PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

No. 19-3891

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PAUL O'HANLON, an individual; JONATHAN ROBISON, an individual; GAYLE LEWANDOWSKI, an individual; IRMA ALLEN, an individual; PITTSBURGHERS FOR PUBLIC TRANSIT, a project of Thomas Merton Center, Inc., a Pennsylvania non-profit corporation, on behalf of themselves and all individuals similarly situated

v.

UBER TECHNOLOGIES, INC., a Delaware Corporation; RASIER, LLC, a Delaware Corporation; RASIER-CA, LLC, a Delaware Corporation,
Appellants

_____

On Appeal from the District Court for the
Western District of Pennsylvania
(D.C. No. 2-19-cv-00675)
Magistrate Judge: Lisa P. Lenihan

_____

Argued July 2, 2020

Before: KRAUSE, PHIPPS, *Circuit Judges*, and
BEETLESTONE[1]

(Opinion Filed: March 17, 2021)

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[1] Honorable Wendy Beetlestone, District Judge, United States District Court for the Eastern District of Pennsylvania, sitting by designation.

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Counsel for Appellees

OPINION OF THE COURT

KRAUSE, *Circuit Judge.*

As Uber would tell it, when Plaintiffs filed their disability-discrimination suit in federal court, they wound themselves in a Gordian knot: They do not have standing to sue unless they would agree to Uber's Terms of Use, but those terms would require Plaintiffs to arbitrate their claim instead of litigating it in federal court. Uber urges that the only way to untie this knot is for us to reverse the District Court's ruling that Plaintiffs have standing, a decision not generally reviewable on interlocutory appeal, as well as its ruling that Plaintiffs have no contractual obligation to arbitrate. Our precedent, however, makes this case far less knotty than Uber suggests. We established in *Griswold v. Coventry First LLC* that, on interlocutory appeal from the denial of a motion to compel arbitration, our appellate jurisdiction is confined to review of that order. 762 F.3d 264, 269 (3d Cir. 2014). We not only have no independent obligation to review nonappealable orders—even jurisdictional ones. We also have no power to do so unless we can exercise pendent appellate jurisdiction over them. *See id.*

This case involves new technology, but that makes *Griswold* no less applicable. We therefore will review only the District Court's arbitrability decision, as we have no obligation to review its standing decision, and Uber has not demonstrated that pendent appellate jurisdiction over that decision would be appropriate. And because we agree that Plaintiffs—who have never accepted Uber's terms, including its mandatory arbitration clause—cannot be equitably estopped from suing in court, we will affirm the District Court's order denying Uber's motion to compel arbitration.[2]

I. Background

Plaintiffs are motorized-wheelchair users who live in the Pittsburgh area and the nonprofit Pittsburghers for Public Transit, whose mission is to make "transportation . . . available and accessible to all, including people with limited mobility." A32. They filed suit in District Court, alleging on behalf of themselves, and other similarly situated wheelchair users, that the ridesharing company Uber discriminated against individuals with mobility disabilities by not offering a "wheelchair accessible vehicle" (WAV) option in the Pittsburgh area. As charged in the complaint, this practice violated Title III of the Americans with Disabilities Act (ADA), *see* 42 U.S.C. §§ 12181 *et seq.*, which prohibits "discriminat[ion] . . . on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,

[2] Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before a magistrate judge. We therefore refer to the Magistrate Judge's rulings as those of the District Court. *See Hardy v. Shaikh*, 959 F.3d 578, 583 n.4 (3d Cir. 2020).

advantages, or accommodations of any place of public accommodation," *id.* § 12182, and, but for the unavailability of WAVs, Plaintiffs would download the Uber app and use its ridesharing service.

Uber filed a motion to compel arbitration pursuant to the Federal Arbitration Act (FAA), *see* 9 U.S.C. §§ 3–4, contending that even though Plaintiffs had never registered for an Uber account or accepted its Terms of Use, they were nevertheless bound by the mandatory arbitration clause of that agreement. *See* A57 ("By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration."). In support of its motion, Uber argued specifically that Plaintiffs could not establish standing to sue in federal court unless they "step into the shoes" of "actual Uber Rider App users who all are bound by Uber's Terms of Use," A10–11 (citation omitted), and more generally that Plaintiffs "necessarily rel[ied] on Uber's service contract to bring suit and should therefore be estopped from avoiding [the] obligation[]" to arbitrate, A9.

The District Court rejected both arguments. It determined that Plaintiffs' failure to download the Uber app, agree to the terms, and perform the "futile gesture" of requesting a WAV ride did not prevent them from pleading an injury in fact. A11 (quoting *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 366–67 (1977)). More broadly, the District Court reasoned that Plaintiffs' disability-discrimination claim did not rely on, or even embrace, Uber's Terms of Use, but was instead based on the ADA, a federal anti-discrimination statute. The Court thus declined to adopt Uber's "overly-broad interpretation of the law of this Circuit regarding the scope of the equitable estoppel exception to bind

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