

21-1195 BITTNER V. UNITED STATES

DECISION BELOW: 19 F.4th 734

LOWER COURT CASE NUMBER: 20-40597

QUESTION PRESENTED:

This case presents a direct and acknowledged conflict regarding an important question of statutory construction under the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*, which generally requires taxpayers to report their interests in foreign bank accounts.

Under the Act, Congress instructed the Treasury Secretary to "require a resident or citizen of the United States * * * to keep records, file reports, or keep records and file reports, when the * * * person makes a transaction or maintains a relation for any person with a foreign financial agency." 31 U.S.C. 5314(a). The Secretary's corresponding regulations require filing a single annual report (called an "FBAR") for anyone with an aggregate balance over \$10,000 in foreign accounts. 31 C.F.R. 1010.350(a), 1010.306(c). The Act authorizes a \$10,000 maximum penalty for any non-willful violation of Section 5314. See 31 U.S.C. 5321(a)(5)(A)-(B).

In the decision below, the Fifth Circuit held that there is a *separate* violation (with its own \$10,000 penalty) for each foreign account not timely reported on an annual FBAR; it thus authorized a penalty on "a per-account, not a per-form, basis." In so holding, the Fifth Circuit expressly rejected a contrary decision of the Ninth Circuit, which held the failure to file an annual FBAR constitutes a *single* violation, "no matter the number of accounts." This critical issue arises all the time, and the Act's penalties for identically situated parties will now turn on whether the taxpayer is from California or Texas.

The question presented is:

Whether a "violation" under the Act is the failure to file an annual FBAR (no matter the number of foreign accounts), or whether there is a separate violation for each individual account that was not properly reported.

CERT. GRANTED 6/21/2022