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 REPLY BRIEF OF PETITIONERS-APPELLANTS

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INTRODUCTION

The Department of Transportation (the "Department") erroneously revoked the motor vehicle dealer license issued to the Appellants, Jesus Carreras ("Carreras") and Los Primos Auto Sales, LLC d/b/a Los Primos Auto Sales ("Los Primos"). On both appellate issues relating to the validity of the license revocation, the Department fails to respond to the bulk of the Appellants' arguments. On the primary legal issue, the Department wrongly claims it is owed deference, then restates its position while ignoring the alternative legal definitions, including the definition accepted by the Administrative Law Judge ("ALJ"), and fails to address any of the logical criticisms of the Department's position. On the secondary issue relating to the absence of evidence for the Department's finding that Carreras' conviction for structuring currency deposits was "inherently fraudulent and deceptive," the Department cites nothing in the record except the very ruling that is being challenged. That ruling is not self-validating. For these reasons, the Court must reverse the Department's errors and provide appropriate relief under Iowa Code Chapter 17A.

ARGUMENT

I. THE DEPARTMENT'S INTERPERTATION OF IOWA CODE § 322.3(12) IS INCORRECT AND CANNOT LEGALLY SUPPORT THE LICENSE REVOCATION AT ISSUE.

A. The Deferential Standard Of Review Set Forth By The Department Is Inapplicable Here As A Matter Of Law.

Attempting to save its revocation decision, the Department erroneously asserts that this Court must defer to the agency concerning the revocation statute and decision in this case. The Department claims that "deference is to be given to the agency's decision" and that "reversal is appropriate only if the agency's application of the law was irrational, illogical, or wholly unjustifiable." Appellee's Br. 13. This request for deference, which the Department has never previously asserted in this case, is misguided and inconsistent with Iowa Code section 17A.19(11).

The Department's contention stems from its belief that Iowa Code § 17A.19(10)(l) applies to this Court's review of the Department's interpretation of Iowa Code § 322.3(12). However, section 17A.19(10)(l) applies only to "a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency." Because the Department has not clearly been vested such discretion, section

17A.19(10)(c) governs, and this Court can freely substitute its judgment and interpretation for that of the Department. *See* Iowa Code § 17A.19(11)(b).

When considering whether interpretative authority has been vested in the agency, the inquiry is not whether the Department has the authority to interpret or implement Chapter 322 in its entirety. Rather the inquiry is whether interpretation of the specific phrase "in connection with" has been clearly vested in the Department's discretion. *See Renda v. Iowa Civ. Rts. Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010). To determine whether the Department has clearly been vested with interpretative authority over that phrase, this Court,

> using its own independent judgment without any required deference to the agency's view, must have a firm conviction from reviewing the precise language of the statute, its context, the purpose of that statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretative power with the binding force of law over the elaboration of the provision in question.

Id. at 11 (quoting Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 62 (1998)); *see also* Iowa Code § 17A.19(11)(a). Using the criteria articulated above, there are at least four

reasons why the Department has not clearly been vested with interpretative authority over the phrase "in connection with" in Iowa Code § 322.3(12).

First, and as a threshold matter, there is no express grant of interpretive authority. Neither Chapter 322 generally, nor section 322.3 specifically, expressly grants the Department the authority to interpret the language in § 322.3(12), much less the particular phrase "in connection with." Though the Legislature did vest "[t]he administration" of Chapter 322 in the director of transportation, the power to ***administer*** the statute is not the same as the power to ***interpret*** it. *See Eyecare v. Dep't Hum. Servs.*, 770 N.W.2d 832, 836 (Iowa 2009) (citing *State v. Pub. Emp. Relations Bd.*, 744 N.W.2d 357, 360 (Iowa 2008) (finding the power to enact, implement, and administer rules and regulations is not the same as the power to interpret them), and *Mosher v. Dep't of Inspections & Appeals*, 671 N.W.2d 501, 509 (Iowa 2003) (finding "general regulatory authority … does not qualify as a legislative delegation of discretion" to the agency.")).

Second, the phrase to be interpreted, "in connection with," is not "a substantive term within the special expertise of the agency." *Renda*, 784 N.W.2d at 14. The Department has no special expertise in how to interpret

"in connection with" in the context of § 322.3(12), and therefore, no deference is justified or appropriate.

Third, the phrase "in connection with" is used in many other statutes throughout the Iowa Code that the Department is not tasked with enforcing,[1] which refutes the notion that interpretive power vested in the Department. *Id.* ("When the provisions to be interpreted are found in a statute other than the statute the agency has been tasked with enforcing, we have generally concluded interpretative power was not vested in the agency.").

