No. 21-1697

In the United States Court of Appeals for the Fourth Circuit

JERRY DAVIDSON, individually and on behalf of others similarly situated,
Plaintiff-Appellant,

v.

UNITED AUTO CREDIT CORPORATION, a California corporation,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia at Alexandria
Case No. 1:20-cv-01263-LMB-JFA (The Honorable Leonie M. Brinkema)

REPLY BRIEF OF PLAINTIFF-APPELLANT

JANET R. VARNELL
BRIAN WARWICK
VARNELL & WARWICK, P.A.
1101 East Cumberland Avenue
Suite 201H-105
Tampa, FL 33602
(352) 753-8600

JENNIFER D. BENNETT
JESSICA GARLAND
GUPTA WESSLER PLLC
100 Pine Street, Suite 1250
San Francisco, CA 94111
(415) 573-0336
jennifer@guptawessler.com

LEONARD ANTHONY BENNETT
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Boulevard, Suite 1A
Newport News, VA 23601
(757) 930-3660

DEEPAK GUPTA
GUPTA WESSLER PLLC
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741

Counsel for Plaintiff-Appellant

(additional counsel listed on inside cover)

May 9, 2022

KRISTI CAHOON KELLY
KELLY GUZZO PLC
3925 Chain Bridge Road, Suite 202
Fairfax, VA 22030
(703) 424-7570

TINA WOLFSON
CHRISTOPHER ERIC STINER
AHDOOT & WOLFSON P.C.
2600 West Olive Avenue, Suite 500
Burbank, CA 91505
(310) 474-9111

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

INTRODUCTION

Everyone agrees that the Military Lending Act exempts loans that are offered for one specific purpose: to finance a car or personal property. Everyone also agrees that this exemption doesn't apply to loans for financial products. The question on appeal is whether a lender may circumvent the exemption's limitations by combining an exempt loan for a car with an otherwise non-exempt loan for a financial product. As we explained in the opening brief, the statute itself answers that question: No.

By its terms, the Military Lending Act exempts loans "for *the express purpose* of financing the purchase" of a car or personal property—not for multiple purposes, including any product a lender might want to tack on. In arguing otherwise, United Auto asserts that the word "express," in isolation, can mean "explicit." But there's no dispute that "express" *can* mean explicit—just as there's no serious dispute that it *can* mean "precisely and specifically identified to the exclusion of anything else."

The question here is what the word means in the context of the Military Lending Act. The statute's text, structure, and purpose all make clear that it only exempts loans that are solely for the specific purpose of purchasing a car or personal property. Financing for anything that isn't either physically part of the car itself or necessary to the car's purchase is, by definition, for a purpose other than "the express purpose" of purchasing the car. Such financing, therefore, is not exempt. So a lender

can't bypass the MLA's protections simply by bundling financial products, like cash advances or GAP coverage, with loans for cars or furniture.

The fundamental problem with United Auto's contrary reading is that it renders the key statutory phrase—"offered for the express purpose of financing the purchase"—superfluous. The exemption at issue here has three requirements: The loan must be "[1] procured in the course of purchasing a car or other personal property, . . . [2] offered for the express purpose of financing the purchase and [3] . . . secured by the car or personal property procured." 10 U.S.C. § 987(i)(6)(B). In United Auto's view, the second requirement means only that the loan documents must be explicit that the loan is for the purchase of a car. But it's difficult to imagine a car loan that would be both "procured in the course of purchasing a car" and "secured by the car," and yet wouldn't state that it is in fact a car loan. And it is even less clear what purpose would be served by making the exemption hinge on this fact. In other words, on United Auto's interpretation, this key limiting language is no limitation at all. United Auto's reading thus runs afoul of the "cardinal principle of statutory construction"—"that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

United Auto's reading would also enable wholesale circumvention of the Military Lending Act. It would permit lenders to evade the MLA's protections for

any additional products that they can bundle in with a car or personal-property loan. Presumably for this reason, halfway through its brief, United Auto abandons its own interpretation of the MLA's text and instead asserts (at 18–19) that, as long as a financial product is not "unrelated to the purchase of a car," it can be bundled with a car loan and exempted from the MLA. But this second interpretation is even further unmoored from the statute's text. At least the word "express" *can* mean "explicit" (though that is not how it is used in this statute). "Express" is never used to mean "related." Not to mention that the statute refers to "*the* express purpose"—singular—not multiple related purposes.

