No. 21-1195

In the Supreme Court of the United States

ALEXANDRU BITTNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Under 31 U.S.C. 5314 and its implementing regulations, a U.S. person who maintains an account with a foreign financial agency is required to report specified information about the account to the federal government each year on a reporting form prescribed by the Secretary of the Treasury. The prescribed form instructs a filer to report each of the filer's foreign financial accounts on a single form. The Secretary may impose a civil money penalty of up to $10,000 "on any person who violates, or causes any violation of, any provision of section 5314." 31 U.S.C. 5321(a)(5)(A); see 31 U.S.C. 5321(a)(5)(B)(i). Here, petitioner failed to report dozens of foreign financial accounts in multiple years, and the Secretary imposed a civil penalty of $10,000 for each unreported account each year. The question presented is as follows:

Whether the court of appeals correctly determined that 31 U.S.C. 5321(a)(5)(A) authorizes the Secretary of the Treasury to impose a civil money penalty of up to $10,000 for each foreign financial account that petitioner failed to report, for each year in which he failed to report that account, or whether the Secretary was instead limited to imposing a penalty of up to $10,000 for each annual form that petitioner failed to file to report his numerous foreign financial accounts.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 19 F.4th 734. The opinion of the district court (Pet. App. 27a-63a) is reported at 469 F. Supp. 3d 709.

JURISDICTION

The judgment of the court of appeals was entered on November 30, 2021. The petition for a writ of certiorari was filed on February 28, 2022. The petition was granted on June 21, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

Pertinent statutes and regulations are reproduced in the appendix to this brief. App., *infra*, 1a-25a.

STATEMENT

A. Legal Background

1. In 1970, after "extensive hearings concerning the unavailability of foreign and domestic bank records of customers thought to be engaged in activities entailing criminal or civil liability," *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 26 (1974), Congress enacted what is commonly known as the Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114. The Act was designed to reduce financial crime, tax evasion, and other violations of U.S. law by requiring "the maintenance of records, and the making of certain reports, which 'have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.'" *California Bankers Ass'n*, 416 U.S. at 26 (citations omitted); see 31 U.S.C. 5311 (1988).

This case concerns the Bank Secrecy Act's reporting requirements for U.S. persons who have financial interests in foreign bank accounts. In Title II of the Act, as amended, Congress directed the Secretary of the Treasury to promulgate regulations imposing record-keeping and reporting requirements on any U.S. resident or citizen who "makes a transaction or maintains a relation for any person with a foreign financial agency." 31 U.S.C. 5314(a); see Bank Secrecy Act § 241(a), 84 Stat. 1124. Congress specified that the records and reports "shall contain" certain categories of information "in the way and to the extent the Secretary prescribes," including "the identity and address of participants in a transaction or relationship." 31 U.S.C. 5314(a)(1); see 31 U.S.C. 5314(a)(1)-(4).

The Secretary's regulations require each "United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country" to "report such re-

lationship * * * for each year in which such relationship exists." 31 C.F.R. 1010.350(a).[1] The reporting requirements apply when a U.S. person has a financial interest in or signatory or other authority over one or more foreign financial accounts, see 31 C.F.R. 1010.350(a), (e), and (f), with an aggregate balance that "exceed[ed] $10,000 * * * during the previous calendar year," 31 C.F.R. 1010.306(c). Cf. 31 C.F.R. 103.24(a), 103.27(c) (2010) (analogous requirements in prior regulations). The Secretary's regulations further require each U.S. person who is obligated to report a foreign financial account to "provide such information as shall be specified in a reporting form" that has been prescribed by the Secretary under Section 5314. 31 C.F.R. 1010.350(a).

During the period relevant to this case (2007-2011), the prescribed form was Treasury Department Form 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), which was to be filed with the Internal Revenue Service (IRS) by June 30 each year to report accounts maintained in the prior calendar year. Pet. App. 4a; see 31 C.F.R. 1010.350(a), 1010.306(c). The FBAR required basic identifying information about the filer, such as the person's name, address, and date of birth. See J.A. 29, 33, 41 (reprinting versions of the form as revised in July 2000, October 2008, and January 2012, respectively). The FBAR also required information about each of the filer's foreign financial accounts, such as the name of the financial institution at which the account was held, the account number, and the maximum value of the account during the reporting

[1] The relevant regulations were renumbered, effective March 1, 2011, as part of a broader reorganization. See 75 Fed. Reg. 65,806, 65,806 (Oct. 26, 2010). The foreign-account reporting requirements were previously found at 31 C.F.R. Part 103, Subpart B (2010).

period. See *ibid.* The form's first page contained space to report one account and the filer's total number of accounts, with additional accounts beyond the first one to be reported as separate entries on the following pages. See J.A. 30 (blank "[c]ontinuation [p]age" from July 2000 version of form, with instructions to duplicate the page "as many times as necessary in order to provide information on all accounts"); see also J.A. 33-37, 41-45 (similar pages and instructions in later versions).[2]

The Bank Secrecy Act directs the Secretary to consider "the need to avoid burdening unreasonably" U.S. persons who maintain foreign financial accounts for legitimate reasons. 31 U.S.C. 5314(a). To that end, the Secretary's regulations set forth special rules "for persons with a financial interest in" or signatory or other authority over "25 or more" foreign financial accounts. 31 C.F.R. 1010.350(a). A filer with 25 or more such accounts generally "need only provide the number of financial accounts and certain other basic information" on the reporting form, 31 C.F.R. 1010.350(g)(1) and (2), without also providing the more granular information about each account that would otherwise be required. Cf. 31 C.F.R. 103.24(a) (2010) (25-account rule in prior regulations).

The regulations specify, however, that a filer covered by one of the 25-account rules is still "required to pro-

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[2] After the events at issue in this case, the Treasury Department prescribed a new reporting form—FinCEN Form 114—which must be filed electronically with the Financial Crimes Enforcement Network (FinCEN) by April 15. See IRS, *Report of Foreign Bank & Financial Accounts (FBAR) Reference Guide* 1, 9 (2022) (*FBAR Guide*). The electronic form continues to require information about each of the filer's foreign accounts, which are reported as separate entries. See *id.* at 3; FinCEN Form 114, Report of Foreign Bank and Financial Accounts 3-4 (ver. 1.0), perma.cc/7FFL-CFGS.

vide detailed information concerning each account when so requested by the Secretary or his delegate." 31 C.F.R. 1010.350(g)(1) and (2); see 31 C.F.R. 103.24(a) (2010) (same); see also J.A. 32, 39, 47 (instructions on FBAR to the same effect). That provision dovetails with the Secretary's record-keeping requirements for all filers. All persons with reportable accounts are required to retain certain records of "each such account" for five years after the reporting period. 31 C.F.R. 1010.420; see 31 C.F.R. 103.32 (2010) (same).

2. Congress authorized the Secretary to "impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314." 31 U.S.C. 5321(a)(5)(A). Section 5314 is the provision, described above, under which U.S. persons who transact or maintain relations with foreign financial agencies must keep records and file reports in accordance with regulations promulgated by the Secretary. See p. 2, *supra*.

In general, the "amount of any civil penalty" imposed under Section 5321(a)(5)(A) "shall not exceed $10,000." 31 U.S.C. 5321(a)(5)(B)(i). The statute also provides a reasonable-cause exception, under which the Secretary may not impose a penalty "with respect to any violation if * * * such violation was due to reasonable cause" and "the amount of the transaction or the balance in the account * * * was properly reported." 31 U.S.C. 5321(a)(5)(B)(ii). If the violation is willful, the maximum penalty increases from $10,000 to the greater of either $100,000 or 50% of "the amount determined under subparagraph (D)." 31 U.S.C. 5321(a)(5)(C)(i). Subparagraph (D) in turn states that, "in the case of a violation involving a failure to report the existence of an account," the amount determined under that provision is "the balance in the account at the time of the violation."

31 U.S.C. 5321(a)(5)(D)(ii). Thus, for a willful failure to report a foreign account, the maximum penalty is the greater of $100,000 or 50% of the balance in the account. See *ibid.* The reasonable-cause exception also does not apply to any willful violation. 31 U.S.C. 5321(a)(5)(C)(ii).[3]

By delegation, the IRS exercises the Secretary's authority to assess and collect civil penalties under Section 5321. 31 C.F.R. 1010.810(g). Notwithstanding the IRS's administrative role, a civil penalty assessed under Section 5321 is not a "tax penalty." Pet. Br. 6 n.2. The distinction has significant practical importance. Among other things, the Internal Revenue Code generally requires treating penalties authorized under the Code as federal taxes for purposes of assessment and collection, meaning that assessed tax penalties can be challenged in federal district court only after they have already been paid. See 26 U.S.C. 6671(a); see also *Flora* v. *United States*, 362 U.S. 145, 155 (1960) (explaining that "full payment of the tax" is a prerequisite to a refund suit in district court). Those rules do not apply to penalties assessed under Section 5321.

B. The Present Controversy

1. Petitioner was born in Romania in 1957. Pet. App. 5a. After earning a master's degree in chemical engineering, petitioner immigrated to the United States in 1982 and became a naturalized U.S. citizen in 1987. *Ibid.* In 1990, petitioner returned to Romania, where he "earned millions of dollars and acquired interests in

[3] For violations occurring after November 2, 2015, the maximum penalties have been periodically adjusted to account for inflation. See 87 Fed. Reg. 3433, 3433-3434 & n.1 (Jan. 24, 2022). The current maximum penalty for a non-willful violation is $14,489. *Id.* at 3434. This brief uses the non-adjusted amount that was applicable to each of petitioner's violations.

a diverse array of companies, including real estate, hotels, restaurants, construction, aquaculture, logging, and manufacturing." *Ibid.* Among other ventures, petitioner negotiated with the Romanian government to purchase government assets, and he used holding companies in London and Geneva to conduct his affairs. *Ibid.*; see *id.* at 28a. Petitioner had an ownership interest in at least 38 different companies while working in Romania, and he "generated over $70 million in total income through his various foreign businesses and investment ventures." *Id.* at 29a; see J.A. 60-62. "To manage his growing wealth," petitioner maintained "dozens of bank accounts in Romania, Switzerland, and Liechtenstein," in some instances "'using numbered accounts'" and nominees to mask his identity as the beneficial owner of the account. Pet. App. 5a; see J.A. 80-81.

