

## DOJ Crypto Enforcement Is Shifting To Target Willfulness

By **Sam Raymond and Roxana Akbari** (July 21, 2025, 6:21 PM EDT)

The recently begun proceedings in *U.S. v. Storm*, brought against developers of the Tornado Cash software protocol, as well as another pending criminal case against executives of Samourai Wallet, are some of the first indicators of how the U.S. Department of Justice will apply Deputy Attorney General Todd Blanche's April memorandum on digital assets.

These initial applications of the memorandum are critical for digital asset companies and their executives to consider.

This article describes the background, law and policy announced in the Blanche memo; closely reviews the initial applications; determines that the Blanche memo may not portend a dramatic shift in the types of cases brought by DOJ; and concludes with key takeaways for digital asset companies.

### Background

Federal law criminalizes the operation of unlicensed money transmitting businesses.[1] Under the statute, a money transmitting business is unlicensed in one of three ways:

1. If it operates without a required state license;[2]
2. If it operates without registering with the Financial Crimes Enforcement Network;[3] and
3. If it knowingly transmits funds derived from criminal activity or intended to promote unlawful conduct.[4]

For nearly 20 years, the DOJ has been active in bringing criminal cases against digital asset companies and their executives for alleged violations of this statute. The first of those cases, *U.S. v. E-Gold*, in the U.S. District Court for the District of Columbia, was initially brought in April 2007, predating even the creation of Bitcoin.

In April 2025, Blanche issued a memorandum instructing prosecutors to cease "regulation by prosecution" in cases involving digital assets.[5] In the memo, Blanche announced a shift in the DOJ's enforcement priorities.



Sam Raymond



Roxana Akbari

According to the Blanche memo, the DOJ "will no longer pursue litigation or enforcement actions that have the effect of superimposing regulatory frameworks on digital assets while President Trump's actual regulators do this work outside the punitive criminal justice framework."

Instead, the focus will be on "prosecuting individuals who victimize digital asset investors, or those who use digital assets in furtherance of criminal offenses such as terrorism, narcotics and human trafficking, organized crime, hacking, and cartel and gang financing."

Among other things, the Blanche memo restricts prosecutors from charging "regulatory violations in cases involving digital assets including but not limited to unlicensed money transmitting under 18 U.S.C. §§ 1960(b)(1)(A) and (B) ... unless there is evidence that the defendant knew of the licensing or registration requirement at issue and violated such a requirement willfully."

The memo also states that the Office of the Deputy Attorney General will "review ongoing cases for consistency with this policy."

While by its terms the Blanche memo clearly applies to Title 18 of the U.S. Code, Sections 1960(b)(1)(A) and (B), it left open the DOJ's future use of Section 1960(b)(1)(C) in digital asset cases.

The DOJ has now provided its position on three pending cases involving application of the Blanche memo. Those positions indicate that while the DOJ may no longer pursue charges under Section 1960(b)(1)(A) and (B), the department is likely to continue to aggressively prosecute cases in which digital asset company executives are alleged to have known that their platform was being used to transmit criminal proceeds or promote criminal conduct, particularly in cases involving sanctions offenses.

Digital asset companies should bear these enforcement priorities in mind as they review their compliance with applicable federal and state money transmitting laws and how their compliance programs mitigate against the risks of transmitting criminal funds.

### **Initial Applications to Pending Cases**

On April 30, in *U.S. v. Scanlon*, the U.S. Attorney's Office for the District of New Jersey consented to the dismissal of an indictment charging an individual with conspiring to operate an unlicensed money transmitting business by transmitting fiat and digital assets without appropriate registration with FinCEN, in violation of Section 1960(b)(1)(B).[6]

The U.S. Attorney's Office did not explain its reasoning in the dismissal paperwork.

In two other cases brought by the U.S. Attorney's Office for the Southern District of New York, discussed below, the DOJ has agreed to dismiss charges alleging that executives at digital asset companies violated Section 1960(b)(1)(B) by failing to register with FinCEN, but have instead proceeded with charges of violations of Section 1960(b)(1)(C).

In August 2023, prosecutors charged developers of Tornado Cash in *U.S. v. Storm* in the U.S. District Court for the Southern District of New York. Tornado Cash is an open-source software protocol that facilitates private digital asset transactions.

