

U.S. Appeals Court Rules That the Department of Treasury Exceeded Its Authority in Sanctioning Tornado Cash

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The Fifth Circuit Court of Appeals held that Tornado Cash’s immutable smart contracts are not the “property” of a foreign national or entity, meaning:

1. Smart contracts cannot be blocked under the International Emergency Economic Powers Act (IEEPA) and
2. OFAC overstepped its authority in sanctioning Tornado Cash.

OFAC’S SANCTIONS ON TORNADO CASH

- The IEEPA and the North Korea Sanctions and Policy Enhancement Act vest the President with the authority to regulate (or block) “property” in which a foreign “national” or “person” (or “entity”) has an “interest.”
- In late 2022, OFAC sanctioned Tornado Cash, a software protocol that facilitates anonymous transactions by obfuscating the origins and destinations of digital asset transfers.
- OFAC added Tornado Cash to the list of Specially Designated National and Blocked Persons (SDN) and imposed an across-the-board prohibition against any dealings with Tornado Cash “property,” which OFAC defined to include open-source computer code known as “smart contracts.”
- OFAC designated as “entities” the website tornado.cash, certain Tornado Cash smart contracts, and several Ethereum addresses associated with Tornado Cash software citing North Korea’s use of Tornado Cash to commit cybercrimes, including laundering of stolen cryptocurrencies.

Learn more about the ruling and the implications for the digital assets space in the document below.

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