IN THE IOWA SUPREME COURT

No. 20-0963

J. JESUS CARRERAS and LOS PRIMOS AUTO SALES, LLC d/b/a LOS PRIMOS AUTO SALES,

Petitioners-Appellants,

v.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Respondents-Appellees.

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY
HON. JEANIE VAUDT

FINAL BRIEF OF PETITIONERS-APPELLANTS

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Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839 (Iowa 2015)

Doe v. Iowa Dep't of Hum. Servs., 786 N.W.2d 853 (Iowa 2010)

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Metro. Prop. & Cas. Ins. Co. v. Fitchburg Mut. Ins. Co., 793 N.E.2d 1252 (Mass. Ct. App. 2003)

More v. State, 880 N.W.2d 487 (Iowa 2016)

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United States v. Thompson, 32 F.3d 1 (1st Cir. 1994)

United States v. Wyatt, 102 F.3d 241 (7th Cir. 1996)

2. Was the Department of Transportation's characterization of Appellant Jesus Carreras' federal conviction for structuring currency deposits supported by substantial evidence?

Iowa Code § 171.19(10)(f)

3. If the Department of Transportation's action is upheld, alternatively, does the five-year revocation period under Iowa Code § 322.3(12) run from the date of conviction, or is the revocation period tolled until this appeal concludes?

Evercom Sys., Inc. v. Iowa Utils. Bd., 805 N.W.2d 758 (Iowa 2011)

Freeman v. Grain Processing Corp., 848 N.W.2d 58 (Iowa 2014)

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Noll v. Iowa Dist. Court for Muscatine Cty., 919 N.W.2d 232 Iowa 2018)

State v. Mathias, 936 N.W.2d 222 (Iowa 2019)

United States v. Garduno-Trejo, 395 F. App'x 321 (8th Cir. 2010)

ROUTING STATEMENT

The Supreme Court should retain this case because it presents substantial issues of first impression concerning the interpretation of Iowa Code § 322.3(12). No Iowa case has addressed that statute or resolved the issues in this case.

STATEMENT OF THE CASE

In this appeal Jesus Carreras ("Carreras") and Los Primos Auto Sales, LLC (collectively the "Appellants") seek judicial relief from the Iowa Department of Transportation's (the "Department") revocation of their motor vehicle dealer license. They appeal from the district court order denying judicial relief under Iowa Code Chapter 17A and from a subsequent order tolling the license revocation until the conclusion of this appeal.[1]

In April 2019, the Department issued an official notice that it was revoking the Appellants' motor vehicle dealer license based on Carreras' federal conviction for structuring currency deposits. Appendix ("App.") 128. The revocation was based upon the following statute:

> A person who has been convicted of a fraudulent practice, has been convicted of three or more violations of section 321.92, subsection 2, or section 321.99, has been convicted of three or more violations of subsection 16 of this section in the previous

[1] The two appeals were consolidated under Case No. 20-1298.

> three-year period, or has been convicted of any other indictable offense in connection with selling or other activity relating to motor vehicles, in this state or any other state, shall not for a period of five years from the date of conviction be an owner, salesperson, employee, officer of a corporation, or representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, employee, officer of a corporation, or representative of a licensed motor vehicle dealer.

Iowa Code § 322.3(12) (emphasis supplied).

The Appellants timely appealed the license revocation and requested a hearing. App. 120. A hearing was scheduled before Administrative Law Judge ("ALJ") Joseph Ferrentino on August 23, 2019. App. 117–19. The ALJ received briefs and exhibits, App. 36–117, as well as testimony from several witnesses and oral argument on the legal issues. *See generally* App. 129–190.

On September 10, 2019, the ALJ issued a proposed decision, which concluded that the Department misinterpreted Iowa Code § 322.3(12). App. 28–35. After surveying and thoughtfully considering many legal and non-legal authorities bearing on the meaning of the key phrase in this case—"in connection with"—the ALJ concluded that Carreras' conviction for structuring was not "in connection with selling or other activity relating to motor vehicles." *Id.* Accordingly, the conviction did not disqualify him

from holding a motor vehicle dealer license, and the Department's only basis for revoking the Appellants' license was invalid.

The Department requested that its own director review and reverse the ALJ's proposed decision. App. 22–27. In making this request (to itself), the Department stated that the facts in this case are undisputed and that this case presents a legal question. App. 22–23. The Appellants requested that the Department allow the proposed decision to become the agency's final decision. App. 10–17. The Appellants also asked to present oral argument to the Department pursuant to Iowa Code § 17A.15. App. 18–21. The Department's reviewing officer denied that request, however, citing a lack of time and manpower. App. 9.

On October 28, 2019, the Department issued a "Ruling on Appeal," which reversed the ALJ's proposed decision and reinstated the revocation of the Appellants' motor vehicle dealer license. App. 6–8. The Ruling on Appeal was the final agency action for purposes of judicial review. In the Ruling on Appeal, the Department accepted the ALJ's findings of fact but disagreed as to the legal conclusions. Specifically, the Department endorsed a "broad interpretation" of the phrase "in connection with," although the

Ruling on Appeal did not actually provide a definition or interpretation of that phrase. *Id*.