Fourth, "[w]hen a term has an independent legal definition that is not uniquely within the subject matter expertise of the agency, [the Iowa Supreme Court has] generally conclude[d] the agency has not been vested with interpretative authority." *Id*. Both sides have cited competing definitions that originate in other contexts, demonstrating this interpretative question is not uniquely in the Department's subject matter expertise.

Moreover, the Department itself quoted *Irving v. Employment Appeal Board*, 883 N.W.2d 179, 185 (Iowa 2016), for the proposition that "[w]ords

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[1] According to Westlaw, the phrase "in connection with" appears in the text of more than 800 different statutes in the Iowa Code, including statutes relating to a wide variety of subject matters and statutes under the purview of many administrative agencies. The frequent use of this phrase suggests that no one-size-fits-all definition is workable or realistic, which the ALJ's decision acknowledged. *See* Appendix ("App.") 30.

and phrases like 'voluntary,' 'misconduct,' 'employer,' and 'in connection with' are *not* alien to the legal lexicon." Appellee's Br. 15 (emphasis supplied). The Appellants previously noted, and the Department has ignored, that "the point of that statement [in *Irving*] 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))." Appellants' Br. 18 n.2.

Aside from the affirmative reasons for this Court to find that the Department was not clearly vested with the authority to interpret the phrase at issue, it is also significant that the Department has not made an argument as to why it believes it has clearly been granted such authority. Instead, the Department just asserts that it deserves deference. In fact, the Department's appellate brief is the first time in the history of this case where the Department has claimed that it is vested with interpretative authority over Iowa Code § 322.3(12). Of course, that self-serving claim is not owed any deference. Iowa Code § 17A.19(11)(a).

For the foregoing reasons, the Department has not been vested with authority to interpret the phrase "in connection with" in the revocation

statute, and therefore, this Court owes no deference to the Department. That phrase is "widely used in areas of law other than the [transportation] arena." *Renda*, 784 N.W.2d at 14. "The fact that [the Department] rel[ies] on definitions of [this phrase] from various other substantive areas of law [including a definition utilized in a case under the Iowa Consumer Fraud Act] indicates the interpretation of [this phrase] is not within the special expertise of the [Department]." *Id.* Therefore, this Court should "not give deference to the [Department's] interpretation" and should substitute its judgment for the Department's judgment if it concludes the Department made an error of law. *Id.* at 14–15.

B. 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).

As the Appellants previously set forth in their opening brief, the primary fighting issue between the parties is the meaning of the phrase "in connection with" as used in Iowa Code § 322.3(12). Given the absence of a statutory definition or any case law on point, the Appellants proffered two definitions of the phrase "in connection with," both of which result in reasonable interpretations of § 322.3(1) that are true to the overarching purpose of Chapter 322. As discussed below, the Department simply

ignores both the Appellants' definitions and assumes incorrectly that its own definition is the only possible approach.

First, the Appellants have advocated for the definition of "in connection with" utilized by the ALJ in this case: "With reference to; concerning." Appellants' Br. 19. Indeed, the ALJ's definition is the <u>*only*</u> definition of the *phrase* "in connection with" rather than the word "connection."[2] Because Carreras' conviction for structuring was not with reference to or concerning motor vehicles—the federal offense of structuring does not concern the source of the structured funds—his conviction for structuring was not "in connection with selling … motor vehicles." *See generally* Appellants' Br. 19–23.

Second, as an alternative to the ALJ's definition, the Appellants cited to the definition of "in connection with" employed by federal courts when interpreting that phrase as it appears in the United States Sentencing Guidelines: a criminal conviction is "in connection with selling … motor vehicles" if the criminal conduct emboldened, facilitated, or had some

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[2] The Department cites to a definition of "connection" in Black's Law Dictionary as "[t]he state of being connected or joined …." Black's Law Dictionary 274 (5th ed. 1979). *See* Appellee's Br. 15. Neither that edition of Black's Law Dictionary nor the more recent edition have defined the phrase "in connection with." *See also* Black's Law Dictionary 302 (6th ed. 1990) (the most recent edition defining "connection").

purpose or effect with respect to vehicle sales. Appellants' Br. 23–24. Because the structuring of currency deposits had no effect whatsoever on motor vehicle sales—Los Primos would have made all the same sales regardless of whether or how they structured the deposits of the sales' proceeds—Carreras' conviction for structuring was not "in connection with selling … motor vehicles." *See generally* Appellants' Br. 23–26.