The indictment charged developers of Tornado Cash with conspiracy to commit money laundering,

conspiracy to operate an unlicensed money transmitting business and conspiracy to violate U.S. sanctions.

The alleged conspiracy to operate an unlicensed money transmitting business was predicated on violations of both Section 1960(b)(1)(B), failure to register with FinCEN and Section 1960(b)(1)(C), and transporting and transmitting funds known to have been derived from a criminal offense and intended to be used to promote and support unlawful activity.[7]

In the fall of 2024, the district court denied a motion to dismiss all charges in the indictment.[8]

On May 15, after the Blanche memo was issued, prosecutors filed a letter voluntarily dismissing the Section 1960(b)(1)(B) failure to register with FinCEN charge, and confirmed that they would proceed to trial on all other charges, including the Section 1960(b)(1)(C) charge.[9]

The prosecutors specifically made clear that the prosecution, and this dismissal, had been reviewed by the Office of the Deputy Attorney General, which concluded that the charges as amended were "consistent with the letter and spirit of the April 7, 2025 Memorandum from the Deputy Attorney General." [10]

Prosecutors in the Southern District of New York later informed the court that the decision to drop the Section 1960(b)(1)(B) charge was a product of the Blanche memo. As described above, the trial commenced on July 14 on the pending charges.

In U.S. v. Rodriguez & Hill in the Southern District of New York, prosecutors charged executives of Samurai Wallet. Samurai Wallet is an alleged cryptocurrency mixing service, which according to the government allows its customers to execute anonymous financial transactions.

The Samurai Wallet indictment alleged the executives knew that the service was used for large-scale money laundering and sanctions evasion, referencing social media posts implying the service could assist Russian oligarchs seeking to evade U.S. sanctions.

The indictment, filed in April 2024, alleged that executives at Samurai Wallet conspired to commit money laundering and to operate an unlicensed money transmitting business. Again, the unlicensed money transmitting charge was predicated on violations of both Section 1960(b)(1)(B) and Section 1960(b)(1)(C).[11]

On June 24, the DOJ filed a superseding indictment that omitted the Section 1960(b)(1)(B) charge, allowing the case to proceed on the alleged conspiracies to commit money laundering and to violate Section 1960(b)(1)(C).[12]

On June 26, in its opposition to the defendants' pretrial motions, prosecutors clarified that they had dropped the Section 1960(b)(1)(B) charge specifically in response to the Blanche memo.[13]

### **A Pattern in DOJ's Crypto Enforcement Strategy**

These initial developments suggest that the DOJ will continue to charge individuals and digital asset companies with unlicensed money transmitting, albeit under Section 1960(b)(1)(C) rather than for the failure to register with FinCEN. Such charges require the DOJ to prove that operators of digital asset platforms knew that their business was being used to transmit illicit funds.

Both the Storm and Rodriguez indictments prominently cited sanctions evasion<sup>[14]</sup> as a form of criminal conduct that users of each respective service allegedly engaged in.

The focus on sanctions crimes is in keeping with pronouncements from the government, including President Donald Trump's imposition of a so-called maximum pressure campaign on Iran via sanctions,<sup>[15]</sup> and the recent announcement by Criminal Division head Matthew Galeotti that sanctions evasion is a major DOJ priority.<sup>[16]</sup>

While limiting prosecutions to Section 1960(b)(1)(C) may seem like a sea change, this charge has been brought commonly by the DOJ, meaning that the Blanche memo's effects may be relatively muted.

Even in earlier cases, where the DOJ brought charges against digital asset platforms under only Section 1960(b)(1)(B), something that is now disfavored, charging instruments frequently cited the use of the platform by criminals or sanctions evaders.

For instance, in two recent criminal cases brought in the Southern District of New York against digital asset exchanges for alleged violations of the transmitting statutes — U.S. v. Aux Cayes Fintech Co. Ltd and U.S. v. Peken Global Ltd. — the charging instruments cited the use of the platform to evade sanctions.<sup>[17]</sup>

It is thus possible that while the technical charging theories may change, the DOJ's focus on criminal charges against the operators of digital asset platforms that are used to evade sanctions will not.

### **Key Takeaways for Digital Asset Companies**

#### ***Section 1960(b)(1)(C) appears to be the DOJ's focus.***

While Section 1960(b)(1)(A) and (b)(1)(B) charges are being trimmed or dismissed, prosecutors remain aggressive where they allege that a digital asset company was used to facilitate illicit finance.