On October 31, 2019, the Appellants filed a Petition for Judicial Review in the Iowa District Court for Polk County. App. 191–200. The Appellants also filed a motion to stay enforcement of the Department's final action (i.e., the license revocation). App. 204–06. The Department resisted the Appellants' motion to stay, but the Department agreed to stay enforcement of the revocation until the district court resolved the Appellants' motion to stay. On March 24, 2020, the district court granted a temporary stay of the license revocation until the district court proceedings were complete. App. 236–39.

The parties submitted written briefs and presented arguments to the district court. App. 217–235, 240–255. On July 14, 2020, the district court issued an Order on Judicial Review, which denied and dismissed the Appellants' Petition for Judicial Review. App. 256–65.

On July 20, 2020, the Appellants filed a notice of appeal from the Order on Judicial Review. App. 273–75. That same day, the Appellants separately filed a motion asking the district court to extend the temporary stay of final agency action until the conclusion of the Appellants' appeal to

this Court. App. 266–72. The Department resisted the Appellants' motion to extend the stay, but again it agreed not to enforce the license revocation until the district court could decide the motion. App. 276–79. The Department also asked, insofar as the stay was granted, that the time during which agency enforcement was stayed be "tolled in its entirety" so that the five-year license revocation period under Iowa Code § 322.3(12) would commence at the conclusion of all appeals. App. 278. The Appellants objected to the Department's request to "toll," or extend, the five-year period under section 322.3(12). App. 280–86.

On September 20, 2020, the district court granted Appellants' motion and stayed the Department's license revocation until the conclusion of the appeal to this Court. App. 294–300. However, the district court also ordered that the five-year license revocation at issue in this case "is tolled in its entirety until this matter is finally adjudicated." App. 298. On October 8, 2020, the Appellants filed a notice of appeal from the tolling order. App. 301–02.

STATEMENT OF FACTS

The administrative record established these undisputed facts: For thirteen years, Jesus Carreras ("Carreras") has owned and operated a motor

vehicle dealership in Des Moines called Los Primos Auto Sales ("Los Primos"). App. 146–48 (Hrg. Tr. 18:19–20:6).

On multiple occasions from January 2014 through April 2017, customers paid cash for vehicles purchased at Los Primos. After these sales were complete, Carreras or his wife, Martha, who handled more of the paperwork necessary to run the business, deposited the cash into bank accounts held by Los Primos. App. 107, 154–55 (8/23/2019 Hrg. Tr. 26:4–27:19). Some deposits were structured intentionally to be less than $10,000 in order to avoid the financial institutions' obligations to file currency transaction reports for cash transactions in excess of $10,000. App. 107.

The practice of structuring deposits, which began with a prior owner's wife, did not help or assist Carreras or Los Primos in any way. App. 159–60 (Hrg. Tr. 31:9–32:3). The practice did not impact, facilitate, or affect any motor vehicle sales; those sales all occurred regardless of how the customers' payments were deposited. App. 152–53, 160–61 (Hrg. Tr. 24:22–25:5 & 32:20–33:10).

Neither Carreras nor Los Primos has a disciplinary record with the Department. App. 150 (Hrg. Tr. 22:2–6). Indeed, Los Primos has a strong history of satisfied customers. In thirteen years of business, only one

customer has complained about a vehicle purchased at Los Primos. That complaint was ultimately dismissed, and Los Primos is still working with that customer. App. 149–50, 158 (Hrg. Tr. 21:5–22:1 & 30:2–19).

In 2017, Carreras was charged with multiple federal financial crimes arising from the manner in which money was deposited into the Los Primos bank accounts. On September 6, 2018, he entered a guilty plea to one count of structuring in violation of 31 U.S.C. § 5324(a)(1) and (a)(3), based on money from vehicle sales that was deposited into Los Primos' bank accounts. App. 29, 105–116. Carreras' guilty plea was pursuant to a written plea agreement, and the government dismissed all other charges against him at the time of his sentencing. App. 105–116. In January 2019, the federal district court sentenced Carreras to a term of probation for the structuring conviction. App. 29, 121–27.

In April 2019, the Department issued an official notice that it was revoking the Appellants' motor vehicle dealer license based on Carreras' federal conviction for structuring currency deposits. App. 128. This judicial review proceeding ensued.

ARGUMENT

I. THE DEPARTMENT'S INTERPRETATION OF IOWA CODE § 322.3(12) IS INCORRECT, AND THE LICENSE REVOCATION CANNOT STAND WHEN THE STATUTE IS CORRECTLY INTERPRETED.

A. Error Preservation.

The Appellants' challenge to the Department's interpretation of Iowa Code § 322.3(12) was central to Appellants' request for relief from the district court. *E.g.*, App. 191–200, 217–35, 249–55. The district court addressed this legal issue in its Order on Judicial Review. App. 259–62.

B. Standard of Review.

When reviewing the district court's decision in a judicial review proceeding, this Court applies the standards of Iowa Code Chapter 17A. *Neal v. Annett Holdings, Inc*., 814 N.W.2d 512, 518 (Iowa 2012). If after applying those standards this Court reaches a different conclusion than the district court, it must reverse the judgment below. *Id*.