Petitioner lived in Romania for two decades before returning to the United States in 2011. Pet. App. 28a. He remained a U.S. citizen throughout that time, *ibid.*, and was therefore subject to both the foreign-account reporting requirements at issue in this case and U.S. income tax obligations. See 31 C.F.R. 1010.350(a) and (b)(1) (obligation to report foreign financial accounts applies to any "citizen of the United States," wherever domiciled); 26 C.F.R. 1.1-1(b) (federal income tax obligations generally apply to "all citizens of the United States, wherever resident * * * whether the income is received from sources within or without the United States"). During that 20-year period, petitioner filed U.S. income tax returns only for tax years 1991 and 1997-2000. Pet. App. 28a. Petitioner did not file an FBAR to report any of his foreign bank accounts for any of the years while he was living in Romania. *Ibid.*

Petitioner has maintained that he first learned of his obligation to report foreign financial accounts only after he returned to the United States in 2011. Pet. App. 6a; see Pet. 4, 9. Since the 1970s, however, individual taxpayers have been required to answer questions about foreign financial accounts as part of completing their income tax returns. See, *e.g.*, 42 Fed. Reg. 63,774, 63,774 (Dec. 20, 1977). Petitioner thus "would have been required to answer [a] question regarding whether he had foreign financial accounts" for each of the U.S. income tax returns he filed while living in Romania. J.A. 66. For the 1991 tax year, for example, Schedule B of the individual income tax return asked, "At any time during 1991, did you have an interest in or signature authority or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)?" IRS, Schedules A&B (Form 1040), at 2, line 11a (1991), perma.cc/UU8D-3A93. Schedule B also directed taxpayers to additional instructions on the "filing requirements for Form TD F 90-22.1." *Ibid.*

In May 2012, petitioner filed untimely FBARs for 1996-2010 and a timely FBAR for 2011. See J.A. 54-58 (years 2007-2011); C.A. ROA 420-430 (years 1996-2006). Each of those forms was inaccurate and incomplete. "[T]hey listed only his largest account," rather than all of his foreign financial accounts, and they "incorrectly stated he did not have an interest in twenty-five or more qualifying accounts." Pet. App. 6a. After hiring a new accountant, petitioner "filed corrected FBARs for the years 2007 to 2011, as penalties for prior years were time-barred." *Ibid.* (citing the six-year limitations period in 31 U.S.C. 5321(b)(1)).

On petitioner's second set of FBARs, he reported having a financial interest in more than 50 foreign financial accounts for each year from 2007 to 2011. Pet. App. 6a. Petitioner checked a box on each annual form indicating that he had a financial interest in 25 or more foreign financial accounts for that year, and he listed the total number of accounts, as required by the form. See J.A. 49-53. He also submitted a schedule purporting to identify all his reportable accounts for 2007-2011 and the annual high balance in each account. J.A. 87-122. The IRS later determined that, in several instances, even the information that petitioner provided on his "corrected" FBARs and accompanying account schedule was not complete and accurate because petitioner failed to disclose the existence of a foreign account held for his benefit by a nominee. J.A. 62-63, 78.

The IRS ultimately determined that petitioner had maintained at least the following aggregate number of reportable foreign accounts each year:

Year	**# Accts.**	**Aggregate High Balance**
2007	61	$10,127,860
2008	51	$10,420,152
2009	53	$ 3,053,884
2010	53	$16,058,319
2011	54	$15,137,405

Pet. App. 34a; see J.A. 82.

In 2017, the IRS assessed a civil penalty of $10,000 against petitioner for each of the unreported foreign financial accounts listed above, for each year in which petitioner failed to report the account. Pet. App. 6a. The assessed penalties totaled $2,720,000. *Ibid.* The IRS chose to impose those penalties based on a number of factors detailed in a revenue agent's report. J.A. 59-83.

The IRS found indications that petitioner was using nominee account holders to "hid[e] receipt of cash of unknown sources from Romanian authorities and/or U.S. authorities"; that petitioner had taken other steps that indicated an effort "to intentionally conceal the reporting of income, assets, or foreign activities"; and that petitioner had "tried to obstruct and delay the examination." J.A. 76, 80, 82. With respect to petitioner's purported ignorance of his obligations to pay U.S. income taxes or report his foreign financial accounts while living in Romania, the IRS observed that petitioner was a "sophisticated businessman" with "the means to hire competent advisors knowledgeable in U.S. taxation." J.A. 74-75. The IRS also noted that petitioner had, in fact, filed a handful of U.S. income tax returns during his two decades in Romania, and that—as explained above—those forms required him to answer questions about his foreign financial accounts and referred to the filing requirements for the FBAR. J.A. 66.

2. In 2019, the government brought this civil action in the Eastern District of Texas to recover the penalties assessed against petitioner, along with associated late-payment penalties and interest. Pet. App. 6a; see 31 U.S.C. 5321(b)(2)(A). "During discovery, [petitioner] admitted he was obligated to report 51 accounts in 2007, 43 in 2008, 42 in 2009, 41 in 2010, and 43 in 2011," while disputing his obligation to report other accounts. Pet. App. 6a. The government moved for partial summary judgment with respect to the assessed penalties for the accounts that petitioner conceded he was obligated to report. *Id.* at 6a-7a. Petitioner filed a cross-motion for summary judgment, arguing in relevant part that the statute capped the amount of penalties that could be assessed against him for non-willful violations at $10,000

per FBAR form that he failed to file. *Ibid.* Petitioner also argued that he had reasonable cause for failing to report his foreign accounts. *Ibid.*

The district court held that Section 5321(a)(5)(B)(i)'s $10,000 ceiling on the civil penalty for a non-willful violation applies "to each FBAR form not timely or properly filed rather than to each foreign financial account maintained but not timely or properly reported." Pet. App. 39a. The court stated that Section 5321(a)(5)(A) authorizes a penalty of up to $10,000 "on any person who violates" Section 5314, and that Section 5314 requires the Secretary to adopt implementing regulations. *Id.* at 40a (citation omitted). The court reasoned that the civil penalties authorized in Section 5321(a)(5) "attach" to "violations of the * * * implementing regulations." *Ibid.* And, in the court's view, the only violation of the implementing regulations for which civil penalties are "contemplated" is the "failure to file an annual FBAR," *id.* at 41a, which the court viewed as constituting a single violation no matter how many accounts a filer fails to report, see *id.* at 41a-49a.

The district court also determined that petitioner lacked reasonable cause for failing to comply with his foreign-account reporting obligations in the years 2007 to 2010. Pet. App. 57a-63a. The court stated that, to show reasonable cause, petitioner would at least be required to demonstrate "that he exercised ordinary business care and prudence." *Id.* at 59a (citation omitted). The court found that petitioner had failed to make that showing, or indeed to raise any genuine issue of material fact about his conduct. *Ibid.* The court emphasized that, by his own admission, petitioner took no "'steps to learn about' his FBAR reporting obligations" at the time, despite being "undoubtedly a sophisticated busi-

ness professional" and being "aware of at least some of his United States income tax obligations." *Id.* at 60a, 62a. Accordingly, the court concluded that petitioner "cannot claim with a straight face that, as an American citizen generating millions of dollars in income abroad, he was so unaware that he might have United States reporting obligations that he did not even feel compelled to investigate the matter." *Id.* at 62a.

The district court's summary-judgment decision did not resolve the issue of reasonable cause for the 2011 reporting period. See C.A. ROA 1647. After petitioner withdrew his claim of reasonable cause for the unreported accounts at issue in that year, *id.* at 1648, the court entered a final judgment requiring him to pay a penalty of $10,000 for each of the five FBARs that he failed to file from 2007 to 2011, plus late-payment penalties and interest. Judgment 1-3. Petitioner appealed, and the government cross-appealed. Pet. App. 7a.

3. The court of appeals affirmed in part and reversed, vacated, and remanded in part. Pet. App. 1a-26a. It affirmed the district court's grant of summary judgment against petitioner on his reasonable-cause defense, *id.* at 8a-14a, concluding that petitioner "did not exercise ordinary business care and prudence" because he "conceded he put no effort into ascertaining and fulfilling his reporting obligations," *id.* at 12a. With respect to the amounts of the assessed penalties, the court of appeals disagreed with the district court and held that "each failure to report a qualifying foreign account constitutes a separate * * * violation" for which the Secretary may assess a civil penalty of up to $10,000. *Id.* at 2a; see *id.* at 14a-25a.

The court of appeals viewed the penalty issue as turning on the correct understanding of "what consti-

tutes a 'violation' of section 5314: the failure to file an FBAR * * * or the failure to report an account." Pet. App. 14a. After reviewing the "text, structure, history, and purpose" of Section 5314, the court determined that "the 'violation' of section 5314 contemplated by section 5321(a)(5)(A) is the failure to report a qualifying account, not the failure to file an FBAR." *Id.* at 25a. The court explained that both Section 5314 and the Secretary's regulations distinguish between the "substantive" obligation of U.S. persons to "'report[]'" any relations they maintain "'with a foreign financial agency,'" *id.* at 17a (quoting 31 U.S.C. 5314(a)), and "procedural" obligations about the format, timing, and content of the reports, *ibid.*—which Congress largely left to the Secretary's discretion. See 31 U.S.C. 5314(a) (stating that the required reports "shall contain [certain] information in the way and to the extent the Secretary prescribes"). The court therefore concluded that the term "violation" in Section 5321(a)(5)(A) "most naturally reads as referring to the statutory requirement to report each account—not the regulatory requirement to file FBARs in a particular manner." Pet. App. 18a-19a.