Under either of these two definitions, the Department's revocation of the Appellants' license cannot legally stand under § 322.3(12). The Department has never once explained why either of these definitions is unreasonable or should be rejected. Nor has the Department contested the application of the Appellants' definitions to the facts of this case. Instead, the Department has done little more than cast aspersions upon the Appellants' definitions without offering any support or rationale for those aspersions. *See* Appellee's Br. 16 (stating, "Petitioner in the case at hand is asking this Court to engage in legal gymnastics in order to overturn the district court's decision and attach a nonsensical meaning to a commonsense term," but failing to explain how the Appellants' two definitions are "nonsensical."). To invoke its own phrase, the Department is the only party engaging in "legal gymnastics" by presenting a circular argument—that is,

every other definition is unreasonable merely because its own definition is clear and correct. The Department insists on interpreting § 322.3(12) as it would write it, but not as the Legislature wrote it.

Astoundingly, the Department *still* continues to conflate the phrases "in connection with" and "connected to" despite the Appellants explicitly pointing out why those phrases are not interchangeable and should not be conflated. *See* Appellants' Br. 22. In its appellate brief, the Department conflates the phrases seven times. *See* Appellee's Br. 14 (using "connected to" instead of "in connection with" twice), 15 (conflating the phrases once), 16 (same), 17 (conflating the phrases twice), 18 (conflating the phrases once).[3] Similarly, the Department attempts to substitute the phrase "in

[3] The Department fails to adhere to the text of section 322.3(12) in other ways as well. For example, the Department states, "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." Appellee's Br. 14 (emphasis supplied). That is simply not true. Aside from the fact that the statute says, "in connection with" and not "connected to," the statute is not concerned with a conviction for *any crime*. Section 322.3(12) is only concerned with convictions for certain *indictable offenses*. In other words, the statute is not concerned with simple misdemeanor convictions such as a conviction under section 322.35 for failing to properly disclose the manufacturer's suggested retail price. Although incidentally, unlike Carreras's federal structuring conviction, a conviction under section 322.35 would be a conviction "in connection with selling … motor vehicles."

connection with" with "related to," "integral to," "the mechanism for," and "the means by which"—obviously none of which is the standard embodied in the statutory text. Lastly, the Department has chosen to read a "but for" causation standard into the text rather than adopting it as written, a position which invites the absurd results illustrated in the Appellants' brief. *See* Appellants' Br. 29–30. The Department has never addressed the absurd results that would result from its position in this case.

These attempted substitutions illustrate the Department's fundamental misunderstanding of the text of § 322.3(12). They also prove that the phrase "in connection with" does not naturally fit with the Department's position, and that other phrases must instead be substituted to justify the Departments' actions against the Appellants. This Court should reject the Department's strained interpretive contortions and apply the statute as written, utilizing a reasonable definition of "in connection with" such as the one accepted by

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Similarly, the Department states, "Each and every one of the nearly 400 deposits listed in petitioner's *indictment* was connected to the business account of Los Primos Auto Sales …." Appellee's Br. 16 (emphasis supplied). Again, the department fails to use the actual statutory standard in its analysis ("connected to" instead of "in connection with"), but it also just analyzes the wrong thing. The question is not whether a person has been *indicted* for a disqualifying offense; the question is whether a person "has been *convicted*" of a disqualifying offense. Iowa Code § 322.3(12) (emphasis supplied). Therefore, Carreras' indictment, which includes charges that were dismissed or not proven, is wholly irrelevant.

the ALJ or the alternative one set forth by the Appellants. Under either of those two reasonable definitions, the license revocation indisputably must be reversed.

II. THE DEPARTMENT CANNOT POINT TO ANY EVIDENCE, MUCH LESS SUBSTANTIAL EVIDENCE, FOR ITS CHARACTERIZATION OF CARRERAS' CONVICTION AS "INHERENTLY FRAUDULENT AND DECEPTIVE."

In any appeal challenging the sufficiency of evidence for an agency finding, this Court would expect the agency to cite evidence in the administrative record supporting the disputed finding. Here, the Department points to *nothing* in the administrative record *except the very agency decision that is being challenged*. The Department's final ruling is not evidence, and the ruling cannot justify itself. Otherwise, there would be no judicial review of administrative actions for lack of substantial evidence.