Neither this Court nor the district court is bound by the Department's interpretation of the law and may substitute its own interpretation for that of the agency. *Des Moines Area Reg'l Transit Auth. v. Young*, 867 N.W.2d 839, 842 (Iowa 2015); *Grant v. Iowa Dep't of Hum. Servs*., 722 N.W.2d 169, 173 (Iowa 2006); *accord* Iowa Code § 17A.19(10)(b) (authorizing relief

from an agency decision that is "in violation of any provision of law"); *id.* § 17A.19(10)(c) (authorizing relief from any agency decision that is "[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not been clearly vested by a provision of law in the discretion of the agency."). The Department has not been statutorily authorized to interpret the relevant statute here, but even it were so authorized, then the Court would review the Department's interpretation to determine if it is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(l). An agency's interpretation of a statute is "irrational, illogical, and wholly unjustifiable" when it "extends, enlarges, or otherwise changes the legislative intent" of the statute, which is derived by using normal rules of statutory construction. *Doe v. Iowa Dep't of Hum. Servs.*, 786 N.W.2d 853, 858 & 860 (Iowa 2010).

C. Carreras' Conviction For Structuring Currency Deposits Was Not "In Connection With Selling Or Other Activity Related To Motor Vehicles," As Required Under Iowa Code § 322.3(12).

The central legal dispute in this case is how to interpret the words "in connection with selling or other activity relating to motor vehicles" in Iowa Code § 322.3(12). Drilling it down, the fighting issue is the meaning of "in connection with" in the context of that statute. No Iowa case has addressed

when a conviction is "in connection with selling … motor vehicles" under section 322.3(12), and the Legislature provided no definition for that phrase.

The meaning of that phrase is neither obvious, self-evident, nor clearly established. *E.g.*, *United States v. Wyatt*, 102 F.3d 241, 247 (7th Cir. 1996) ("[N]o simple judicial formula can adequately capture the precise contours of the 'in connection with' requirement"); *United States v. Thompson*, 32 F.3d 1, 5–6 (1st Cir. 1994) (noting that "it is difficult to sketch the outer boundaries of this link").[2] As discussed below, there are two interpretations of section 322.3(12) that are reasonable when the Court considers how "in connection with" is commonly used in similar contexts, how other courts have defined "in connection with," and the overall purpose of Iowa Code Chapter 322. Under either of these interpretations, the Department's action must be reversed.

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[2] The Department has quoted *Irving v. Emp. Appeal Bd.*, 883 N.W.2d 179, 185 (Iowa 2016), for the proposition that "in connection with" is not "not alien to the legal lexicon." *See* App. 244. However, the point of that statement was to reject an administrative agency's claim to have special expertise as to the interpretation of "in connection with" in a different statute. If it has any bearing here, *Irving* means that no deference is owed to the Department on the meaning of the revocation statute (§ 322.3(12)). *Irving* did not address the statute here, and it did not hold that the meaning of "in connection with" is obvious or clearly established.

1. Carreras' Conviction Was Not "In Connection With" Selling Motor Vehicles Because The Conviction Did Not Concern The Source Of The Deposited Funds.

The ALJ thoroughly reviewed legal and non-legal authorities using the phrase "in connection with" and then had an "a-ha moment" from this definition: "With reference to; concerning." App. 32 (quoting https://www.lexico.com/definition/in_connection_with).[3] The ALJ concluded this definition was "superior" to many alternatives because it best captured the way that "in connection with" is used context of a criminal conviction. App. 32–33. The ALJ described this "interpretive clue":

> The construction follows a simple template: so-and-so was convicted of *x* in connection with *y*, where *y* = a plain statement of facts and *x* = an obvious criminal charge that would flow from those facts. For example: "Frank was convicted of manslaughter in connection with Sharrine's death." *In re Wilson's Estate*, 202 N.W.2d 41, 42 (Iowa 1972). "Fisher was convicted of murder in connection with the death of his girlfriend." *More v. State*, 880 N.W.2d 487, 503 (Iowa 2016). "Appellant Wayne E. Ates (Ates) was convicted of grand larceny in connection with the theft of a camera belonging to Thomas Paull (Paull)." *State v. Ates*, 377 S.E.2d 98, 98 (S.C. 1989). "The respondent was convicted of criminal offenses in connection with a conspiracy to defraud an insurance carrier." *In re Perwin*, 287 A.2d 3, 3 (N.J. 1972). This appears to be the

[3] This definition came from Lexico.com, which is a collaboration between Dictionary.com and the Oxford University Press to help users with everyday language challenges. *See* Lexico, *About*, available at: www.lexico.com/about.

> most common way "convicted of . . . in connection with . . ." is used.

App. 33. Under this definition, a conviction is in connection with selling motor vehicles only if the conviction concerned or was with respect to selling motor vehicles. That definition is consistent with common meaning and usage, which must guide this Court's interpretation of Iowa Code § 322.3(12). *See State v. Shorter*, 945 N.W.2d 1, 7 (Iowa 2020) ("If the legislature does not provide a definition, 'we look to the context in which the term appears and give it its ordinary and common meaning.'" (internal citation omitted)); *see also Gardin v. Long Beach Mortg. Co*., 661 N.W.2d 193, 197 (Iowa 2003) ("When the legislature has not defined words of a statute, we look to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage."); *State v. Alexander*, 853 N.W.2d 295, 298 (Iowa Ct. App. 2014) ("If any individual term is not defined by the legislature, we may rely on its common meaning.").