The court of appeals found its reading of "violation" in Section 5321(a)(5)(A) further supported by the use of that term in adjacent provisions. Pet. App. 20a. For example, the maximum penalty for a willful failure to report a foreign account is the greater of $100,000 or 50% of "the balance in the account at the time of the violation." 31 U.S.C. 5321(a)(5)(D)(ii); see 31 U.S.C. 5321(a)(5)(C)(i). As the court explained, that "language plainly describes a 'violation' in terms of a failure to report * * * an account," not failure to file an FBAR. Pet. App. 20a-21a. Invoking the "presumption of consistent usage," the court reasoned that "[i]f a willful vi-

olation of section 5314 in subsection (C) involves failing to report a transaction or an account, then presumably so too does a non-willful violation of section 5314 in subsection (A)." *Id.* at 21a; see *id.* at 22a-23a (discussing similar account-specific usage of the term "violation" in the reasonable-cause provision).

SUMMARY OF ARGUMENT

The court of appeals correctly determined that the Bank Secrecy Act authorizes the Secretary of the Treasury to impose a civil penalty of up to $10,000 for each foreign financial account that petitioner failed to report as required in a given reporting period.

A. In 31 U.S.C. 5321(a)(5)(A), Congress authorized the Secretary to impose a "civil money penalty" for a "violation" of 31 U.S.C. 5314, which in turn instructs the Secretary to impose record-keeping and reporting requirements when a U.S. person maintains a relation with a foreign financial agency. The text of both provisions makes clear that each undisclosed account is a separate violation.

Section 5321(a)(5) consistently uses the term "violation" in an account-specific way. Subparagraph (A) authorizes the Secretary to impose a civil penalty for a "violation"; Subparagraph (B) contains an exception, under which no penalty may be imposed if the "violation" is due to reasonable cause; and Subparagraph (C) prescribes a higher maximum penalty if the "violation" was willful, with the amount determined in part by rules set forth in Subparagraph (D). The reasonable-cause exception in Subparagraph (B) necessarily uses the term "violation" in an account-specific way, because whether reasonable cause exists depends in part on whether the "balance in the account" was properly reported for "such violation." 31 U.S.C. 5321(a)(5)(B)(ii). Subpara-

graphs (C) and (D) likewise use the term "violation" in an account-specific way, because the maximum penalty amount for a willful violation "involving a failure to report the existence of an account" is in part a function of "the balance in the account at the time of the violation." 31 U.S.C. 5321(a)(5)(D)(ii).

The court of appeals correctly determined that the account-specific usage of the term "violation" in Subparagraphs (B), (C), and (D) of Section 5321(a)(5) supports giving that term the same meaning in Subparagraph (A). Indeed, each of those subparagraphs is referring to the same "violation." Subparagraph (A) authorizes the Secretary to impose a civil penalty for a "violation," and Subparagraphs (B)-(D) set forth rules for determining the maximum amount of the penalty *for that violation*. To make Section 5321(a)(5) coherent, the term "violation" must mean the same thing each place that it appears.

The text of Section 5314 also demonstrates that each undisclosed account is a separate violation. Section 5314(a) directs the Secretary to impose record-keeping and reporting requirements whenever a U.S. person maintains "a relation" with a foreign financial agency, and the statute contains an enumerated list of account-identifying information that the reports and records should address. 31 U.S.C. 5314(a). In both respects, Section 5314(a) contemplates that each foreign financial account is a matter of distinct concern.

Petitioner's contrary view wrongly conflates the statutory requirement to report each foreign financial account with the Secretary's administrative decision to permit multiple reports to be made on a single form (generally with additional pages for accounts beyond the first one). Section 5314(a) says nothing about any

annual form. The statute does not require the Secretary to permit multiple accounts to be reported on a single form, and the Secretary has in the past directed that each account be reported on a separate form. Those administrative decisions do not alter the underlying statutory "violation," which is the failure to report an account as required.

B. The history and purpose of the Bank Secrecy Act confirm that each undisclosed account is a separate violation. Initially, the Act did not contain any penalty provision specific to the foreign-account reporting requirements. In 1986, Congress authorized the Secretary to assess a civil penalty for a willful "violation" of Section 5314, while using account-specific language in rules specifying the maximum penalty amount (as in the current statute). In 2004, Congress amended Section 5321(a)(5) to authorize the Secretary to assess a civil penalty for even a non-willful violation of Section 5314. Congress used the same term ("violation") that already had an account-specific connotation in the 1986 amendments, and Congress presumably meant to incorporate that same meaning.

Congress first enacted the provision now located at Section 5314(a) in 1970 after hearing testimony from U.S. officials about the use of secret foreign bank accounts to commit tax evasion, money laundering, and other violations of U.S. law. The Bank Secrecy Act's record-keeping and reporting requirements for foreign financial accounts were designed to deter such abuses by giving federal officials a measure of visibility into relations between U.S. persons and foreign banks. That is why Congress later chose to treat each undisclosed account as a separate violation. When a U.S. person fails to report multiple foreign accounts on a single

form, the result is multiple informational gaps for U.S. law enforcement—not just a single omission.

Petitioner's per-form approach would wrongly treat failing to report dozens of accounts in a single year the same way as failing to report just one. The per-account approach, by contrast, gives the Secretary appropriate leeway to assess penalties that reflect the greater seriousness of failing to disclose multiple accounts. And because Section 5321(a)(5) specifies only the *maximum* penalty amount for a violation, the Secretary may assess lesser penalties when warranted.

C. The Secretary's implementing regulations further confirm that each foreign financial account that a person fails to report is a separate violation. Petitioner sought this Court's review to resolve a conflict between the decision below and a Ninth Circuit decision, *United States* v. *Boyd*, 991 F.3d 1077 (2021), in which a divided panel incorrectly construed the regulations to mean that failing to file the annual form in a timely fashion is a single violation—no matter how many accounts are at issue. In fact, the regulations make clear that each qualifying foreign financial account must be reported, and they distinguish between the reports a U.S. person must make and the form on which those reports are made.

D. Petitioner's remaining arguments lack merit. The per-account interpretation of the statute produces sensible practical results, and administrative and judicial review are available as a check on the amount of assessed penalties. The substantive canons invoked by petitioner, including the rule of lenity, do not apply here. Section 5321(a)(5) is not a tax statute, it does not impose criminal sanctions, and it is not ambiguous—let alone grievously ambiguous.

ARGUMENT

UNDER THE BANK SECRECY ACT, PETITIONER IS LIABLE FOR A CIVIL MONEY PENALTY OF UP TO $10,000 FOR EACH FOREIGN FINANCIAL ACCOUNT THAT HE FAILED TO REPORT

The court of appeals correctly determined that the Bank Secrecy Act authorizes the Secretary of the Treasury to impose a civil money penalty of up to $10,000 on a U.S. person for each foreign financial account that the person fails to report as required by the Act and its implementing regulations. That conclusion follows straightforwardly from the plain text of both 31 U.S.C. 5314, which directs the Secretary to establish the reporting obligations that petitioner violated, and 31 U.S.C. 5321(a)(5), which authorizes the Secretary to assess civil penalties for violations of Section 5314. Both statutes make clear that each undisclosed foreign account is a separate violation, for which a separate civil penalty may be imposed. The history and purpose of the Bank Secrecy Act further confirm that petitioner committed a distinct violation for each foreign account that he failed to report, even though the reporting form prescribed for use at the time directed filers with multiple accounts to report all of their accounts on a single form. The Secretary's decision to permit multiple accounts to be reported on a single form does not relieve filers of their obligation to report each account, on pain of a separate civil penalty for each failure to do so.

A. The Statutory Text Treats Each Undisclosed Foreign Financial Account As A Separate Violation

To resolve a question of statutory interpretation, this Court ordinarily "start[s] with the text of the statute." *Babb* v. *Wilkie*, 140 S. Ct. 1168, 1172 (2020). If the "plain meaning of the statutory text" reveals a firm an-

swer to the question presented, the judicial inquiry may end there as well. *Ibid.*; see, *e.g.*, *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 254 (1992).

This is such a case. To resolve the parties' dispute, the Court need look no further than the text of Section 5321(a)(5) itself. Section 5321(a)(5) authorizes the Secretary to assess a civil penalty for any "violation" of Section 5314; it provides an exception, under which a penalty may not be imposed if "such violation was due to reasonable cause"; and it prescribes a higher maximum penalty amount if "the violation" was willful. 31 U.S.C. 5321(a)(5)(A), (B)(ii)(I), (C)(i), and (D)(ii). All of those provisions concern the same "violation," and the provisions addressing reasonable cause and willfulness necessarily use that term to refer to failing to report or keep records of a specific account—not failing to file an annual form—because those provisions contain rules that turn on the balance in a specific account. Accordingly, the term "violation" must bear the same account-specific meaning throughout Section 5321(a)(5) in order for the parts of the statute to cohere.

The text of Section 5314 confirms that petitioner committed a distinct violation for each foreign financial account that he failed to report. Section 5314(a) directs the Secretary to impose reporting and record-keeping requirements that apply on a per-account basis, but the statute says nothing about using a single annual form for multiple accounts. Petitioner's contrary view (Br. 18-22) wrongly conflates the substantive requirement to file reports about each account with the Secretary's administrative decision to permit multiple reports to be made on a single annual form.

1. Section 5321(a)(5) consistently uses the term "violation" in an account-specific way

a. Subparagraph (A) of Section 5321(a)(5) authorizes the Secretary to "impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314." 31 U.S.C. 5321(a)(5)(A). The statute then provides a series of rules respecting the penalty that may be imposed under Subparagraph (A) for any given "violation." Those rules make clear that Section 5321(a)(5) uses the term "violation" in an account-specific way.

