* p. 521-22.

219 *See supra* p. 524-25.

220 *Gutloff*, 51 A.3d at 792.

In addition to sovereignty claims, an exceptionally troubling issue for the judges is the filing of liens. Considering that the radicals are free to file a lien under the Uniform Commercial Code, the liens must be viewed as invalid since the initial filing presumably cannot be stopped. The federal court in New Jersey recognized this in *Monroe* when it declared that the liens were null and void.²²¹ Viewing the liens as invalid must be the general policy. The filing of liens is causing widespread and severe problems. There should be a blanket rule that states that the filing of liens against judges and other court officials under certain circumstances – the Moorish American radicals' filings included – are always null and void.

X. IN CONCLUSION: MOVING FORWARD PROACTIVELY

The federal courts must continue to respond as they have and continue to deny the motions by the Moorish American radicals. The state courts should follow the federal courts' lead and also deny the motions of the radicals and act to stop the group. Court action though, is inherently reactive. While the courts can stop the radicals from progressing with their claims, they cannot stop them from filing claims. One of the rights inherent in the judicial system is for individuals, including radicals, to have their day in court. Perhaps the courts do not have the ability to handle this issue completely.

Proactive measures must be taken against the Moorish American radicals for their illegal actions and alleged religious practices. In addition to judicial action, the legislature should respond in some way. The best way to proactively combat the Moorish American radicals is through a focus on policy considerations and legislative means. In order to combat the illegal actions of these individuals, they must be stopped prior to asserting their sovereignty claims and filing their fake and baseless liens. The courts cannot continue to respond after the Moorish American radicals have made these claims and aggravated the courts and their officers without some type of proactive countermeasure.

The concern of striking an acceptable balance between religious freedom and judicial and legislative enforcement will always exist. Although proactive measures against the Moorish American radicals do threaten the group's religion freedom, such

²²¹ *Monroe*, 536 F.3d at 202 n.2.

measures must be taken in response to their current actions. At this point, the integrity of the judicial system has been severely harmed and proactive measures are necessary, regardless of the infringement on the religious freedom of the radicals. It will benefit society and the courts to stop the nuisance created by the Moorish American radicals, as they continue to act under the veil of religious freedom and the claim of sovereign immunity. The courts and legislature must strictly draw the line at some point and it must be drawn now. The improper application of religious freedom cannot trample on the integrity of the judicial system.