The district court sidestepped the ALJ's interpretive analysis by grossly misconstruing the ALJ's proposed decision. The Order on Judicial Review stated: "The ALJ concluded that *despite the plain language of section 322.3(12)*, structuring deposits sourced solely from vehicle sale proceeds was not *connected to* selling or other activity related to motor

vehicles as required by chapter 322." App. 257 (emphasis supplied). However, the ALJ did not reach its conclusion *despite* the plain language of section 322.3(12). Nor did the ALJ draw a conclusion about whether the structuring crime was *connected to* selling motor vehicles. To the contrary, the ALJ clearly and forcefully concluded that the plain meaning of "in connection with" is not "connected to":

> Most suspect are the cases that do little more than refer to a dictionary definition of "connect" or "connection." *See, e.g.*, *United States v. Thompson*, 32 F.3d 1, 5–6 (1st Cir. 1994) ("causal or logical relation or sequence"); *Hirsch*, 550 B.R. at 140 ("causal or logical relation or sequence" or "the state of being connected or joined"); *Bews*, 868 P.2d at 349 ("a relationship or association in thought"). Common usage instructs that "in connection with" does not have the same meaning. Consider these logical relations the undersigned has with Mr. Carreras: we both work in Des Moines, we both (presumably) live in or near Des Moines, we both speak at least a few words of Spanish, and we both appeared for the hearing on this matter. We are connected by all those details. Yet no one would say, in common usage, that we work, live, or speak "in connection with" one another. At most one would say we appeared "in connection with" one another for the hearing, although even that strains common usage. The relationship of "connection" to "in connection with" is the linguistic analog to squares and rectangles: all in-connection-withs are connections, but not all connections are "in connection with." To elide the two rewrites the statutory text in a way that invites absurd results.

App. 30.

The district court's mistake in equating "in connection with" and "connected to" when referring to the ALJ's proposed decision is illustrative of how the Department and the district court have confused the issue here. The Department has consistently conflated the phrases "connected to" and "in connection with" even when arguing about the meaning of "in connection with." For reasons explained more in Section II-B below, "in connection with" does not mean the same as "connected to" or "related to." The ALJ's definition is more thoughtful and consistent with common usage of "convicted of … in connection with," and neither the Department nor the district court has ever addressed the merits of the ALJ's definition.

It is clear and indisputable that under the ALJ's definition, Carreras' conviction for structuring was not in connection with selling or other activity related to motor vehicles.[4] That is because the federal offense of structuring does not concern the source of the funds; where or how the currency was obtained is irrelevant to a structuring charge. App. 33–34 (collecting authorities). Indeed, the Department has never disputed that legal

[4] As the ALJ noted in his ruling, "To find otherwise would ignore the best definitions available, would ignore [the Legislature's use of the phrase] 'convicted of . . . in connection with . . .', and would retreat to a simplistic parallel with 'connection' that bears little resemblance to how 'in connection with' is used." App. 34.

proposition. Consequently, Carreras' conviction did not concern motor vehicle sales, which means it was not "in connection with selling … motor vehicles." Under this definition of "in connection with," it does not matter that the unlawfully deposited currency came from vehicle sales. That fact does not mean the conviction *concerned* the vehicle sales.

2. Carreras' Conviction Was Not "In Connection With" Selling Motor Vehicles Because The Criminal Conduct Did Not Embolden, Facilitate, Or Have Some Other Purpose Or Effect With Respect To Vehicle Sales.

As an alternative to the ALJ's definition, the Court could look to persuasive authority from the United States Sentencing Guidelines, where a defendant is subject to an enhancement if he or she possesses a firearm "in connection with another felony offense." U.S.S.G. § 2K2.1(b)(6)(B). Federal courts have concluded that to qualify for this enhancement, the firearm must "embolden" the other crime, must "have some purpose or effect with respect to" the other crime, or must "facilitate, or have the potential of facilitating" the other crime. *See United States v. Jeffries*, 587 F.3d 690, 695 (5th Cir. 2009); *United States v. Regans*, 125 F.3d 685, 686 (8th Cir. 1997). Applying this definition to Iowa Code § 322.3(12), a conviction is "in connection with selling … motor vehicles" if the criminal

conduct emboldened, facilitated, or had some purpose or effect with respect to vehicle sales.

Here, the structuring of currency deposits had no effect whatsoever on motor vehicle sales. Los Primos would have made all of the same sales regardless of how Carreras and his wife structured deposits—that is, the deposit structure did not change how Los Primos sold motor vehicles. Whether customer payments were deposited in one large amount or in many smaller amounts was irrelevant to vehicle sales. As such, Carreras' structuring crime was not "in connection with selling or other activity relating to motor vehicles."

A counterfactual demonstrates this point: If Carreras had completed every vehicle sale and accepted the exact same amount of cash but *never* deposited the cash—i.e., if the cash was retained in a safe at Los Primos—then there would not have been any structuring offense, but the motor vehicle sales would have been exactly the same. The sales occurred when cash exchanged hands, and the crime of structuring cash deposits happened later. Thus, the deposits did not embolden, facilitate, or have a purpose with respect to the sales.