On the other hand, "express" is often used to mean "precisely and specifically identified to the exclusion of anything else"—especially in statutes that govern financing. That meaning is even more apparent when the word is used within the phrase "the express purpose." Applying that ordinary meaning here effectuates the Military Lending Act's text, structure, and purpose and comports with the Pentagon's consistent, authoritative interpretation. And it does so without rendering any of the Act's provisions superfluous, adding extratextual limitations, or construing the statute to enable its own circumvention.

ARGUMENT

I. United Auto's reading is contrary to the Military Lending Act's text and structure and would render key statutory terms superfluous.

United Auto spends much of its brief arguing that the word "express" can mean "explicit." *See* Response Br. 12. But nobody denies that "express" *can* mean explicit. It can also mean "precisely and specifically identified to the exclusion of anything else." Opening Br. at 25; The Concise Oxford American Dictionary 315 (Oxford Univ. Press 2006). Even the dictionary definitions that United Auto itself cites recognize both meanings. *See* Response Br. 12 (quoting Garner's Modern American Usage (3d ed. 2009) (defining "express" as "specific")). The question here is what the word means in the context of the Military Lending Act, where the word "express" is used as part of a particular phrase—"offered for the express purpose of financing the purchase"—which itself is used to limit a statutory exemption. *See Navy Fed. Credit Union v. LTD Fin. Servs., LP*, 972 F.3d 344, 357 (4th Cir. 2020) (explaining that when a word has multiple "dictionary definitions," courts "must draw its meaning from its context" (quoting *Ardestani v. I.N.S.*, 502 U.S. 129, 135 (1991))). The text, structure, and purpose of the statute all demonstrate that the statute only exempts car loans, and not loans that include financial products bought at the same time as the car.[1]

[1] Unless otherwise specified, internal quotation marks, citations, and alterations are omitted throughout this brief.

1. Start with text. Our reading gives significance to each of the exemption's three distinct elements. *See* Opening Br. 25. First, the statute states that the exemption at issue only applies to loans "procured in the course of purchasing a car." 10 U.S.C. § 987(i)(6)(B). The exemption's second phrase then further limits it to loans that are made "for the express purpose of financing the purchase." And the third statutory phrase—that the loan must be "secured by the car or personal property"—provides yet another limitation, ensuring that the loan be secured by the very thing the loan is for. *See* § 987(i)(6)(B).

Our reading recognizes that the second element of the exemption—"offered for the express purpose of financing the purchase"—must have a meaning that goes beyond merely repeating the other two, providing an additional limitation on what is exempted from the statute's protections. *See McDonnell v. United States*, 579 U.S. 550, 568–69 (2016) ("To choose between . . . competing definitions, we look to the context in which the words appear," presuming "that statutory language is not superfluous."). Statutory terms should be defined by the "the context in which the words appear," such that the "statutory language is not superfluous." The first and third elements of the exemption ensure that the loan finances and is secured by a car (or personal property). So the second element must do something other than require that the loan include car financing; the other elements already do that. The words "the express purpose" tell us what more the second element does: It ensures that the

loan does not just *include* financing for a car, but that it is "precisely and specifically" for the purchase of the car, "to the exclusion" of anything else. *See* Opening Br. 25; The Concise Oxford American Dictionary.