Without any evidence to validate its final ruling, the Department makes irrelevant and incorrect assertions about Carreras. For instance, the Department claims that Carreras' crime was one of "dishonesty which involves deliberate action and intent." Appellee's Br. 20. There is no evidence that Carreras was dishonest to anyone. To whom did Carreras lie, and what was the lie? And to whom did Carreras act fraudulently? The Department does not even try to answer these questions. Also, it is

inapposite whether Carreras' actions were deliberate or intentional. This brief was written deliberately and intentionally. The Court's opinion in this case will be deliberate and intentional. Most actions we take are deliberate and intentional—that does not make them fraudulent and deceptive.

Next, the Department asserts that Carreras used Los Primos "as a means to launder money." Appellee's Br. 20. This assertion is completely wrong but, more importantly, it is indicative of the Department's misunderstanding of this case. Carreras did not plead guilty to money laundering. Insofar as any charges for money laundering were alleged, the government dismissed those charges at Carreras' sentencing. App. 105, 121; *see also* Appellee's Br. 10.[4] Revealingly, the Department equates the crimes of structuring and money laundering, but they are different. Structuring does not concern itself with the source of the currency but, whereas the source of the money is integral to money laundering. That distinction was critical to the ALJ's conclusion that Carreras' conviction did not *concern* the sales of motor vehicles (and, therefore, the conviction was not in connection with the

[4] This is another example of the Department wrongly analyzing the charges against Carreras rather than his conviction, as required under Iowa Code § 322.3(12).

sales of motor vehicles). Unlike money laundering, the source of the currency is irrelevant to the crime of structuring. App. 33–34.

After quoting its own ruling, the Department then confuses the substantial-evidence issue by invoking the liberal construction statute, Iowa Code § 322.15, which has no bearing on whether the Department's final ruling is supported by substantial evidence. That statute does not change the evidence. Nor does it provide for liberal construction of the substantial evidence standard. Thus, the liberal construction statute does not save the Department's baseless assertion that Carreras' conviction was "inherently fraudulent and deceptive."

Both sides agree that the purpose of Chapter 322 is to protect a particular group—that is, *consumers* of motor vehicles. The license revocation here does not serve that specific goal, however, because the Department cannot point to any evidence that any consumer was affected by how Carreras arranged bank deposits. In fact, there is no evidence that any consumer was aware of how the Los Primos currency deposits were structured, much less that the deposit arrangements affected any sale or any consumer.

Structuring is a banking offense that does not require proof of fraud or deception, much less fraud or deception toward anyone who purchased a vehicle at Los Primos. Carreras did not make any false or deceptive statements, promises, representations, or assurances to any consumers. In over a decade of selling vehicles, no such complaint has ever been made against Carreras or Los Primos.

The Department's argument about a "public protection interest" in prohibiting individuals convicted of structuring currency deposits from owning and operating a motor vehicle dealership is not only unsupported, but it is irrelevant. The questions here are whether the Department has erroneously interpreted Iowa Code § 322.3(12) and whether the Department's findings about Carreras' conviction are supported by substantial evidence. The Department's self-serving assertion about a vague "public protection interest" is simply not relevant.

Finally, the Department asserts that the finding of fraud and deception was essentially harmless because it was not necessary for the Department's final ruling. *See* Appellee's Br. 22–23. The Department claims that the agency's holding did not turn on any finding regarding the fraudulent and deceptive nature of the structuring conviction, but the ruling itself suggests

otherwise. That finding was the critical link in the final ruling for the Department to use the liberal construction statute (§ 322.15) to justify an expansive application of the revocation statute (§ 322.3(12)). Moreover, the Department cannot credibly claim that the "inherently fraudulent and deceptive" finding was inconsequential when the only "evidence" that the Department has ever cited is that very finding.

The district court judgment should be reversed as it denied relief to the Appellants on the grounds that the Department's final ruling lacked substantial evidence for the finding that Carreras' conviction was inherently fraudulent and deceptive.

III. IOWA LAW DOES NOT SUPPORT THE DISTRICT COURT'S TOLLING ORDER.

Iowa Code § 322.3(12) clearly states that a person convicted of a disqualifying offense "shall not for a period of five years from the date of conviction" be owner of a licensed motor vehicle dealer, as relevant here. The Department acknowledges the plain meaning of the statutory text. *See* Appellee's Br. 25 ("Iowa Code section 322.3(12) mandates a five- (5) year revocation period from the date of conviction."). Ironically, while in one section of its brief the Department asks this Court to apply its view of the

plain meaning of Iowa Code § 322.3(12), it then asks this Court to disregard the plain meaning of that statute in another section.