This interpretation of the phrase "in connection with" finds support in the "overriding purpose" of Iowa Code Chapter 322, which is "*to protect consumers* of motor vehicles *from fraud and deception*." *State v. Miner*, 331 N.W.2d 683, 687 (Iowa 1983) (emphasis supplied); *see also Extreme Auto Plaza, Inc. v. Iowa Dep't of Transp.*, 2018 WL 3472197, at *8 (Iowa Ct. App. July 18, 2018) (quoting a decision of one of the Department's reviewing officers that provided: "The overriding purpose of Chapter 322 is to protect consumers of motor vehicles from fraud and deception."). The purpose of Chapter 322 is not served by targeting an incidental relationship between a crime and the proceeds of vehicle sales. Rather, the purpose of Chapter 322 is served only by demanding a more significant relationship between the criminal conduct and vehicle sales than was present here.

This interpretation of "in connection with" also finds support in dictionary definitions. According to the definitions cited by the district court, "in connection with" requires a causal or logical relation or link. *E.g.*, App. 259–60. "This definition suggests that there must be some reasoned link" between the conviction and the motor vehicle sales. *United States v. Thompson*, 32 F.3d 1, 6 (1st Cir. 1994). "While it is difficult to sketch the outer boundaries of this link," it cannot "simply be coincidental." *Id.*

Inasmuch as there was a link between the vehicle sales at Los Primos and Carreras' structuring conviction, the link was merely coincidental or incidental. Nothing about the vehicle sales made it more likely that Carreras would engage in structuring, and nothing about the structure of deposits made any vehicle sale more likely. The two events were linked—as the Department repeatedly points out—but that link does not mean that the conviction was "in connection with" selling motor vehicles.

D. The Department's Broad Interpretation Of Iowa Code § 322.3(13) Is Flawed And Incorrect.

Instead of using either of the two reasonable interpretations of Iowa Code § 322.3(12) discussed above, the Department applied a broader interpretation and erred as a matter of law.

Although it was not obvious from the Department's final agency action, the Department's position is that "in connection with" is synonymous with "related to" or "connected to." *See* App. 289 (Hrg. Tr. 23:24–25). The Department concluded that Carreras' conviction was "related to" or "connected to" the vehicle sales because the money that was structured into deposits of less than $10,000 came directly from the sale of motor vehicles. According to the Department, the crime was "connected to" the dealership because the dealership was "the mechanism" for the crime. App. 245. Said

another way, "but for the dealership proceeds, there would have been no crime." *Id*. The district court essentially repeated the Department's conclusions. App. 262.

This interpretation is inferior and legally flawed for several reasons. ***First***, as noted by the ALJ, the Department's interpretation of "in connection with" is contrary to common usage of that phrase. *See* App. 30–31. Indeed, it is revealing that the Department has frequently substituted "connected to" as though that is the statutory question.[5] The statute does not use the phrase "connected to," but the Department's repeated use of "connected to" in its argument proves the point that "in connection with" does not naturally fit in the Department's argument.

Second, the Department's interpretation overlooks how section 322.3(12) compares with other licensing statutes. The Legislature has authorized revocation of many other state-issued licenses when a licensee's

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[5] *E.g.*, App. 243 ("Iowa Code section 322.3(12) is clear and unambiguous on its face in barring individuals convicted of any crime *connected to* the selling of motor vehicles from holding a dealer license.") (emphasis supplied); *id.* ("This conviction is directly *connected to* vehicle sales at Los Primos Auto.") (emphasis supplied); *id*. at 245 ("Each and every one of the nearly 400 deposits listed in petitioner's indictment was *connected to* the business account of Los Primos…") (emphasis supplied); *id*. ("…the entire basis for the resulting revocation was directly and unequivocally *connected to* the selling of motor vehicles") (emphasis supplied).

conviction was "related to" his or her occupation, profession, or activity.[6] The Legislature easily could have used the phrase "related to" or "relating

[6] *E.g.*, Iowa Code § 151.9(5) (authorizing revocation of a chiropractor's license for a "conviction of a felony *related to* the profession or occupation of the licensee…") (emphasis supplied); Iowa Code § 543D.17(1)(c) (authorizing revocation of a real estate appraiser's certificate based on a conviction "which is substantially *related to* the qualifications, function, and duties of a person developing real estate appraisals and communicating real estate appraisals to others.") (emphasis supplied); Iowa Code § 156.15(2)(a) (authorizing revocation of a funeral or cremation license based on a "any crime *related to* the practice of mortuary science or implicating the establishment's ability to safely perform mortuary science services") (emphasis supplied); Iowa Code § 544C.9(1)(d) (authorizing revocation of an interior designer's registration based on a "conviction of a felony *related to* the profession or occupation of the registrant") (emphasis supplied); Iowa Code § 100D.5(2)(e) (authorizing the state fire marshal to revoke a license based on a "conviction of a felony *related to* the profession or occupation of the licensee") (emphasis supplied); Iowa Code § 455B.219(5) (authorizing revocation of a water treatment operator's certificate based on a "conviction of a felony *related to* the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to operate a water treatment or wastewater treatment plan") (emphasis supplied); Iowa Code § 544A.13(1)(e) (authorizing revocation of an architect's license based on a "conviction of a felony *related to* the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice the profession of architecture") (emphasis supplied); Iowa Code § 103A.55 (authorizing revocation of a license of a manufactured or mobile home retailer, manufacturer, or distributor based on a "conviction of a felony *related to* the business of a manufactured or mobile home retailer, manufacturer, or distributor.") (emphasis supplied); Iowa Code § 544B.15(5) (authorizing revocation of a landscape architect's license based on a "conviction of a felony *related to* the profession or occupation of the licensee that would affect the licensee's ability to practice professional landscape architecture.") (emphasis supplied); Iowa Code § 272C.10 (authorizing numerous licensing boards to enact rules for revocation of a

to" in Iowa Code § 322.3(12) if it meant for that statute to be construed so broadly. Instead, the Legislature used the phrase "in connection with," which has a different meaning. The Respondent erroneously treats those phrases as interchangeable.