Subparagraph (B) provides an exception under which a "violation" that is the result of reasonable cause shall not be penalized: "No penalty shall be imposed under subparagraph (A) with respect to any violation" if "(I) such violation was due to reasonable cause," and "(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported." 31 U.S.C. 5321(a)(5)(B)(ii). That phrasing presupposes that the "violation" relates to a single, specific account. Because it requires a determination whether the balance in "*the* account" has been properly reported for "such violation," the "violation" must relate to a single account, not to a single form on which multiple accounts could be reported. *Ibid.* (emphasis added); see Pet. App. 22a ("[T]he definite article 'the' before the singular * * * 'account' suggests that the 'violation' excused for reasonable cause relates to a single * * * account."); see also, *e.g.*, *Nielsen* v. *Preap*, 139 S. Ct. 954, 965 (2019) ("[G]rammar and usage establish that 'the' is 'a function word indicating that a following noun or noun

equivalent is definite or has been previously specified by context.'") (alterations and citation omitted).[4]

Subparagraphs (C) and (D) set forth rules for willful violations that likewise presuppose—in their text—that the term "violation" connotes a failure with respect to a specific account, not a specific form. Subparagraph (C) increases the maximum civil penalty for a "violation" that is willful: "In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314," the "maximum penalty under subparagraph (B)(i) shall be increased" from $10,000 to $100,000 or "50 percent of the amount determined under subparagraph (D)," whichever is greater. 31 U.S.C. 5321(a)(5)(C)(i). Subparagraph (D), in turn, provides that, "in the case of a violation involving a failure to report the existence of an account," the amount determined under that subparagraph is "the balance in the account at the time of the violation." 31 U.S.C. 5321(a)(5)(D)(ii). That language again "plainly describes a 'violation' in terms of a failure to report * * * an account." Pet. App. 20a-21a (citing *United States* v. *Boyd*, 991 F.3d 1077, 1089 (9th Cir. 2021) (Ikuta, J., dissenting)). Indeed, Subparagraph (D) is account-specific twice over: It not only refers to "a failure to report the existence of *an* account," in the singular, it also requires ascertaining the balance in that particular account ("*the*

[4] As a textual matter, the violation could also relate to a specific "transaction." 31 U.S.C. 5321(a)(5)(B)(ii)(II). The Bank Secrecy Act authorizes the Secretary to impose record-keeping and reporting requirements for "a transaction" between a U.S. person and a foreign financial agency as well as "a relation" between them. 31 U.S.C. 5314(a). The record-keeping and reporting requirements at issue here apply only to financial accounts (*i.e.*, relations), not discrete transactions. See 31 C.F.R. 1010.350(a), 1010.420.

account") to determine the maximum civil penalty for "*the* violation." 31 U.S.C. 5321(a)(5)(D)(ii) (emphases added).

The court of appeals reviewed the account-specific use of the term "violation" in Subparagraphs (B), (C), and (D) of Section 5321(a)(5) and correctly concluded that the term bears that same account-specific meaning in Subparagraph (A), which authorizes the Secretary to assess a civil penalty for a "violation" of Section 5314. 31 U.S.C. 5321(a)(5)(A); see Pet. App. 20a-23a. As the court explained, "[i]t is a 'basic canon of statutory construction that identical terms within an Act bear the same meaning.'" *Id.* at 21a (quoting, indirectly, *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992)); see, *e.g.*, *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 34 (2005) (invoking "the normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning"); cf. Pet. Br. 33 n.15 (invoking the same principle). That principle has particular force for a word's appearances in a single paragraph, and that is reason enough to give the term "violation" a consistent, account-specific meaning throughout Section 5321(a)(5). See Pet. App. 21a; *Boyd*, 991 F.3d at 1090-1091 (Ikuta, J., dissenting).

But the case for adopting such a reading is even stronger here than in the typical scenario in which the presumption of consistent usage is invoked. Subparagraphs (B), (C), and (D) not only use the same term ("violation"), they refer to *exactly the same violation* as Subparagraph (A). In fact, Subparagraph (A) is the only provision in Section 5321(a)(5) that authorizes the Secretary to assess a civil penalty for a "violation." 31 U.S.C. 5321(a)(5)(A). The remaining subparagraphs

merely set forth the rules for determining the maximum penalty that may be assessed for that particular violation: if the violation was due to reasonable cause and the balance in the account has been properly reported, $0; otherwise, up to $10,000; or, if the violation was willful, up to $100,000 or half the balance in the account, whichever is greater.

Accordingly, each time Section 5321(a)(5) uses the term "violation," it is referring to the same underlying conduct—the same "actus reus," *Boyd*, 991 F.3d at 1089 (Ikuta, J., dissenting). And that conduct cannot be one thing—the failure to file an annual form—for purposes of some of the constituent parts of Section 5321(a)(5) but another thing—the failure to report a specific account—for others. See, *e.g.*, *Cochise Consultancy, Inc.* v. *United States ex rel. Hunt*, 139 S. Ct. 1507, 1512 (2019) (observing that, "[i]n all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning") (citing *Ratzlaf* v. *United States*, 510 U.S. 135, 143 (1994)); *Reno* v. *Bossier Parish Sch. Bd.*, 528 U.S. 320, 329 (2000) (rejecting "a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying"). The statutory text thus compels the conclusion that, when Congress authorized the Secretary to assess a civil penalty for each "violation of[] any provision of section 5314," 31 U.S.C. 5321(a)(5)(A), Congress authorized the Secretary to assess a separate penalty with respect to each foreign financial account that a U.S. person fails to report as required.

b. Petitioner attempts (Br. 26) to turn the account-specific use of the term "violation" in Subparagraphs (B) and (D) to his advantage, arguing that the omission of similar language in Subparagraph (A) suggests that

Congress "conspicuously chose" not to impose civil penalties on a per-account basis for a "baseline violation" of Section 5314. Cf. Pet. App. 41a-42a (district court's similar reasoning); *Boyd*, 991 F.3d at 1084 (same). But the entirety of Section 5321(a)(5) addresses the same "violation," and the term "violation" must bear a consistent account-specific meaning throughout Section 5321(a)(5) to make the statute coherent. The omission of any reference to the account balance in the provision specifying the maximum penalty for a non-willful violation, 31 U.S.C. 5321(a)(5)(B)(i), merely reflects that Congress chose to impose a "cap[]" of $10,000 for such a violation as a matter of policy, rather than making the maximum a function of "the 'balance' in the unreported account," Pet. App. 22a (citation omitted). The "different phrasing" of the respective maximum penalty amounts for non-willful and willful violations "does not affect the definition of 'violation,' which * * * means the same thing whether willful or non-willful." *Ibid.*

Petitioner also contends (Br. 27) that his interpretation can be squared with the text of Subparagraph (D) if the latter is not read to be account-specific. Petitioner emphasizes (*ibid.*) that the provision specifying the maximum civil penalty for a willful violation refers to a case "*involving* a failure to report the existence of an account," 31 U.S.C. 5321(a)(5)(D)(ii) (emphasis added), which he takes to suggest that a single "violation" might "involve" a failure to report more than one account on the same form. But petitioner overlooks the rest of Subparagraph (D), under which the maximum penalty for a willful violation is a function of "the balance in the account at the time of the violation." *Ibid.* That language contemplates that the "violation" corresponds to a particular account with a particular balance.

To take a concrete example, suppose a U.S. person willfully refuses to report that he maintains two numbered accounts in the Cayman Islands. Petitioner would read Section 5321(a)(5)(D) to mean that the person has committed a single willful "violation" of Section 5314 that "'involve[d]' failing to report multiple accounts." Pet. Br. 27. But to determine the maximum civil penalty that may be imposed for that violation, Section 5321(a)(5) requires determining the "balance in *the* account." 31 U.S.C. 5321(a)(5)(D)(ii) (emphasis added). Petitioner has no explanation of that statutory language, which plainly contemplates that the "violation" corresponds to one account, not one form listing multiple accounts with potentially quite different balances.

Petitioner's approach would create the same problem for the reasonable-cause provision, which also refers to the "balance in *the* account." 31 U.S.C. 5321(a)(5)(B)(ii)(II) (emphasis added). A U.S. person might well have reasonable cause for failing to report one foreign financial account but not another, even where the person failed to report both accounts on the same annual form—as, for example, when the person receives reasonable but mistaken advice from a lawyer not to disclose one account over which she has signatory authority, and the same person unreasonably concludes that the same advice applies to a second account. The statute accommodates such circumstances by providing for a distinct inquiry into reasonable cause for each nonwillful failure to report an account—an inquiry that turns in part on whether the "balance in the account" has been properly reported. *Ibid.* Petitioner's approach, by contrast, would leave the application of the reasonable-cause provision entirely unclear in those circumstances.

Petitioner cannot avoid that textual problem by invoking (Br. 27) the Dictionary Act's instruction that, generally, "words importing the singular include and apply to several persons, parties, or things," 1 U.S.C. 1. The Dictionary Act does not detract from the provisions in Section 5321(a)(5), which necessarily contemplate that each violation corresponds one-to-one with a specific account and account balance. And in any event, the interpretive rules in the Dictionary Act do not apply when "the context indicates otherwise." *Ibid.*; cf. *United States* v. *Hayes*, 555 U.S. 415, 422 n.5 (2009) (noting this limitation and describing as "rare" the "occasions when [the Court] ha[s] relied on" the rule allowing singular words to include plurals). To the extent that the Dictionary Act would provide a basis for adopting petitioner's per-form reading, the specific statutory context forecloses his approach.