Adopting United Auto's interpretation, on the other hand, would render the second element superfluous. On United Auto's reading, the requirement that a car loan be "for the express purpose of financing the purchase" means only that the loan must "explicitly state[]" that it's a car loan. Response Br. 12. But the first and third elements already limit the exemption to "a loan procured in the course of purchasing a car" and "secured by the car." A loan that satisfies those requirements is, by definition, already a car loan—it is already for the "explicit" purpose of purchasing a car. It's hard to imagine any plausible scenario in which a loan would be both "procured" by a service member "in the course of purchasing a car" and "secured by the car," but wouldn't "clearly" state that it's a car loan. Response Br. 15. To the contrary, when a consumer in the process of buying a car takes out a loan that is secured by that very car, that loan is always clear on its face that the loan is for a car.

Thus, under United Auto's reading, the second element adds nothing. *See Colautti v. Franklin*, 439 U.S. 379, 392 (1979) ("Appellants' argument . . . would make either the first or the second condition redundant or largely superfluous, in violation of the elementary canon of construction that a statute should be interpreted so as not to render one part inoperative."). United Auto suggests no reason why Congress

would make this important exemption hinge on whether a car loan is labeled as a car loan, and no reason to suggest that this distinction could have any real-world significance. What purpose could Congress have been trying to serve? United Auto does not say. The phrase "for the express purpose of" must add *something* to the statute. On our reading, it does: It makes clear that the loan must be for one specific purpose—"*the* express purpose" of purchasing a car—and not for a limitless array of add-on financial products of just the sort that the MLA was intended to regulate.

2. United Auto's interpretation reads yet another key word out of the statute–the word "the" *See United States v. Broncheau*, 645 F.3d 676, 684 (4th Cir. 2011) ("We should also strive, of course, when interpreting a statute, to give effect to each word[.]"). United Auto never tries to reconcile its reading, which permits loans with multiple purposes to qualify for the exemption, with the statute's use of the singular definite article, "the," and the singular form of "purpose" to describe "*the* express purpose," 10 U.S.C. § 987(i)(6) (emphasis added). *See Nielsen v. Preap*, 139 S. Ct. 954, 965 (2019) ("Rules of grammar govern statutory interpretation unless they contradict legislative intent or purpose."). The "'use of the definite article [the] in reference' to an object 'indicates' that the statute refers to only one such object." *Kouambo v. Barr*, 943 F.3d 205, 211 (4th Cir. 2019) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004)); *see Renz v. Grey Advert., Inc.*, 135 F.3d 217, 222 (2d Cir. 1997) ("Placing the article 'the' in front of a word connotes the singularity of the word modified."). If Congress had

wanted the exemption to apply to loans for multiple purposes, it easily could have said so.

Congress' use of "the" thus highlights that for a loan to be exempt from the MLA, it must serve "only one" purpose: the purchase of a car (or personal property). *Padilla*, 542 US at 434; *see Main St. Legal Servs., Inc. v. Nat. Sec. Council*, 811 F.3d 542, 549 (2d Cir. 2016) ("Such use of the definite article to describe '*the* function' of the Council . . . makes clear that [there is a] sole function statutorily conferred[.]"). The statute tells us that the exemption applies only when a loan finances a purchase of *the* specific exempted item, whether that be a car or personal property, and not a bundle that includes standalone financial products.

3. United Auto doesn't dispute that Congress commonly uses the phrase "for the express purpose of" in precisely this way. *See* Opening Br. 25–27 (citing numerous statutes using the phrase "for the express purpose of" to specifically and exclusively identify a permitted purpose for the use of funds). Instead, the company cites a single example of a statute in which the word "expressly"—not the phrase "for the express purpose of"—likely means "explicitly." Response Br. 13. But, again, there's no dispute that "expressly" *can* mean "explicitly." In the exemption here, however, the word "express" is used in its other sense: specific and exclusive.