Third, the Department's interpretation leads to absurd results. According to the Department, a "but for" relationship is enough to demonstrate that a conviction was "in connection with selling … motor vehicles." The Department argues that but for vehicle sales, the structured deposits would not have happened, but that logic leads to absurd outcomes.[7]

Suppose that a motor vehicle dealer used the proceeds from a vehicle sale to purchase a rifle and then used the rifle to shoot and kill an

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license based on a "conviction of a felony *related to* the profession or occupation of the licensee.") (emphasis supplied).

[7] The ALJ's ruling aptly recognized the absurd outcomes that would result from taking the "connected to" or but-for causation approach advanced by the Department. To exemplify the absurdity the Department's position could lead to, the ruling cited to *Gavin v. AT&T Corp*, 464 F.3d 634, 639 (7th Cir. 2006) and quoted the following: "Of course there is a literal sense in which anything that happens that would not have happened *but for* some prior event is *connected to* that event. In that sense the fraud of which plaintiff complains is connected to the merger, without which there would not have been such a fraud against the plaintiff and her class. But in the same sense the fraud is connected to the Big Bang, without which there would never have been a MediaOne or even an AT&T." App. 31-32 (emphasis supplied).

endangered animal protected by federal statute. If the licensee is convicted of a federal environmental crime, no one would reasonably say that the conviction was "in connection with … sales of motor vehicles," but that is where the Department's logic leads.

Or suppose that the owner of a motor vehicle dealership sets up IRA accounts for her employees funded by dealership proceeds. If the owner deducted money from her employees' paychecks but did not deposit it into the IRA accounts, that would be a federal crime, and the dealership would be the "mechanism" for the crime. The crime would not have occurred but for vehicle sales, but no one would plausibly conclude that the crime was "in connection with … sales of motor vehicles."

The Department's "but for" interpretation sweeps too broadly. This Court should avoid a construction that is unreasonable and leads to absurd results. *See, e.g.*, *State v. Mathias*, 936 N.W.2d 222, 232 (Iowa 2019) ("We always look for an interpretation of a statute that is reasonable and avoids absurd results."); *Alexander*, 853 N.W.2d at 298 ("We naturally avoid any interpretation that creates an impractical or absurd result.").

E. Iowa Code § 322.15 Does Not Rescue The Department's Position.

To support its broad interpretation of the revocation statute (Iowa Code § 322.3(12)), the Department relies heavily on Iowa Code § 322.15, which provides:

> All provisions of this chapter shall be liberally construed to the end that the practice or commission of fraud in the sale, barter, or disposition of motor vehicles at retail in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, bartering, or otherwise dealing in motor vehicles at retail in this state and reliable persons may be encouraged to engage in the business of selling, bartering, and otherwise dealing in motor vehicles at retail in this state.

This interpretative guidance is unusual. The words "shall be liberally construed" appear over seventy times in the Iowa Code, and in almost all instances the Legislature generally referred to the statute's remedial purpose. It is much rarer for the Legislature to specify a particular regulatory objective, as it did in section 322.15—that is, prohibiting or preventing fraud in the sale of motor vehicles. How the regulatory objective is framed in section 322.15 is significant. The revocation statute can only be interpreted "liberally" if the predicate conviction involved fraud or dishonesty in motor vehicle sales. Carreras' conviction plainly did not, and therefore, section 322.15 does not support an extension of the revocation statute in this case.

There is no evidence that Carreras was dishonest or deceptive toward anyone, much less that he was dishonest or deceptive in motor vehicle sales. To the contrary, the record was undisputed that Carreras had a stellar record of satisfied customers and no history of discipline with the Department. App. 149–50, 158 (Hrg. Tr. 21:5—22:6, 30:2-19). Carreras has never been accused of fraud or deception in motor vehicle sales. Moreover, Carreras' plea agreement contained no admission of dishonesty or deception, and that is not a requirement for structuring. In fact, the record is uncontroverted that the bank employees knew that Carreras' deposits were intentionally made below $10,000 to avoid paperwork. App. 159-60 (Hrg. Tr. 31:12—32:19).

The disjunction between Mr. Carreras' actions and the specified regulatory objective highlights why the Department's reliance on *State ex rel. Miller v. Cutty's Des Moines Camping Club*, 694 N.W.2d 518, 526 (Iowa 2005), is misplaced. *Cutty's* involved Iowa's consumer fraud statute, which makes it unlawful to engage in an "unfair practice in connection with the … sale … of … merchandise." *Id.* at 524. The Supreme Court concluded that a broad interpretation of the consumer fraud statute was appropriate to serve the statute's remedial purpose, which was plainly implicated by the allegations against the defendant in *Cutty's*. *Id.* at 528.