The Department claims that the tolling order is justified to make sure the Appellants "suffer[] the consequences intended by the Iowa legislature." App. 296. The only evidence of the Legislature's intent, however, is the unequivocal language in the statute. The Legislature could have easily allowed for tolling of the revocation period in the event of an appeal under Chapter 17A, but it did not do so. This Court should not rewrite the statute to fit what the Department believes the Legislature intended.

The Department greatly exaggerates the consequences of the Appellants' position. The Department claims that it would be "essentially stripped of its statutory authority under Iowa Code section 322.1 to regulate motor vehicle dealers." Appellee's Br. 25. However, the Department can still regulate licensees in many other ways and even revoke a license under § 322.3(12) in appropriate circumstances. Additionally, a licensee is not automatically entitled to a stay of agency action. But even in this specific case where multiple stays were granted, it is untrue that the Appellants would "evade any enforcement whatsoever" and render the Department's enforcement action "entirely moot." Appellee's Br. 25, 27. If upheld, the

revocation of the Appellants' license will extend to September 2023. These proceedings will probably be resolved by then, and in the unlikely event that they extended that long, it would only be due to the Department's errors.

Furthermore, even if the district court's stay orders shorten the effective revocation period, perhaps substantially, there would still be real consequences for the Appellants from the Department's revocation action. The Department publishes a list of dealer licenses that are active and revoked. Los Primos would be listed with a revoked license, which is not a trivial consequence.

The Department's argument about suffering consequences really boils down to its reliance of the absurdity doctrine, which the district court did not invoke. The absurdity doctrine is utilized in "rare cases," and "must be used sparingly and only in circumstances when the court is confident the legislature did not intend the result required by literal application of the statutory terms." *Brakke v. Iowa Dep't of Nat. Res.*, 897 N.W.2d 522, 540 (Iowa 2017) (rejecting the agency's proposed application of the absurdity doctrine to expand a regulatory statute).

It is not absurd that the Legislature intended that the prohibition on involvement in a motor vehicle dealership should be tied to the date of the

conviction that triggers the prohibition, regardless of the timing of any administrative action or appeals. The period of prohibition (five years) is longer than the typical length of administrative proceedings and judicial review proceedings. The Legislature could have reasonably concluded that a five-year prohibition period is sufficient even if the licensee could effectively shorten the prohibition if they are granted a stay during administrative appeals.

Additionally, section 322.3(12) is not a criminal statute; nor does it empower the Department to dole out punishment terms. Rather, the statute serves to protect consumers of motor vehicles, and the Legislature reasonably determined that the consumer protection interest no longer justifies a restriction on motor vehicle dealers after five years have passed from a disqualifying conviction.

It is not absurd, moreover, to assume that the Legislature intended to honor the right to appeal from an administrative decision pursuant to Iowa Code §§ 17A.18(3) and 17A.20. The effect of the Department's position and the district court's tolling order is to penalize Carreras for exercising his right to appeal and his right to request a stay under well-established legal authority. Under the Department's position, if Carreras had never

challenged the Department's enforcement action or if he had never requested a stay as allowed under Iowa Code Chapter 17A, then he could be involved in a motor vehicle dealership beginning in September 2023. However, if Carreras exercised his right to appeal and obtained a stay of the agency action but was ultimately unsuccessful on appeal, then according to the Department's position, Carreras should be prohibited from being involved in a motor vehicle dealership until sometime in 2026. The Legislature reasonably could have found that disparity unreasonable and refused to penalize someone for exercising their rights under Chapter 17A.

The other argument raised by the Department is that "for a period of five years from the date of conviction" is directory language, rather than mandatory language. Appellee's Br. 26–27. The distinction between mandatory and directory statutes is inapposite here. Whether directory or mandatory, the plain language of § 322.3(12) provides that the restriction applies for five years "from the date of conviction." That language does not change depending on when the Department pursues an administrative enforcement action. The Department quotes from a leading case on the directory-versus-mandatory distinction, but there is no connection to the statutory interpretation issue here.

In the event that the Department's enforcement action is upheld, the consequence is simple and straightforward—Carreras would be prohibited from being involved with a licensed motor vehicle dealer for five years from the date of conviction. The district court's tolling order unquestionably deviated from and expanded the statutory prohibition.

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.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 1, 2021, I electronically filed the foregoing Final Reply 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 4,355 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: February 1, 2021

/s/ Todd M. Lantz