In arguing to the contrary, United Auto relies heavily on a single district court case interpreting an Omaha, Nebraska city ordinance. Response Br. 15 (citing

Harrington v. Strong, 363 F. Supp. 3d 984 (D. Neb. 2019)). But that case simply does not say what the company says it does. The quotations and analysis that United Auto attributes to *Harrington* appear nowhere in the district court's opinion.[2] *See* Response Br. 15. And the only other case law that United Auto discusses is an unpublished district-court decision that disregarded a contemporaneous dictionary definition of "express" (as "definitely and explicitly stated" and "particular; specific") in favor of its own idiosyncratic and unsupported definition ("the driving motivation behind an action"). *Juarez v. Drivetime Car Sales Co., LLC*, 2021 WL 2404118, at *2–3 (M.D. Fla. June 1, 2021).[3] This Court should not do the same.

4. Finally, United Auto's understanding of the statute is internally inconsistent. On the one hand, United Auto's reading of "express" to mean "explicit" reads out any limitation on what can be included in a car loan to be exempted from the MLA. As long as a service member receives the loan in the course of purchasing a car, the lender could add in any additional financial products it wants and avoid the MLA's

[2] Instead, United Auto's mistaken quotations and analysis appear to come from the *defendant's brief* in that case and from an unreported state trial-court order. *See* Br. Supp. State Defs.' Mot. Dismiss, *Harrington v. Strong*, 2018 WL 11255991, at 13–14, (D. Neb. July 18, 2018).

[3] The only other authority United Auto cites in support of its view is a CFPB rule, enacted long after the Military Lending Act was passed, enforcing a different statute. *See* Response Br. 13. But, in any event, that rule uses the words "sole" and "express" interchangeably. *See* 82 Fed. Reg. 54472, 544893 (describing "'[s]ole purpose' test" as meaning that a loan be "for the express purpose of initially purchasing" a specific product).

protections. For example, United Auto's reading would permit a lender to bundle in not just car insurance but also home or renters' insurance—as long as the loan still explicitly stated that it was a car loan.

To address this problem, United Auto ultimately abandons its own reading of the text. Having spent most of its brief trying to convince the court that the MLA exempts any loan explicitly for the purchase of a car, no matter what additional loans are bundled in with it, United Auto changes course and asserts that the exemption applies to any loan, so long as one of the loan's purposes is a car purchase and its other purposes are *related* to the car. *See* Response Br. 25 (identifying the "pertinent question" as "whether the charge is related to the vehicle purchase"). But this interpretation has no basis in the text. It adds word that are not there ("related"); and it reflects nobody's sensible account of the words that are there ("*the* express purpose").

II. United Auto's atextual approach would also undermine the statute's purpose and produce absurd practical consequences.

1. Aside from being untethered to text or structure and inconsistent with even itself, United Auto's interpretation would also undermine the Military Lending Act's purpose: to shield service members from predatory lending. The company apparently reads the statute to exempt any product from the MLA's protections so long as it is "related to [a] vehicle purchase" and secured by the car. *See* Response Br. 25. Thus, a lender can bundle in additional charges into an exempt vehicle loan

that otherwise would have to comply with the MLA's protections—for example, financing for a yearly supply of car washes, a monthly parking spot, or life insurance for auto crashes. And so long as the additional products are in some way arguably car-related, the MLA would offer no protection. Lenders could therefore secure these loans with a service member's car—which the MLA ordinarily prohibits—and repossess that car if the service member falls behind on their car-wash or parking or GAP insurance payments.

But, as we explained in the opening brief, a core purpose of the MLA is to *prevent* lenders from taking service members' vehicles as security for anything other than a car loan itself. *See* Opening Br. 29. Before the statute was enacted, the Department of Defense had concluded—and informed Congress—that prohibiting car-title loans was necessary to prevent service members from "losing essential transportation and key family assets." U.S. Department of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and their Dependents* 16 (Aug. 2006), https://perma.cc/NAC5-D97H. So Congress prohibited these loans except where they were "for the express purpose" of purchasing the car itself. United Auto's reading would bring back the very car-title lending that the MLA was designed to stamp out. 10 U.S.C. § 987(e)(5).