In contrast, the clearly stated purpose of Chapter 322 is to protect customers from fraud and deceit in the sale of motor vehicles, but that purpose is not served by the Department's expansive application of the revocation statute here. That problem lies at the heart of this license revocation appeal—the Department is attempting to exclude the Appellants from operating a motor vehicle dealership without any colorable claim that it the exclusion serves the customer-focused objective of Chapter 322.

Finally, insofar as *Cutty's* considered the meaning of "in connection with," it relied on an insurance case involving a policy that excluded coverage for "bodily injury or property damage arising out of or in connection with your business activities." *Metro. Prop. & Cas. Ins. Co. v. Fitchburg Mut. Ins. Co.*, 793 N.E.2d 1252, 1255 (Mass. Ct. App. 2003). Clearly, when an insurance policy exclusion uses both "arising out of" and "in connection with," the policy was not intended to equate those phrases.[8] *Id.* Thus, the Massachusetts court held that "in connection with" is plainly broader than "arising out of." *Id.* That is fine, but it is irrelevant here. The

[8] By the same logic, the fact that section 322.3(12) uses "in connection with" and "relating to" in the same sentence suggests that those phrases were not meant to be synonymous. *See* Iowa Code § 322.3(12) ("… any other indictable offense *in connection with* selling or other activity *relating to* motor vehicles …").

Appellants are not arguing that "in connection with" is interchangeable with "arising out of."

II. THE DEPARTMENT LACKED SUBSTANTIAL EVIDENCE FOR ITS CHARACTERIZATION OF CARRERAS' CONVICTION.

A. Error Preservation.

The Appellants preserved error by alleging that the Department lacked sufficient evidence for its characterization of Carreras' conviction in their Petition for Judicial Review, App. 195-96, and in their briefing to the district court. App. 232–34, 249–51. The district court rejected this challenge, concluding that the record substantially supports the agency's findings, although the district court did not cite any evidence in the record for that conclusion. App. 262–63.

B. Standard of Review.

With respect to the Department's factual finding that Carreras' conviction was "inherently fraudulent and deceptive," the Court reviews for "substantial evidence" supporting the findings when the "record is viewed as a whole," and those terms are statutorily defined:

> "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great consequence.

…

> "When that record is viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

Iowa Code § 17A.19(10)(f)(1) & (3). Here, the presiding officer was the ALJ, and therefore, this Court defers to the credibility determinations reflected in the proposed decision.

C. The Department's Characterization Of Carreras' Conviction As "Inherently Fraudulent And Deceptive" Was Baseless And Prejudicial.

Most of the facts in this appeal are undisputed, and most of the Department's factual findings are not contested. However, the Appellants have consistently challenged the Department's finding that Carreras' conviction for structuring currency deposits was "inherently fraudulent and deceptive." App 8. That finding was significant and prejudicial because it was the predicate for the Department invoking section 322.15 (the liberal construction statute) as a justification for its broad application of section 322.3(12) (the revocation statute). The Department's argument for applying

the revocation statute to this case falls apart without its baseless characterization of Carreras' conviction.

There is no evidence to support the Department's assertion about structuring being "inherently fraudulent and deceptive," particularly toward consumers. Quite the opposite, the record was uncontroverted that no consumer was negatively impacted by the manner in which money was deposited into Los Primos' bank accounts. App. 152–53, 159–61 (Hrg. Tr. 24:22—25:5, 31:9—32:3, 32:20—33:10). In fact, the record firmly established that Carreras had a strong record of satisfied customers and no history of discipline or sanctions from the Department. App. 149–50, 158 (Hrg. Tr. 21:5—22:6 & 30:2—19). Accordingly, the Department's assertion that Carreras' conviction was "inherently fraudulent and deceptive" was completely without a factual basis. This error requires judicial relief pursuant to Iowa Code § 17A.19(10)(f), regardless of the outcome of the primary legal dispute about the meaning of "in connection with."

The Department's Ruling on Appeal does not specify what evidence it relied upon to characterize Carreras' conviction as "inherently fraudulent and deceptive." Nor did the district court identify any evidence in the record when it upheld the Department's findings. The district court merely quoted

at length the Department's Ruling on Appeal. It is axiomatic, though, that the final agency action cannot itself substantiate the evidentiary basis for that action. Put another way, the Department's ruling is not self-validating. The Department must be able to point to substantial evidence in the record *beyond its own ruling*, and it cannot do so.[9]

III. ALTERNATIVELY, THE DISTRICT COURT'S TOLLING ORDER IS INCORRECT AS A MATTER OF LAW.

A. Error Preservation.

The Department requested tolling of the revocation period in its response to the Appellants' motion to extend the temporary stay of the agency action. App. 278. The Appellants objected to the tolling request, App. 280–86, but the district court granted the Department's request and ordered that "enforcement of the five-year license revocation period arising from the date of Petitioner J. Jesus Carreras' federal conviction is tolled in its entirety until this matter is finally adjudicated. If [the Department] ultimately prevails, the license revocation period shall be enforced once procedendo issues." App. 298.