2. Section 5314 confirms that each undisclosed foreign financial account is a distinct violation

a. Section 5314 confirms that, when Congress authorized the Secretary to impose a civil money penalty for "any violation * * * of section 5314," 31 U.S.C. 5321(a)(5)(A), Congress authorized a distinct penalty for each foreign financial account that a U.S. person fails to report as required. Section 5314(a) uses account-specific language and contemplates that the Secretary will impose account-specific record-keeping and reporting requirements, which the Secretary has in fact done.

Section 5314(a) states that the Secretary "shall require a resident or citizen of the United States," such as petitioner, "to keep records, file reports, or keep records and file reports, when [the U.S. person] makes a transaction or maintains a relation for any person with

a foreign financial agency." 31 U.S.C. 5314(a). The statute uses the singular—"a transaction" or "a relation" with "a foreign financial agency"—to describe the subject matter of the required reports and records. *Ibid.* The text of Section 5314(a) thus contemplates that the filer is required to "report *each* qualifying transaction or relation with a foreign financial agency," Pet. App. 18a (emphasis added), subject to any exceptions the Secretary may prescribe, see 31 U.S.C. 5314(b). And because the statute indicates that each instance of "maintain[ing] a relation * * * with a foreign financial agency" is a matter of distinct concern, the statute is best read to mean that each instance in which a U.S. person fails to report such a relation is a separate violation. 31 U.S.C. 5314(a).

The enumerated list at the end of Section 5314(a) underscores the point. After directing the Secretary to adopt record-keeping and reporting requirements, Section 5314(a) states that "[t]he records and reports shall contain the following information in the way and to the extent the Secretary prescribes," followed by a list of four items. 31 U.S.C. 5314(a). Every one of the listed items is necessarily account-specific (or transaction-specific) because it can vary for each of the accounts (or transactions) being reported. For example, the statute indicates that the required reports and records shall disclose "the identity and address of participants in a * * * relationship." 31 U.S.C. 5314(a)(1). The Secretary has implemented that provision in part by prescribing a form that requires the filer to identify the name and mailing address of the foreign financial institution at which each account is held. See, *e.g.*, J.A. 29-30 (July 2000 version of FBAR). When a U.S. person fails to file an annual form on which multiple accounts

should have been reported, the person fails multiple times to provide the account-identifying information that the statute contemplates.

The text of Section 5314(a) also weighs in favor of an account-specific approach by drawing a parallel between "fil[ing] reports" and "keep[ing] records" of a foreign financial account. 31 U.S.C. 5314(a). Those terms appear in sequence in a compact list, and the subject matter of both the reporting and the record-keeping is the same account. See *ibid.* (authorizing the Secretary to require a U.S. person "to keep records, file reports, or keep records and file reports, when [the U.S. person] maintains a relation * * * with a foreign financial agency"). Moreover, the records contemplated by the statute are themselves account-specific (or transaction-specific), as again confirmed by the enumerated list of account-identifying information at the end of Section 5314(a). See 31 U.S.C. 5314(a)(1)-(4). Each failure to keep records about an account is a distinct violation, just as each failure to report that same account is a distinct violation.

b. Petitioner contends (Br. 14) that Section 5314(a) imposes no "standalone obligation to report each qualifying account." In his view (Br. 18), maintaining one or more foreign financial accounts is the "triggering condition" that "activates" a duty to file a single report. Petitioner concedes (Br. 21), however, that the statute imposes a duty to file a "proper report," and that a U.S. person is required to report every qualifying foreign financial account. Thus, even by petitioner's own lights, the statute imposes (or, more precisely, instructs the Secretary to impose) a "duty to report each account." Pet. Br. 19. Petitioner's contention is only that U.S. persons do not have a "standalone" or "independent"

duty (Br. 17, 19) with respect to each qualifying account, such that they can violate their reporting obligations only once in any given reporting period.

That contention—the opposite of petitioner's position about Section 5314 in the court of appeals—is unsound.[5] As explained above (at pp. 26-28), even setting aside the account-specific language in Section 5321(a)(5), the text of Section 5314(a) itself contemplates record-keeping and reporting requirements that apply on an account-specific basis, including through the statute's use of the singular ("maintains *a* relation") and in the enumerated list of account-identifying information to be addressed in the records and reports. 31 U.S.C. 5314(a) (emphasis added). Petitioner would dismiss that language as merely speaking to the minutiae of the single "report" that he understands the statute to require. Pet. Br. 19 (emphasis omitted). But that language is what gives content to the reporting requirement. The statute directs the Secretary to require U.S. persons to "keep records, file reports, or keep records and file reports" *about the foreign financial account* that triggers those obligations. 31 U.S.C. 5314(a). And when a U.S. person has more than one qualifying account, the statute is best read to mean that the U.S. person must file reports about each qualifying account.

Petitioner also fails to explain why, even under his own reading of the text, the "triggering condition" (Br. 18) can occur only once. The more natural reading is

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[5] In the court of appeals, petitioner took the position that "Section 5314 itself imposes no obligations on individuals." Pet. C.A. Response & Reply Br. 3; see *id.* at 11-13. Petitioner contended that the question presented should instead be resolved on the basis of the language of Section 5321(a)(5) and the Secretary's implementing regulations. See *id.* at 16-25.

that the statute contemplates that each time a U.S. person "maintains a relation * * * with a foreign financial agency," a new and distinct requirement is triggered to keep records and file reports about *that* relation with *that* financial agency. 31 U.S.C. 5314(a). The relevant clause of the statute is introduced by the word "when." See *ibid.* (directing the Secretary to require record-keeping and reporting "when the [U.S. person] * * * maintains a relation" with a foreign financial agency). In this context, "when" is a conjunction that means "at any and every time that." *Webster's Third New International Dictionary* 2602 (1971) (def. 1c). Thus, the statute contemplates that the obligation to file reports and keep records will apply every time that a U.S. person maintains a foreign financial account.[6]

c. At bottom, petitioner's textual position reduces to the claim that Section 5314(a) imposes a requirement to file an annual form disclosing at least one qualifying account, which petitioner would treat as the only statutorily required "report[]," no matter how many qualifying accounts the filer has. 31 U.S.C. 5314(a); see, *e.g.*, Pet. Br. 17 (equating the "'required' report" with a "single form") (brackets omitted); *id.* at 21 ("requirement * * * to list all foreign accounts on a single form"); *id.* at 25

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[6] The provision was phrased in materially the same way when it was first enacted in 1970. Although petitioner omits it from his block quotation (Br. 19), the 1970 predecessor of what is now Section 5314(a) included an enumerated list of account-specific information to be included in the reports and records—the list that is still found, with only minor differences in phrasing, at Section 5314(a)(1)-(4). See Bank Secrecy Act § 241(a)(1)-(3), 84 Stat. 1124. When Title 31 was codified and enacted as positive law in 1982, those stylistic edits were "without substantive change," as petitioner acknowledges. Br. 20 n.13 (quoting Act of Sept. 13, 1982, Pub. L. No. 97-258, Pmbl., 96 Stat. 877); see H.R. Rep. No. 651, 97th Cong., 2d Sess. 1 (1982).

("requirement to file one form"). That interpretation wrongly "conflates the 'report' that a person must make, with the 'reporting form' required by the regulations." *Boyd*, 991 F.3d at 1090 (Ikuta, J., dissenting).

Section 5314(a) itself says nothing at all about any annual form. The statute instead directs the Secretary to require U.S. persons to "file reports" of their foreign financial accounts, 31 U.S.C. 5314(a), while leaving the precise format, timing, and content of those reports largely to the Secretary's discretion. See Pet. App. 19a (explaining that Section 5314 "does not create [an] obligation to file 'a single report'" identifying all accounts, but rather "gives the Secretary discretion to prescribe how to fulfill the statute's requirement of reporting qualifying accounts"). During the years at issue here, the Secretary chose to prescribe an annual form that instructed filers to report all of their qualifying foreign financial accounts as separate entries on a single form. See pp. 3-4, *supra* (discussing the forms reprinted at J.A. 29-48). But Section 5314(a)'s underlying "substantive" requirement remained the same: U.S. persons must report each qualifying foreign financial account. Pet. App. 17a. Each failure to do so is therefore a separate violation of Section 5314, as Section 5321(a)(5) confirms.

Section 5314(a) does not mandate that the Secretary require multiple accounts to be reported on the same form. Nor does it preclude the Secretary from requiring that each report be made on a separate form. In fact, the first reporting form that the Secretary prescribed to implement what is now Section 5314(a) instructed a filer to "use a separate [f]orm" (or attach his own schedule) to report additional accounts beyond the first one. Office of the Gen. Counsel, Dep't of Treasury,

Currency and Foreign Transactions Reporting Act: Statute, Regulations, and Forms 22 (1972) (reprinting IRS Form 4683, U.S. Information Return on Foreign Bank, Securities, and Other Financial Accounts (Nov. 1971)). Later reporting forms likewise directed a filer to "attach a separate [f]orm" for each account beyond the first one. IRS, *Package X: Informational Copies of Federal Income Tax Forms* 281 (1978) (reprinting Treasury Department Form 90-22.1, Report of Foreign Bank and Financial Accounts (Sept. 1978)). Ultimately, the reporting form evolved to permit additional accounts to be reported on "[c]ontinuation page[s]," J.A. 30—or, most recently, as separate entries in a single electronic submission, see p. 4 n.2, *supra*. But nothing in the statute prevents the Secretary from reinstating a requirement that a separate form be used for each account.