And the problems don't end with cars. The MLA uses the exact same language to exempt loans "for the express purpose of" purchasing personal property. *See* 10 U.S.C. § 987(i)(6). If that language exempts any loan so long as it

"clearly" states that it's a personal property loan, then it exempts virtually any loan at all. Lenders could bundle in a high-interest cash advance with a low-cost radio (or any other household good) and call it an exempt "personal property" loan. *See Limitations on Terms of Consumer Credit Extended to Service Members and Dependents,* 79 Fed. Reg. 58602, 58609 (Sept. 29, 2014) (noting a concern "that some lenders disguise . . . loans and loan fees using the sale of phone cards or other 'trinkets' at inflated prices combined with the delayed presentment of checks"). Or it could bundle in high-cost, low-value financial products like dubious insurance that costs far more than it would ever pay out and, again, avoid any of the MLA's strictures.

United Auto doesn't dispute that courts should not interpret statutes in a way that would permit unscrupulous actors to circumvent them unless the "language" of the statute itself "compel[s]" the court to do so. *Sec. Exch. Comm'n v. Edwards*, 540 U.S. 389, 394–95 (2004); *see* Opening Br. 22–24.[4] The MLA, therefore, can only be read as United Auto suggests if the text of the statute "compels" that reading. But not only does the statute not "compel" United Auto's reading, it prohibits it.

2. On the other hand, our reading gives effect to both the statute's language and its purpose. It does not permit lenders to circumvent the MLA's protections

[4] Nor does United Auto dispute that that is especially so when courts are interpreting a statute whose purpose is to protect service members. *See* Gov. Br. 24 (describing the "canon" of statutory interpretation "that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor" (quoting *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011)).

merely by bundling dubious financial products, which on their own would violate the MLA, with car loans that do not.

United Auto asserts that adhering to the text of the MLA will somehow hurt service members. But it offers no basis for its assertions—and they are mistaken. For example, United Auto claims that, without being able to use their car as security for GAP coverage, service members are "unlikely to qualify for a vehicle loan." Response Br. 2. But the company cites no evidence for that proposition, and, in fact, the evidence is to the contrary. *See* Gov. Br. 8 ("[I]t would be 'highly unusual for a [car] lender to require that [a consumer] buy GAP insurance.'" (quoting CFPB, *What Is Guaranteed Auto Protection (GAP) Insurance?* (June 8, 2016), https://perma.cc/LNN5-GYMH)). United Auto also asserts that GAP coverage reduces the price of car, so buying a car loan without GAP coverage will make the car more expensive. *See* Response Br. 26. But again, not only does United Auto fail to identify any support for that claim, it makes no sense. The company does not explain how adding on an expensive financial product can possibly make the car itself cheaper. To the contrary, as the Department of Defense explains, "GAP coverage can . . . unduly *increase* a consumer's total costs." Gov. Br. 8–9 (citing Nat'l Consumer Law Ctr., *Auto Add-Ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing* 1, 3, 10 (Oct. 2017), https://perma.cc/CMM5-9P7F (finding that, for "GAP products" and other ancillary products, "the combined

average markup was 170%," and that financing costs and optional products like GAP coverage to be the "largest source of dealer profit")).

Finally, United Auto claims (at 2–3) that if the MLA exempts only those loans for the specific, exclusive purpose of purchasing a car (or personal property), costs essential to that purchase—such as sales tax—could not be included in the financing. And service members, United Auto contends, may not be able to pay for these costs otherwise. But the company misunderstands what it means for financing to be for the exclusive purpose of a purchase. The ordinary meaning of "purchase" is "to obtain (as merchandise) by paying money or its equivalent." Webster's Third New International Dictionary 1844 (2002). Financing for a car purchase, therefore, is the financing necessary to obtain the car. Sales tax is money paid "to obtain" a car. Nobody would say that sales tax is a separate product or a separate purchase. It is part of the purchase of the car. So too is anything that is physically attached to the car—its seats, for example, or its radio. An ordinary English speaker would say those things are part of the purchase of the car. They are, after all, part of the car itself.