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[9] In fact, the Department completely ignored the Appellants' challenge to the sufficiency of the evidence in its brief to the district court. *See* App. 240–48. Further, the Department quoted only its own ruling—the very ruling that the Appellants have challenged as lacking support—to argue that the ruling was valid. *Id*. at 244.

B. Standard of Review.

This appellate issue concerns the Department's and district court's interpretation of Iowa Code § 322.3(12), which is a legal issue that this Court reviews for correction of errors at law. *See* Section I-B, supra; *accord In re A.J.M.*, 847 N.W.2d 601, 604 (Iowa 2014) ("[W]hen the issue requires the interpretation of a statute, the standard of review is for correction of legal errors.").

C. Section 322.3(12) Is Unambiguous That The Revocation Period Runs From The Date Of Conviction.

If this Court upholds the Department's revocation of the Appellants' motor vehicle dealer license, then there is one more question to resolve: When does the five-year revocation period under section 322.3(12) begin? The statute unambiguously answers that question:

> A person who has been convicted … of any other indictable offense, in connection with selling or other activity relating to motor vehicles, in this state or any other state, shall not <u>for a period of five years from the date of conviction</u> be an owner, salesperson, employee, officer of a corporation, or representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, employee, officer of a corporation, or representative of a licensed motor vehicle dealer.

Iowa Code § 322.3(12) (emphasis supplied). Under the clear and plain language of the statute, the revocation period is not tied to any action by the

Department or triggered by any judicial review proceedings under Chapter 17A. Instead, the revocation period runs "from the date of conviction," which for Carreras was September 6, 2018. App. 29, 105–06.[10] There is no textual basis for any alternative.

The Department argued, and the district court agreed, that a licensee should not be permitted to avoid or shorten the five-year revocation period by exercising their rights to judicial review under Chapter 17A. Without citing any support, the district court was "confident" that the legislature did not intend to allow someone convicted of a qualifying crime under section 322.3(12) to escape the five-year revocation period if the agency's revocation of the license is proper. This line of attack fails for several reasons.

First and foremost, the Department's argument is not a valid basis for disregarding the unambiguous language of section 322.3(12). This Court interprets statutes by discerning legislative intent "from the words chosen by the legislature, not what it should or might have said." *State v. Mathias*, 936 N.W.2d 222, 227 (Iowa 2019). Moreover, this Court does not "allow

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[10] Under federal criminal law, the conviction occurred on the date of Carreras' guilty plea. *See United States v. Garduno-Trejo*, 395 F. App'x 321, 323 (8th Cir. 2010).

legislative intent to change the meaning of a statute if the words used by the legislature will not allow for such a meaning." *Id*.; *see also Noll v. Iowa Dist. Court for Muscatine Cty.*, 919 N.W.2d 232, 235 (Iowa 2018) ("When interpreting a statute, we look at the language the legislature chose to use, not the language it might have used. In other words, we cannot change the meaning of a statute, as expressed by the words the legislature used, if the words used by the legislature do not allow for such a meaning.") (internal citation omitted); *Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 765 (Iowa 2011) ("When the meaning of a statute or rule is clear, we will not search for meaning beyond the express terms of the statute or rule."). The Department's argument is that the Legislature could not have intended what section 322.3(12) literally says, but Iowa law forbids the Department's invitation to rewrite the statute.

Second, there is no reason to assume that the Legislature did not intend Chapter 17A rights to affect the five-year revocation period. The Legislature is presumed to know the existent state of the law when it enacts a new law. *Freeman v. Grain Processing Corp*., 848 N.W.2d 58, 88 (Iowa 2014). In 1974, the Iowa Legislature enacted the Iowa Administrative Procedure Act (now Chapter 17A). 1974 Iowa Acts 165 (ch. 1090). In

1998, the Legislature added the five-year prohibition contained in § 322.3(12). 1998 Iowa Acts 127 (ch. 1075, sec. 26). The Legislature could have drafted § 322.3(12) to say that the mandatory revocation is effective for five years after a conviction *or* the exhaustion of the licensee's remedies under Chapter 17A, whichever is later. *Or* the Legislature could have provided for a tolling of the five-year revocation period in the event of an appeal under Chapter 17A. Instead, however, the Legislature established a five-year revocation without any extension in the event of an appeal under Chapter 17A. In other words, the Legislature imposed a five-year revocation running from the date of conviction despite the possibility that a legal dispute could challenge the revocation action. Insofar as the Department is frustrated by the Appellants' exercise of their judicial review remedies under Chapter 17A, the Department's complaint lies with the Legislature. This Court should not rewrite or expand the revocation provision contained in section 322.3(12) by giving any weight to the Department's assumption about legislative intent.

CONCLUSION

For the foregoing reasons, the Appellants pray that the Court reverse the district court judgment and remand for the district court to enter relief from the Department's license revocation consistent with Iowa Code

§ 17A.19(10). Failing that, the Appellants pray that the Court reverse the tolling order and hold that the revocation period under Iowa Code § 322.3(12) runs from the date of Carreras' conviction in the federal case, which was September 6, 2018.

STATEMENT REGARDING ORAL ARGUMENT

The Appellants request oral argument on the issues addressed above.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on January 20, 2021, I electronically filed the foregoing Final Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 7,485 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2010 in Times New Roman 14 pt.

Dated: January 20, 2021

/s/ Todd M. Lantz