The Secretary's discretion to require that each qualifying account be reported on a separate form provides yet another reason to reject the district court's view that the penalties for non-willful violations "apply on a per form, rather than per account basis." Pet. App. 57a. As the court of appeals explained, adopting a per-form approach "would give the Secretary discretion not only to define the reporting mechanism, but also to define the number of violations subject to penalty." *Id.* at 19a (emphasis omitted). The statutory text does not suggest, however, that a U.S. person's liability for failing to report multiple accounts should vary based on the Secretary's decision to "[s]treamlin[e]" the reporting process by permitting multiple accounts to be reported on a single form. *Ibid.* Moreover, adopting a per-form approach to civil penalties would greatly discourage the Secretary from continuing to permit multiple accounts

to be reported on a single form, to the detriment of the law-abiding filers who currently benefit from the convenience of that arrangement.

d. Petitioner makes a number of other purportedly textual arguments about Section 5314, all of which lack merit. Despite petitioner's contentions (Br. 21), it fully comports with "common sense," "normal experience," and "natural expectations" to treat each foreign financial account that a U.S. person fails to report as a distinct violation of Section 5314, subject to a separate civil penalty. Petitioner likens (*ibid.*) Section 5314 to a requirement to list all foreign accounts on a single piece of paper. But that view wrongly conflates the statutory obligation to report each foreign financial account with the Secretary's administrative decision to permit those separate reporting obligations to be consolidated in a single form with multiple pages. And common sense rebels against petitioner's view that the failure to report *dozens* of foreign accounts should be treated as no more egregious than the failure to report only one foreign account.

Petitioner is also wrong to suggest (Br. 22-23) that this Court's decision in *California Bankers Association* v. *Shultz*, 416 U.S. 21 (1974), provides any support for his approach. There, the Court rejected various constitutional challenges to the Bank Secrecy Act, including to the foreign-account reporting requirements. See *id.* at 43, 59-63, 71-76. At the outset, the Court observed that "the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary," and that, "if the Secretary were to do nothing, the Act itself would impose no penalties on anyone." *Id.* at 26. But those observations could not have referred to the Secretary's authority under Section 5321(a)(5) to

impose a penalty for a non-willful violation of Section 5314, because Congress did not give the Secretary that specific authority until "thirty years after" the Court's decision. Pet. App. 16a; see pp. 35-36, *infra* (discussing the statutory history).

Petitioner nonetheless contends (Br. 23) that *California Bankers Association* supports the proposition that Section 5314 cannot be read to treat each failure to report a qualifying account as a separate violation because the statute "does nothing" in the absence of implementing regulations. It is true that Section 5314(a) is phrased as a directive to the Secretary to impose record-keeping and reporting requirements; the statute does not directly regulate primary conduct. But that phrasing does not advance petitioner's argument. He too reads Section 5314(a) as imposing a "substantive obligation," at least "indirectly," to file a report. Pet. Br. 18, 19 n.11 (emphasis omitted). The only dispute is whether the Bank Secrecy Act as a whole treats each unreported foreign financial account as a separate violation of that obligation to file a report, and the text of Sections 5314 and 5321(a)(5) makes clear that it does.

B. The Statutory History And Purpose Support Treating Each Undisclosed Account As A Separate Violation

This Court "often looks to 'history and purpose' to divine the meaning" of an Act of Congress. *Gundy* v. *United States*, 139 S. Ct. 2116, 2126 (2019) (plurality opinion) (quoting *Maracich* v. *Spears*, 570 U.S. 48, 76 (2013)) (brackets omitted). Here, those considerations point in the same direction as the statutory text, further confirming that each foreign financial account that petitioner failed to report was a separate violation for which he became liable for a separate penalty.

1. The most salient historical point is that, when Congress amended the Act in 2004 to authorize the imposition of a penalty for a non-willful "violation," the Bank Secrecy Act already authorized the Secretary to impose an account-specific penalty for a willful "violation" of Section 5314. By using the same term in the amendment, Congress presumably intended to carry forward the existing, account-specific connotation of "violation" into the context of non-willful conduct. See, *e.g.*, *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019) ("When a statutory term is obviously transplanted from another legal source, it brings the old soil with it.") (citation and internal quotation marks omitted).

As originally enacted, Title II of the Bank Secrecy Act authorized the Secretary to assess civil penalties against certain financial entities and their employees for willful violations of that title, which included the predecessor of Section 5314. See Bank Secrecy Act § 207(a), 84 Stat. 1120; see also *id.* §§ 209-210, 84 Stat. 1121 (criminal penalties). In 1986, Congress amended the Act to add a "separate civil money penalty for violation[s] of Section 5314." Money Laundering Control Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. H, § 1357(c), 100 Stat. 3207-25 (capitalization altered) (adding a new Section 5321(a)(5)). The new penalty provision applied only to those who "willfully violate[d]" Section 5314. *Ibid.* (31 U.S.C. 5321(a)(5)(A) (1988)). The provision also contained a rule—like the one found in the current version of the statute—under which the maximum penalty "in the case of violation * * * involving a failure to report the existence of an account" depended in part on "the balance in the account at the time of the violation." *Ibid.* (31 U.S.C. 5321(a)(5)(B)(ii)(I) (1988)). Thus, the 1986 provision necessarily treated

each willful failure to report an account as a distinct "violation."

The current version of Section 5321(a)(5) dates from 2004, when Congress first authorized the Secretary to assess a civil penalty for each "violation * * * of section 5314," even if the violation was not willful. American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 821(a), 118 Stat. 1586. The 2004 amendments also added the reasonable-cause exception, *ibid.*, which expressly associates each non-willful violation with a particular account, see pp. 20-21, *supra*. In other words, Congress not only used the same term ("violation") that already had an account-specific connotation in the 1986 amendments, but also simultaneously included account-specific language when it added the reasonable-cause exception. The sequence of amendments leaves no doubt that Congress chose to treat each failure to report a foreign financial account as a separate violation, subject to a separate civil penalty.

Petitioner observes (Br. 29) that the Bank Secrecy Act "operated for over three decades without any penalty for non-willful reporting violations" of Section 5314. But that observation cuts the other way. By the time Congress created that penalty in 2004, there was abundant evidence that many individuals were not complying with their existing obligations to report foreign financial accounts. In 2002, for example, the Secretary estimated in a congressionally mandated study of compliance with Section 5314's reporting requirements that "the approximate rate of compliance * * * could be less than 20 percent." Secretary of the Treasury, *A Report to Congress in Accordance with § 361(b) of the USA PATRIOT Act* 6 (Apr. 26, 2002), perma.cc/933K-UM7Q. Congress evidently found that state of affairs unac-

ceptable and amended the Act to authorize the Secretary to assess penalties for non-willful violations of the foreign-account reporting requirements. Petitioner's crabbed understanding of the Secretary's authority would frustrate that reform by dramatically recalibrating its deterrent effect.

2. More broadly, petitioner's approach is contrary to the essential purposes of the Bank Secrecy Act's disclosure regime for foreign financial accounts. Congress enacted what is now Section 5314 in 1970, after it had grown concerned "about a serious and widespread use of foreign financial institutions, located in jurisdictions with strict laws of secrecy as to bank activity, for the purpose of violating or evading domestic criminal, tax, and regulatory enactments." *California Bankers Ass'n*, 416 U.S. at 27. During the legislative process that preceded the Bank Secrecy Act, there was "[c]onsiderable testimony" from U.S. law-enforcement officials describing the role of "[s]ecret foreign bank accounts" in facilitating financial crimes, tax evasion, money laundering, securities fraud, and other civil and criminal violations of U.S. law. *Id.* at 28 (quoting H.R. Rep. No. 975, 91st Cong., 2d Sess. 12 (1970) (1970 House Report)). Congressional committees also heard evidence that law-enforcement authorities were often in an "impossible position" when investigating potential misconduct involving foreign accounts, given the many "obstacles" to obtaining foreign bank records. *Id.* at 29 (quoting 1970 House Report 12); see S. Rep. No. 1139, 91st Cong., 2d Sess. 8 (1970) (discussing the challenges posed by "foreign bank secrecy laws").

The Bank Secrecy Act's record-keeping and reporting requirements for foreign financial accounts were designed to bring such secret dealings with foreign

banks into the sunlight, at least to the limited extent of requiring disclosures about the accounts' existence to the federal government. See *California Bankers Ass'n*, 416 U.S. at 35. Indeed, the express purpose of the Act's record-keeping and reporting requirements has long been to ensure the availability of information that Congress described as having "a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." 31 U.S.C. 5311 (1988); see Bank Secrecy Act § 202, 84 Stat. 1118. In the last two decades, Congress has recognized that the Act's disclosure regime also protects "the national security of the United States" by facilitating efforts to "identify, stop, and apprehend * * * those who finance terrorists." 31 U.S.C. 5311(4)(B) and (5) (Supp. II 2020); see S. Rep. No. 257, 108th Cong., 2d Sess. 32 (2004) (describing the foreign-account reporting requirements as "vitally important * * * to combating terrorism").

The purpose and history of the Bank Secrecy Act illustrate why Congress chose to treat each undisclosed account as a separate violation for purposes of assessing civil penalties. When a U.S. person fails to report a qualifying foreign financial account, the federal government is deprived of timely information about that particular account. When the U.S. person fails to report *multiple* qualifying accounts (albeit on a single form), the result is multiple informational gaps for U.S. law enforcement. If U.S. authorities must seek records about those undisclosed accounts from multiple foreign banks in multiple jurisdictions, the U.S. person's violations have re-created—not just once, but many times over—the very problem that Congress aimed to solve.

3. Petitioner contends (Br. 31) that the Act's purposes are not served by assessing a separate penalty for

each non-willful failure to report an account because "most violators * * * are unaware of the filing requirements" and thus will not comply with them no matter the penalties. Setting aside whether that claim (for which petitioner provides no support) is even true, Congress already addressed the possibility of excusable lapses by providing the reasonable-cause exception in Section 5321(a)(5)(B)(ii), which necessarily operates on an account-by-account basis. See pp. 20-21, *supra*. Petitioner himself sought to invoke that exception here, but the lower courts rejected his position. See Pet. App. 8a-14a, 57a-63a. Although petitioner now says that his failures were "inadvertent[]" (Br. 18), the lower courts determined that, at best, he acted imprudently by failing to take any steps to ascertain his legal obligations. See, *e.g.*, Pet. App. 62a (district court's observation that petitioner "cannot claim with a straight face" that he was "so unaware" of his reporting obligations "that he did not even feel compelled to investigate").