GAP insurance, on the other hand, is not physically part of a car, nor is it a cost that's a necessary part of buying a car.[5] *See* Gov. Br. 13; Federal Reserve Board,

[5] The "amount financed" under the installment contract also included a $250 processing fee. J.A. 41. United Auto has yet failed to make clear the nature of this processing fee. This case would thus need to proceed to discovery to determine the nature of that fee and whether it can properly be included in an exempt loan.

Gap Coverage (May 5, 2003), https://perma.cc/VS4T-MNHW. It is a separate financial product that need not be purchased with a car. It can be bought separately from an entirely different company at an entirely different time—or not at all. *See* Gov. Br. 9 ("Rather than buy coverage along with the car, consumers 'can purchase GAP from different sources' . . . often for lower costs.") (citing Patrick Brick & Patrick Campbell, *Servicemembers, Arm Yourself with Basic Car Buying Skills—Stand Your Guard When It Comes to Add-On Products*, CFPB Blog (Dec. 10, 2018), https://perma.cc/2TV3-QMQW).

And, despite the company's assertion to the contrary, the fact that a consumer would not buy GAP insurance unless she had first bought (or was buying) a car does not make the financing for GAP insurance "for the express purpose of the purchase" of a car. *See* Response Br. at 19–20. Just because GAP coverage is usually purchased by car-owners doesn't mean that the purchase of GAP coverage *is* the purchase of a car. Nor does it mean that financing for GAP coverage is somehow financing for the purpose of purchasing a car. Just as a loan for home improvements is not financing for the express purpose of purchasing a home—even though nobody makes home improvements unless they have a home—so too a loan for GAP insurance is not financing for the express purpose of purchasing a car.

However, the fact that United Auto's loan included financing for GAP insurance is alone enough to reverse.

United Auto resists this conclusion by arguing (at 20–21, 25) that Virginia law requires that GAP coverage be a part of a car's financing agreement. Of course, Virginia law cannot override federal law. But regardless, United Auto is mistaken about what Virginia law says. The Virginia code defines the term "GAP waiver" to mean GAP coverage offered by the lender (as opposed to an insurance company) for a "separate charge" that is *either* "part of" the financing agreement "*or* a *separate*" attachment. *See* Va. Code Ann. § 38.2-6400 (emphasis added). In other words, the statute itself recognizes that a GAP waiver may be "separate" from the car financing. And it certainly does not require that the financing for the car include financing for GAP coverage. To the contrary, the statute *prohibits* lenders from conditioning the sale of a car on the purchase of a GAP waiver. Va. Code Ann. § 38.2-6401.

GAP coverage is a financial product. It is not a car. A loan that finances GAP coverage, therefore, is not a loan "for the express purpose of the purchase" of a car.

III. The Pentagon's authoritative interpretation is inconsistent with United Auto's proposed circumvention of the Military Lending Act.

In our opening brief, we explained that United Auto's position is inconsistent with the authoritative interpretation of the U.S. Department of Defense. The United States has now filed an amicus brief explaining that it agrees: Standalone financial products are not included in the MLA's vehicle exemption, and thus "[l]enders cannot invoke the statute's specific car-loan exception and bypass its consumer protections when they choose to bundle standalone financial products into a loan."

Gov. Br. 1. As the government explains, a hybrid loan that "finance[s] both an exempt product (a car) and a distinct non-exempt product (an optional financial product)," such as "GAP coverage[,] do[es] not satisfy the car-loan exception to consumer credit." Gov. Br. 1.

Despite all this, United Auto plucks a single quote from the government's brief out of context to suggest that the government agrees with the company's interpretation. It does not. The company asserts (at 3) that the "United States concedes that loans and credit transactions fall safely within the MLA exemption if they finance both the purchase price of the car and related charges that 'advance the purchase or use of the car.'" In fact, what the government said (at 1) is that GAP coverage "is not needed to buy a car and does not advance [its] purchase or use." The government does not, as United Auto claims, state that anything that advances the purchase or use of a car "falls safely" within the exemption. And, in any event, the government makes clear that GAP coverage specifically is not just separate from the purchase of a car; it is "unrelated."