#### ***Sanctions and national security implications remain decisive.***

The DOJ will continue to aggressively prosecute cases that implicate allegations of sanctions violations or other serious crimes.

#### ***The Blanche memo does not decriminalize crypto noncompliance.***

Rather than decriminalizing crypto noncompliance, the memo has recalibrated DOJ priorities to align with willfulness and criminal intent over technical registration violations.

#### ***Compliance programs are key.***

Regulatory agencies, including FinCEN and state regulators, can continue to pursue action for violations of the registration requirements of Section 1960(b)(1)(A) and (B); registration also requires implementation of compliance programs. Formal compliance programs can also mitigate the possibility that a digital asset company would serve clients who are using the platform to commit other crimes like sanctions evasion.

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*Sam Raymond is of counsel at Gibson Dunn & Crutcher LLP. He previously served as an assistant U.S. attorney in the Southern District of New York.*

*Roxana Akbari is an associate at Gibson Dunn.*

***Disclosure: Attorneys at Gibson Dunn submitted an amicus brief on behalf of the defendants in U.S. v. Storm.***

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[1] 18 U.S.C. § 1960.

[2] 18 U.S.C. § 1960(b)(1)(A).

[3] 18 U.S.C. § 1960(b)(1)(B).

[4] 18 U.S.C. § 1960(b)(1)(C).

[5] Todd Blanche, Deputy Att'y Gen., U.S. Dep't of Just., Memorandum for All Department Employees: Ending Regulation by Prosecution (Apr. 7, 2025) <https://www.justice.gov/dag/media/1395781/dl?inline>.

[6] U.S. v. Scanlon, 24 Cr. 682, Dkt. No. 73 (D.N.J. April 30, 2025).

[7] U.S. v. Storm, 23 Cr. 430, Dkt. No. 109 (superseding indictment).

[8] 23 Cr. 430, Dkt. No. 84 (Transcript of decision on motion to dismiss).

[9] U.S. v. Storm et al., 23 Cr. 430, Dkt. No. 144.

[10] *Id.*

[11] U.S. v. Rodriguez & Hill, 24 Cr. 82, Dkt. No. 1 (Indictment).

[12] U.S. v. Rodriguez & Hill, 24 Cr. 82, Dkt. No. 109 (Superseding Indictment).

[13] U.S. v. Rodriguez & Hill, 24 Cr. 82, Dkt. No. 118, 14 n. 4 ("On May 15, 2025, the Government informed the defendants that, in response to a memorandum dated April 7, 2025, 'Ending Regulation by Prosecution,' by the Deputy Attorney General, it did not intend to proceed to trial on Section 1960(b)(1)(B)").

[14] E.g. Storm Superseding Indictment ¶ 1 ("the defendant also knew that the Tornado Cash service received funds from, and provided services to, the Lazarus Group, a U.S.-sanctioned North Korean cybercrime organization."); Rodriguez Superseding Indictment ¶ 1 ("the defendants intended for Samurai to be a haven for criminals to engage in large-scale money laundering and sanctions evasion").

[15] Fact Sheet: President Donald J. Trump Restores Maximum Pressure on Iran, The White House (Feb.

4, 2025) <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-maximum-pressure-on-iran/>

[16] Matthew R. Galeotti, Acting Assistant Att'y Gen., U.S. Dep't of Just., Memorandum for All Criminal Division Personnel: Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime (May 12, 2025), <https://www.justice.gov/criminal/media/1400046/dl?inline>; For more on Mr. Galeotti's speech, please see Gibson Dunn's recent client alert: <https://www.gibsondunn.com/doj-announces-white-collar-enforcement-priorities/>.

[17] United States v. Aux Cayes Fintech Co. Ltd., 25 Cr. 69, Dkt. No. 1, Indictment ¶ 11 (S.D.N.Y.) (criminal information against Aux Cayes alleged that the platform had inadequate controls related to sanctions); United States v. Peken Global Ltd. d/b/a Kucoin, 24 Cr. 168, Dkt. No. 1, Indictment ¶ 9 (S.D.N.Y.) (indictment against KuCoin exchange alleged that it "made itself available to be used, and in fact was used, as a vehicle for laundering the proceeds of suspicious and criminal activities, including proceeds from sanctions violations").