Construing the statutory scheme to permit the Secretary to assess civil penalties on a per-account basis furthers the purposes of the Act by ensuring that the Secretary may distinguish between the failure to report a single account and more egregious conduct like petitioner's, which involved failing to report dozens of accounts in each of several years. It is indisputable that the failure to disclose a single account may incur a $10,000 penalty. The court of appeals' construction of the Act gives the Secretary leeway to calibrate civil penalties that reflect the greater seriousness of failing to report multiple accounts. In appropriate cases, the Secretary may still choose to impose a penalty of less than $10,000 for each of multiple violations on a single form, or to impose no penalties at all. The provisions at issue

here specify the *maximum* penalty for a violation; the statute contains no minimum penalty amount. But petitioner's construction would significantly curtail the Secretary's ability to make penalties more proportional to the harms represented by the underlying violations.

C. The Regulations Reinforce That Each Failure To Report An Account As Required Is A Separate Violation

Petitioner sought this Court's review to resolve a conflict of authority between the decision below and a contrary decision by the Ninth Circuit, *United States* v. *Boyd*, *supra*. See Pet. I, 13-25. In *Boyd*, a divided panel held that a U.S. person who had filed an untimely FBAR that accurately reported her 13 foreign financial accounts had committed only a single "violation," based largely on the theory that the person had violated the regulation specifying the annual due date for filing the reporting form but not the regulation specifying the information that must be reported. See 991 F.3d at 1082. For good reason, petitioner does not defend that theory in this Court. The *Boyd* majority "misread[]" the Secretary's regulations, *id.* at 1090 (Ikuta, J., dissenting), which in fact confirm that each failure to timely and accurately report a foreign financial account is a distinct violation.

The Secretary's regulations mirror the "substantive and procedural" aspects of Section 5314. Pet. App. 17a (quoting *Boyd*, 991 F.3d at 1088 (Ikuta, J., dissenting)). In particular, the regulations "distinguish (1) the substantive obligation to file reports disclosing each account from (2) the procedural obligation to file the appropriate reporting form." *Ibid.* The regulations state that each U.S. person "having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report

such relationship." 31 C.F.R. 1010.350(a). The regulations then specify that the "report" of "such relationship" must be made on "a reporting form prescribed under 31 U.S.C. 5314." *Ibid.*; see 31 C.F.R. 1010.306(d) (stating that the required "[r]eports * * * shall be filed on forms prescribed by the Secretary"); accord 31 C.F.R. 103.24(a), 103.27(d) (2010).

The regulations thus distinguish, on their face, between the obligation to report each foreign financial account and the annual form on which those reports must be made. The regulations, together with the prescribed reporting forms, also make clear that each qualifying foreign financial account must be reported. 31 C.F.R. 1010.350(a); see, *e.g.*, J.A. 30 (continuation page with instructions to copy it "as many times as necessary to provide information on all accounts"). The "core requirement[]" (Pet. Br. 28) of the regulations therefore parallels Section 5314 itself, by requiring accurate reports about each foreign financial account maintained by a U.S. person. A person who fails to report multiple accounts on the prescribed form has violated the statute and the regulations multiple times, not just once. See *Boyd*, 991 F.3d at 1091 (Ikuta, J., dissenting).

That remains true even when the Secretary's special 25-account rules apply. Contra Pet. Br. 28. The regulations provide that a person with a financial interest in 25 or more qualifying foreign financial accounts "need only provide the number of financial accounts and certain other basic information" on the reporting form, without also providing the more granular account-identifying information that would otherwise be required (*e.g.*, the account number). 31 C.F.R. 1010.350(g)(1); see pp. 4-5, *supra*. But those provisions do not alter the statutory and regulatory requirement to report the ex-

istence of each qualifying account. The Secretary has determined, largely for administrative convenience, that reporting the existence of each account is sufficient in the first instance in those circumstances. But the regulations specify that a person with 25 or more accounts is nevertheless "required to provide detailed information concerning each account when so requested by the Secretary." 31 C.F.R. 1010.350(g)(1). The regulations separately require that a U.S. person keep records, such as bank statements, for each of the person's reportable accounts for five years after the reporting period. See 31 C.F.R. 1010.420.[7]

Petitioner also observes (Br. 28) that the obligation to file reports is "activated by the aggregate account balance, not the number of accounts." Petitioner is correct that the Secretary has prescribed a *de minimis* exception, under which a U.S. person needs to report his foreign financial accounts only if the aggregate balance in those accounts exceeded $10,000 in the prior calendar year. 31 C.F.R. 1010.306(c); cf. 31 U.S.C. 5314(a) and (b) (directing the Secretary to consider the need to avoid "unreasonably" burdening U.S. persons and authorizing the Secretary to prescribe exceptions based on "magnitude"). That exception is fully consistent with

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[7] To be precise, the regulations contain two 25-account rules, one covering persons with a financial interest in 25 or more accounts and the other covering persons with signatory or other authority over (but no financial interest in) 25 or more accounts. 31 C.F.R. 1010.350(g)(1) and (2). When the latter rule applies, the filer must still provide identifying information about the owner or owners of the accounts for which the filer has signatory authority. See, *e.g.*, J.A. 47; *FBAR Guide* 5. FinCEN has proposed eliminating both 25-account rules, in part because electronic filing procedures have made it easier to provide detailed account information in the first instance. See 81 Fed. Reg. 12,613, 12,617 (Mar. 10, 2016).

the account-specific focus of the statute and the regulations. It requires a filer to take account of *each* of the filer's foreign financial accounts in determining whether the $10,000 threshold is met.

Lastly, petitioner fails to show (Br. 30-31) that the IRS or FinCEN has ever taken inconsistent positions on the question presented—a question that, in any event, can be resolved on the basis of the unambiguous statutory text. Petitioner and an amicus brief point to a handful of instances in which the agencies referred in passing to a penalty of up to $10,000 for "failure to file the FBAR." Pet. Br. 30 (quoting IRS form letter) (emphasis omitted); see American College of Tax Counsel Amicus Br. 17-24. But in those instances, the agencies did not go on to address the distinct question of whether additional penalties may be imposed when a person fails to report multiple accounts on a single FBAR.

D. Petitioner's Remaining Arguments Lack Merit

Petitioner's remaining arguments about practical consequences, sound policy, and substantive canons of construction all lack merit.

First, adopting the government's interpretation would not produce any "absurd results" (Br. 24), such as an endless multiplication of civil penalties. Section 5314 directs the Secretary to impose account-specific record-keeping and reporting requirements for foreign financial accounts. When a U.S. person fails to report a qualifying account, the person commits a violation of Section 5314 and is liable for a civil penalty under Section 5321(a)(5). The failure might consist of not reporting the account at all, not reporting it in a timely manner, or not reporting it fully and accurately. But those are simply different ways of failing to make a required report, which is the relevant "violation."

Second, petitioner's concerns (Br. 25) about the prospect of "jaw-dropping" liability are misplaced. As noted above, the provisions at issue here specify the maximum penalty amount, not any minimum amount, and the reasonable-cause exception already operates to protect the truly blameless. Individuals who wish to challenge the amount of any assessed penalty may do so administratively and in federal court. See, *e.g.*, *Kimble* v. *United States*, 991 F.3d 1238, 1243 (Fed. Cir.) (reviewing willful penalty amount for abuse of discretion), cert. denied, 142 S. Ct. 98 (2021); cf. Internal Revenue Manual § 8.11.6 (Sept. 27, 2018). Petitioner is also wrong to suggest (Br. 32-33) that the penalty scheme presents any unusual barriers to judicial review. Notably, unlike for tax penalties, a person against whom FBAR penalties are assessed may obtain review by a district court without first paying the penalties in full and then suing for a refund. See p. 6, *supra*.

Third, petitioner and some of the amici supporting him err in contending that the government's position would treat non-willful violators worse than willful violators. Pet. Br. 32; see, *e.g.*, Center for Taxpayer Rights Amicus Br. 10-13. For failing to disclose any particular account, which is the relevant apples-to-apples comparison, the maximum penalty for a willful violation will always be at least ten times higher than the maximum penalty for a non-willful violation. Compare 31 U.S.C. 5321(a)(5)(B)(i) ($10,000), with 31 U.S.C. 5321(a)(5)(C)(i) and (D)(ii) ($100,000 or half the account balance, whichever is greater).

Fourth, the substantive canons of construction invoked by petitioner (Br. 33) and several of the amicus briefs do not apply here. Any canon that would put a thumb on the scale in favor of taxpayers in a dispute

about the meaning of a "tax statute," *ibid.* (citation omitted), is inapplicable here because Section 5321(a)(5) is not such a statute. The Secretary's authority to assess the penalties derives from the Bank Secrecy Act, not the Internal Revenue Code, and the penalties are not assessed or collected in the manner of tax penalties. But even setting aside those distinctions, the court of appeals correctly determined that any such canon would not apply here "because the text of sections 5321(a)(5) and 5314 and of the regulations leaves no doubt that each failure to report an account is a separate violation of section 5314 subject to penalty." Pet. App. 23a-24a.

For similar reasons, petitioner's invocation (Br. 33) of the rule of lenity fails. Section 5321(a)(5) authorizes civil money penalties, not criminal sanctions. But even if the nature of the statute could implicate lenity concerns, petitioner errs in suggesting (Br. 34) that the existence of judicial disagreement establishes an ambiguity that must be resolved in his favor. This Court has repeatedly rejected that view. See, *e.g.*, *Hayes*, 555 U.S. at 420, 429-430 (noting division among circuits, and within the court of appeals' decision, before finding the rule of lenity inapplicable in a criminal case in which two members dissented from the Court's construction of the statute); *Reno* v. *Koray*, 515 U.S. 50, 64-65 (1995) ("A statute is not ambiguous for purposes of lenity merely because there is a division of judicial authority over its proper construction.") (citation and internal quotation marks omitted). Here, the statute is not ambiguous—let alone so "grievous[ly]" ambiguous as to call the rule of lenity into play. *Ocasio* v. *United States*, 578 U.S. 282, 295 n.8 (2016) (citation omitted); cf. *Wooden* v.

