

# Fifth Circuit Overturns OFAC Sanctions on Blockchain-based Privacy Technology

Article By:

A.J. S. Dhaliwal

Mehul N. Madia

Maxwell Earp-Thomas

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On November 26, the U.S. Fifth Circuit Court of Appeals [overturned](#) sanctions imposed by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) against a decentralized cryptocurrency mixing service (a blockchain-based technology used to enable transaction anonymity) accused of facilitating money laundering.

The sanctions were based on OFAC's finding that North Korean hackers used the crypto mixer to launder hundreds of millions of dollars in illicitly acquired funds. As a result, the crypto mixer was placed on the list of Specially Designated Nationals and Blocked Persons (SDN), which prohibited U.S. persons from engaging in any dealings with the crypto mixing service.

The court reasoned that the crypto mixer's immutable smart contracts, which operate autonomously, do not qualify as "property" and therefore OFAC is not empowered to regulate them under the International Emergency Economic Powers Act (IEEPA), which authorizes the President to freeze the assets of, and prohibit transactions with, any foreign actor determined to be a threat to America's national security. In reversing the decision, the court concluded that OFAC exceeded its statutory authority under the Administrative Procedure Act. See 5 U.S.C. §§ 551 *et seq.*

OFAC sought to bypass the IEEPA's ownership requirement by claiming that the crypto mixer profits from, and thus has an interest in, the underlying computer code comprising the smart contracts. The regulator likened the smart contracts to patents and copyrights, which OFAC deems property. The court disagreed with this argument, reasoning that, due to the decentralized and autonomous nature of the smart contracts, they cannot be owned, controlled, or altered, even by their creators. Because OFAC's definition of property requires that property be ownable, the smart contracts fall outside the regulator's jurisdiction.

The court further pointed out that, because IEEPA became law in 1977, revisions to the current legislation may be needed. Notably, the opinion highlights that while decentralized autonomous software poses novel challenges, the power to regulate such innovations lies with lawmakers, not

with executive agencies acting under statutes enacted before the advent of the internet and digital technologies.

**Putting It Into Practice:** This case sets a precedent for how regulators might address decentralized technologies moving forward. While it marks a significant step towards regulatory clarity for the crypto industry, it is clear that developers and users of blockchain applications will face regulatory scrutiny to the extent their technologies are used to facilitate illicit activities. The opinion should amplify intensifying calls for legislative clarity from the crypto industry, as industry stakeholders urge policymakers to create a modern legal framework for crypto with the nuance necessary to promote financial innovation while also addressing the potential for illicit activities.

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