DeFi Education Fund

1155 F Street NW
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defieducationfund.org

April 7, 2025

The Honorable David Sacks
White House AI and Crypto Czar
Eisenhower Executive Office Building
1650 17th Street NW
Washington, DC 20006

Dear Mr. Sacks:

We write to express our collective concern about the Biden-era Department of Justice's (the "Department" or "DOJ") extraordinary, lawless reinterpretation of federal money transmission licensing statutes to criminalize innovation in software development, a practice that has yet to be curbed under President Trump. As leaders in the blockchain and cryptocurrency industry and attendees of the recent White House Crypto Summit, we are united in our support for the software developers who are building America's financial future. We were pleased that at the Summit and in President Trump's Executive Orders, "Strengthening American Leadership in Digital Asset Technology" and "Establishment of the Strategic Bitcoin Reserve," the administration voiced its support for the crypto industry and pledged to make the United States the "crypto capital of the planet."

Technology is neutral. In many cases and especially with respect to the coding of self-custodial peer-to-peer protocols, software developers creating such technology have no control over the third parties who use it - for good or bad purposes. Yet, the DOJ's unprecedented theory of liability in its continued criminal prosecutions would subject software developers to *criminal* liability for the illicit conduct of third parties over which the developers have no control. This principle makes no sense in law or in practice. It would be akin to holding automobile manufacturers liable for drivers who use their vehicles as weapons, real estate development companies liable for businesses that use their office buildings to perpetrate fraud, or television manufacturers liable for newscasters who use their screens to make defamatory statements.

Validating the DOJ's campaign against software developers would also grant prosecutors unlimited power to target any software developer who writes code that is later used by a third party for nefarious purposes whether in the blockchain industry or outside of it. With no limiting principle in place, nearly all developers who create open-source software would be exposed to criminal liability for activity outside of their control years or decades later. The surface area for selective prosecution would be incalculable, as prosecutors would be free to target software developers aligned with politically disfavored causes and industries.

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To make matters even more confusing, the DOJ's legal position[1] is directly at odds with guidance issued by the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") in 2019 and relied upon by the blockchain industry for more than five years. The blockchain and cryptocurrency industry has relied in good faith on this FinCEN Guidance to understand what constitutes a "money services business" under the Bank Secrecy Act.[2] Yet the Biden DOJ has ignored FinCEN Guidance to pursue its new interpretation of "money transmitting business" and has even gone so far as to tell one court that it need not be bound by this Guidance.[3] The result: two U.S. government agencies with conflicting interpretations of "money transmission" — an unclear, unfair position for law-abiding industry participants and innovators, and a serious infringement on their Due Process rights.

The Biden DOJ's approach raises concerns about the rule of law, and chills innovation. We urge the Trump Administration to protect the rights of American blockchain and crypto developers.

Respectfully signed,

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[1] The DOJ has targeted individual software developers based on an unprecedented, legally unsupportable position related to 18 U.S.C. 1960 ("Section 1960"). Section 1960 criminalizes operating an "unlicensed money transmitting business" and according to Section 1960(b)(2), "money transmitting" means "transferring funds on behalf of the public by any and all means." The plain meaning of "transfer[] funds on behalf of" another person has always been clear: in order to transfer funds *on someone's behalf,* one must have possession of those funds and then relinquish control over them to a third party. Software developers of self-custodial protocols that enable people to engage in peer-to-peer transactions categorically do not meet this definition.

[2] Fin. Crimes Enf't Network, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001, at 15, § 4.2, https://shorturl.at/jdYAT (May 9, 2019).

[3] *See United States v. Storm*, No. 1:23-cr-00430 (KPF), ECF No. 53 (S.D.N.Y. April 26, 2024) (Government Opposition to Defendant Roman Storm's Pretrial Motions).

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