United States, 142 S. Ct. 1063, 1075 (2022) (Kavanaugh, J., concurring).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 31 U.S.C. 5311 (Supp. II 2020) provides:

Declaration of purpose

It is the purpose of this subchapter (except section 5315) to—

(1) require certain reports or records that are highly useful in—

(A) criminal, tax, or regulatory investigations, risk assessments, or proceedings; or

(B) intelligence or counterintelligence activities, including analysis, to protect against terrorism;

(2) prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism;

(3) facilitate the tracking of money that has been sourced through criminal activity or is intended to promote criminal or terrorist activity;

(4) assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institutions, products, or services to—

(A) protect the financial system of the United States from criminal abuse; and

(B) safeguard the national security of the United States; and

(5) establish appropriate frameworks for information sharing among financial institutions, their agents and service providers, their regulatory authorities, associations of financial institutions, the Department of the Treasury, and law enforcement authorities to identify, stop, and apprehend money launderers and those who finance terrorists.

2. 31 U.S.C. 5314 provides:

Records and reports on foreign financial agency transactions

(a) Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. The records and reports shall contain the following information in the way and to the extent the Secretary prescribes:

(1) the identity and address of participants in a transaction or relationship.

(2) the legal capacity in which a participant is acting.

(3) the identity of real parties in interest.

(4) a description of the transaction.

(b) The Secretary may prescribe—

(1) a reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) a foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) the magnitude of transactions subject to a requirement or a regulation under this section;

(4) the kind of transaction subject to or exempt from a requirement or a regulation under this section; and

(5) other matters the Secretary considers necessary to carry out this section or a regulation under this section.

(c) A person shall be required to disclose a record required to be kept under this section or under a regulation under this section only as required by law.

3. 31 U.S.C. 5321 (2018 & Supp. II 2020) provides:

Civil penalties

(a)(1) A domestic financial institution or nonfinancial trade or business, and a partner, director, officer, or employee of a domestic financial institution or nonfinancial trade or business, willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except sections 5314, 5315, and 5336 of this title or a regulation prescribed under sections 5314,

5315, and 5336), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed $100,000) involved in the transaction (if any) or $25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3) A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than $10,000.

(4) STRUCTURED TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States in connection with the transaction with respect to which such penalty is imposed.

(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

(B) AMOUNT OF PENALTY.—

(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $10,000.

(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

(I) such violation was due to reasonable cause, and

(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

(I) $100,000, or

(II) 50 percent of the amount determined under subparagraph (D), and

(ii) subparagraph (B)(ii) shall not apply.

(D) AMOUNT.—The amount determined under this subparagraph is—

(i) in the case of a violation involving a transaction, the amount of the transaction, or

(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.

(6) NEGLIGENCE.—

(A) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution or nonfinancial trade or business which negligently violates any provision of this subchapter (except section 5336) or any regulation prescribed under this subchapter (except section 5336).

(B) PATTERN OF NEGLIGENT ACTIVITY.—If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter (except section 5336) or any regulation prescribed under this subchapter (except section 5336), the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than $50,000 on the financial institution or nonfinancial trade or business.

(7) PENALTIES FOR INTERNATIONAL COUNTER MONEY LAUNDERING VIOLATIONS.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than $1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.

(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d)[1] of section 5317 of this title or civil penalty under subsection (a)(2) of this section.

(d) CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e) DELEGATION OF ASSESSMENT AUTHORITY TO BANKING AGENCIES.—

(1) IN GENERAL.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) AUTHORITY OF AGENCIES.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

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[1] So in original. Section 5317 does not contain a subsec. (d).

(3) TERMS AND CONDITIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) MAXIMUM DOLLAR AMOUNT.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

(f) ADDITIONAL DAMAGES FOR REPEAT VIOLATORS.—

(1) IN GENERAL.—In addition to any other fines permitted under this section and section 5322, with respect to a person who has previously violated a provision of (or rule issued under) this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or section 123 of Public Law 91-508 (12 U.S.C. 1953), the Secretary of the Treasury, if practicable, may impose an additional civil penalty against such person for each additional such violation in an amount that is not more than the greater of—

(A) if practicable to calculate, 3 times the profit gained or loss avoided by such person as a result of the violation; or

(B) 2 times the maximum penalty with respect to the violation.

(2) APPLICATION.—For purposes of determining whether a person has committed a previous violation under paragraph (1), the determination shall only include violations occurring after the date of enactment of the Anti-Money Laundering Act of 2020.

(g) CERTAIN VIOLATORS BARRED FROM SERVING ON BOARDS OF UNITED STATES FINANCIAL INSTITUTIONS.—

(1) DEFINITION.—In this subsection, the term "egregious violation" means, with respect to an individual—

(A) a criminal violation—

(i) for which the individual is convicted; and

(ii) for which the maximum term of imprisonment is more than 1 year; and

(B) a civil violation in which—

(i) the individual willfully committed the violation; and

(ii) the violation facilitated money laundering or the financing of terrorism.

(2) BAR.—An individual found to have committed an egregious violation of the Bank Secrecy Act, as defined in section 6003 of the Anti-Money Laundering Act of 2020, or any rules issued under the Bank Secrecy Act, shall be barred from serving on the board of directors of a United States financial institution during the 10-year period that begins on the date on which the conviction or judgment, as applicable, with respect to the egregious violation is entered.

4. 31 U.S.C. 5321(a)(5) (1988) provides:

Civil penalties

(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5314.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

(i) in the case of violation of such section involving a transaction, the greater of—

(I) the amount (not to exceed $100,000) of the transaction; or

(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

(II) $25,000.

5. The Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114, provides in pertinent part:

* * * * *

§ 202. Purpose

It is the purpose of this title to require certain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

* * * * *

§ 207. Civil penalty

(a) For each willful violation of this title, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this title, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

* * * * *

§ 241. Records and reports required

(a) The Secretary of the Treasury, having due regard for the need to avoid impeding or controlling the export or import of currency or other monetary instruments and having due regard also for the need to avoid burdening unreasonably persons who legitimately engage in transactions with foreign financial agencies, shall by regulation require any resident or citizen of the

United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

(1) The identities and addresses of the parties to the transaction or relationship.

(2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.

(3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

(b) No person required to maintain records under this section shall be required to produce or otherwise disclose the contents of the records except in compliance with a subpena or summons duly authorized and issued or as may otherwise be required by law.

§ 242. Classifications and requirements

The Secretary may prescribe:

(1) Any reasonable classification of persons subject to or exempt from any requirement imposed under section 241.

(2) The foreign country or countries as to which any requirement imposed under section 241 applies or does not apply if, in the judgment of the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.

(3) The magnitude of transactions subject to any requirement imposed under section 241.

(4) Types of transactions subject to or exempt from any requirement imposed under section 241.

(5) Such other matters as he may deem necessary to the application of this chapter.

* * * * *

9. 31 C.F.R. 1010.306 provides in pertinent part:

Filing of reports.

* * * * *

(c) Reports required to be filed by § 1010.350 shall be filed with FinCEN on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by § 1010.311, § 1010.313, § 1010.340, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter may be obtained from BSA E-Filing System. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection or FinCEN.

10. 31 C.F.R. 1010.350 provides:

Reports of foreign financial accounts.

(a) *In general.* Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD-F 90-22.1), or any successor form. *See* paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.

(b) *United States person.* For purposes of this section, the term "United States person" means—

(1) A citizen of the United States;

(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of "United States" provided in 31 CFR 1010.100(hhh) rather than the definition of "United States" in 26 CFR 301.7701(b)-1(c)(2)(ii); and

(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

(c) *Types of reportable accounts*. For purposes of this section—

(1) *Bank account*. The term "bank account" means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.

(2) *Securities account*. The term "securities account" means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.

(3) *Other financial account*. The term "other financial account" means—

(i) An account with a person that is in the business of accepting deposits as a financial agency;

(ii) An account that is an insurance or annuity policy with a cash value;

(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or

(iv) An account with—

(A) *Mutual fund or similar pooled fund*. A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or

(B) *Other investment fund*. [Reserved]

(4) *Exceptions for certain accounts*.

(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.

(iii) An account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.

(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

(d) *Foreign country.* A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010.100(hhh).

(e) *Financial interest.* A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):

(1) *Owner of record or holder of legal title.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

(2) *Other financial interest.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is—

(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;

(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in

paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;

(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. *See* 26 U.S.C. 671-679 and the regulations thereunder to determine if a grantor has an ownership interest in the trust for the year; or

(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

(3) *Anti-avoidance rule.* A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

(f) *Signature or other authority—*

(1) *In general.* Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

(2) *Exceptions*—(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the

Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States

subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.

(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.

(g) *Special rules—*

(1) *Financial interest in 25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(2) *Signature or other authority over 25 or more foreign financial accounts.* A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(3) *Consolidated reports*. An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.

(4) *Participants and beneficiaries in certain retirement plans*. Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

(5) *Certain trust beneficiaries*. A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust's foreign financial accounts.

11. 31 C.F.R. 1010.420 provides:

Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such

account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

12. 31 C.F.R. 103.24 (2010) provides:

Reports of foreign financial accounts.

(a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

13. 31 C.F.R. 103.27 (2010) provides in pertinent part:

Filing of reports.

* * * * *

(c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by § 103.22, § 103.23 or § 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by §§ 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 103.23 may be obtained from the U.S. Customs Service.

14. 31 C.F.R. 103.32 (2010) provides:

Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value

of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.