This conclusion is fully consistent with the Pentagon's longstanding interpretation of the MLA and its regulations administering the Act. As we explained in the opening brief, in 2016, the Pentagon issued guidance reflecting its "preexisting view" that a loan cannot be "expressly intended" to finance personal property if the lender "extends credit in an amount greater than the purchase price." *Military Lending*

Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 81 Fed. Reg. 58840, 58841 (Aug. 26, 2016). In that guidance, the Defense Department interpreted the language of the MLA to require that, "[t]o qualify for the purchase money exception . . ., a loan must finance *only* the acquisition of personal property." *Id.* (emphasis added). Because the text of the statute and its implementing regulations use exactly the same words to exempt both personal-property loans and car loans, the same must be true for a car loan. *See* 10 U.S.C. § 987(i)(6) ("[A] loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured."); 32 C.F.R. § 232.3(f)(2) (exempting "[a]ny credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased," and "[a]ny credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased"). The government's amicus brief in this case reflects this longstanding view. *See* Gov. Br. 12–13 (citing 81 Fed. Reg. at 58841).

United Auto emphasizes (at 22) that the government withdrew the interpretive guidance that explicitly applied directly to car loans. But, as the government itself explains in its brief, it did so only because the Defense Department wanted to study and address a "technical" objection from car lenders: The lenders claimed that if

hybrid loans were not exempt from the MLA, they could not take service members' cars as security for those loans; and therefore, they asserted, "they might not extend hybrid loans." Gov. Br. 27 (citing *Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents,* 85 Fed. Reg. 11842, 11843 (Feb. 28, 2020)); *see id.* 26 (explaining the withdrawal was "made to allow the Department to consider lenders' stated concerns," to "provide[] room for 'additional analysis' from the Department" (quoting 85 Fed. Reg. at 11843)).

But now, after studying the purported concern, the Department has determined that the lenders have identified "a feature, not a bug of the statute." Gov. Br. 27. As the government explains, "[t]he statute closely guards servicemembers' car titles, *see* 10 U.S.C. § 987(e)(5)." *Id.* It "covers hybrid loans precisely so lenders cannot bundle in standalone financial products . . . while using a car title as a security." *Id.* The Department of Defense's consistently held interpretation is thus contrary to the district court's and United Auto's stance, which lacks any basis in the Military Lending Act.

CONCLUSION

The judgment of the district court should be reversed.

May 9, 2022

Respectfully submitted,

/s/ Jennifer D. Bennett
JENNIFER D. BENNETT
JESSICA GARLAND
GUPTA WESSLER PLLC

100 Pine Street, Suite 1250
San Francisco, CA 94111
(415) 573-0336
jennifer@guptawessler.com

DEEPAK GUPTA
GUPTA WESSLER PLLC
2001 K Street, NW, Suite 850 North
Washington, DC 20006
(202) 888-1741

JANET R. VARNELL
BRIAN WARWICK
VARNELL & WARWICK, P.A.
1101 East Cumberland Avenue
Suite 201H-105
Tampa, FL 33602
(352) 753-8600

LEONARD ANTHONY BENNETT
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Boulevard, Suite 1A
Newport News, VA 23601
(757) 930-3660

TINA WOLFSON
CHRISTOPHER ERIC STINER
AHDOOT & WOLFSON P.C.
2600 West Olive Avenue, Suite 500
Burbank, CA 91505

KRISTI CAHOON KELLY
KELLY GUZZO PLC
3925 Chain Bridge Road, Suite
Fairfax, VA 22030
(703) 424-7570

Counsel for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4989 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

/s/ Jennifer D. Bennett
Jennifer D. Bennett

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2022, I electronically filed the foregoing brief of plaintiff-appellant with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Jennifer D. Bennett
Jennifer D. Bennett