ORAL ARGUMENT NOT YET SCHEDULED
No. 24-7154

In the United States Court of Appeals for the District of Columbia Circuit

CHERYL WALKER,
Plaintiff-Appellee,

v.

UBER TECHNOLOGIES, INC; RAISER LLC; and RAISER-DC LLC.
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia
Case No. 1:23-cv-03796-APM (The Hon. Amit Priyavadan Mehta)

BRIEF OF AMICUS CURIAE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PLAINTIFF-APPELLEE

LORI ANDRUS
President
JEFFREY R. WHITE
Senior Associate General Counsel
AMERICAN ASSOCIATION FOR JUSTICE
777 6th Street NW, #200
Washington, DC 20001
(202) 617-5620
jeffrey.white@justice.org

MATTHEW W.H. WESSLER
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
matt@guptawessler.com

September 2, 2025 *Counsel for Amicus Curiae*

COMBINED CERTIFICATES

Certificate as to Parties, Rulings, and Related Cases

As required by Circuit Rule 27(a)(4) and 28(a)(1), counsel for amicus curiae American Association for Justice provide the following information.

I. Parties and Amici Appearing Below

All parties, intervenors, and amici appearing before the district court are listed in the Brief for the Appellee.

II. Parties and Amici Appearing in this Court

Except for the following, all parties, intervenors, and amici appearing in this Court are listed in the Brief for the Appellee:

Amici: American Association for Justice

III. Rulings under Review

The rulings under review are listed in the Brief for the Appellee.

IV. Related Cases

The related cases are listed in the Brief for the Appellee.

Corporate Disclosure Statement

Pursuant to FRAP 26.1 and Circuit Rule 26.1, amicus curiae the American Association for Justice states it is a 501(c)(3) non-profit organization. It has no parent corporation or publicly owned corporation that owns 10% or more of its stock.

Statement Regarding Consent to File

As required by D.C. Circuit Rule 29(b), the American Association for Justice certifies that counsel for all parties have consented to its participation as amicus curiae.

Statement Regarding Separate Briefing

Pursuant to D.C. Circuit Rule 29(d), amicus curiae American Association for Justice is not aware of any other potential amicus briefs in support of Plaintiff-Appellee.

Respectfully submitted,

September 2, 2025

/s/ Matthew W.H. Wessler
Matthew W.H. Wessler

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AAJ American Association for Justice

INTEREST OF AMICUS CURIAE[1]

The American Association for Justice is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

AAJ files this brief for two reasons. First, the brief highlights the settled approach courts have taken when considering whether companies have met their burden to demonstrate that a valid contract was formed based on inquiry notice, and shows why, applying that standard here, Uber's attempt to meet its burden fails. Second, the brief explains why Uber's understanding of the third-party beneficiary doctrine is inconsistent with both the history and current application of the doctrine. Based on its members' expertise in both arbitration and litigation—and its organizational concern for the development of the law on these topics—AAJ is well positioned to offer a unique perspective in this case.

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[1] No counsel for either party authored this brief in whole or in part. Neither party and no one other than amicus curiae and its counsel contributed funding for the preparation and submission of this brief.

INTRODUCTION

Corporations like Uber have fought for years to close the courts to consumers and restrict claims brought against them to arbitrations. That effort has largely paid off. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). Forced arbitration requirements are now a ubiquitous part of most consumer contracts. As a result, when a consumer assents to binding contractual terms with almost any corporation, for almost any type of transaction, the consumer is often left with only one pathway to redress illegal misconduct: private arbitration.

In this case, Uber seeks to push the bounds of forced arbitration even further. It asks this Court to approve an attempt to compel arbitration against an individual who did not sign any contract and who never even entered into a transaction with the company. Endorsing such a request would erode one of the most basic tenets of contract law—that arbitration is a "matter of consent, not coercion." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478–79 (1989). As the Supreme Court has repeatedly explained, a "party may not be compelled under the FAA to submit to … arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010); *see also Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019).

Because the district court correctly applied these principles in refusing to compel arbitration, this Court should affirm.

ARGUMENT

I. Uber cannot meet its burden to demonstrate that a contract was validly formed because the single text message it relies on does not satisfy the reasonable consumer standard for inquiry notice.

A. It has long been the rule that, in determining "whether a valid arbitration agreement exists," a court must carefully evaluate whether the "'touchstone'" principle of contract law— "'[m]utual manifestation of assent'"—has been satisfied. *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (quoting *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17, 29 (2d Cir. 2002)). That is just as true for purported agreements to arbitrate. Because arbitration is a "matter of consent, not coercion," *Volt.*, 489 U.S. at 478–79, a "party may not be compelled under the FAA to submit to … arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen*, 559 U.S. at 684. A valid contract, in other words, requires a "meeting of the minds" on the essential terms. *Davis v. Winfield*, 664 A.2d 836, 838 (D.C. 1995).

This requirement is no less strict when it comes to contracts in the digital age. "While new commerce on the Internet has exposed courts to many new situations, it has not fundamentally changed the principles of contract." *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 403 (2d. Cir. 2004); *see also Forrest v. Verizon Comm'ns, Inc.*, 805 A.2d 1007, 1011 (D.C. 2002) ("A contract is no less a contract simply because it is entered into via a computer."). Companies like Uber that seek to enforce the terms of an

online take-it-or-leave-it contract still shoulder "the burden of demonstrating" that a valid contract exists. *Johansson v. Cent. Props., LLC*, 320 F. Supp. 3d 218, 221 (D.D.C. 2018); *see also Nguyen*, 763 F.3d at 1179 (explaining that the "onus" is on the party seeking to enforce contractual terms "to put users on notice of the terms to which they wish to bind consumers").

The enforceability of these contracts turns on "ordinary state-law principles that govern the formation of contracts." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). Courts cannot enforce a contract unless a consumer assents "to all the essential terms of the contract." *Malone v. Saxony Coop. Apartments, Inc.*, 763 A.2d 725, 729 (D.C. 2000). For online form contracts, that means a party seeking to bind a consumer to certain contractual obligations must demonstrate that: (1) it provided "reasonable notice" that a user would be bound by a particular set of contractual obligations, and (2) there was a "manifest[ation of] assent" to those contractual terms. Restatement of Consumer Conts. § 2 (A.L.I. 2024).

Both inquiries are measured by an "objective" standard. *Apprio, Inc. v. Zaccari*, 104 F.4th 897, 907 (D.C. Cir. 2024). Notice requires that a reasonable person would be aware "that terms are being presented" and of what conduct would be deemed to constitute assent to them. *Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 123 (2d Cir. 2012). A person cannot be "bound by inconspicuous contractual provisions" of which she is "unaware, contained in a document whose contractual nature is not obvious."

Meyer v. Uber Techs., Inc., 868 F.3d 66, 74–75 (2d Cir. 2017). And although "[t]he conduct manifesting such assent may be words or silence, action or inaction," that conduct cannot be "'effective'" as a "'manifestation of [] assent'" unless the circumstances show that the parties "'intend[ed] to engage'" in the relevant conduct and "'kn[ew] or ha[d] reason to know that the other party may infer'" assent from such conduct. *Schnabel*, 697 F.3d at 120 (quoting Restatement (Second) of Contracts § 19(2) (A.L.I. 1981)).

The application of these principles is a "fact-intensive inquiry"—and nowhere more so than in the world of internet- and app-based contracting. *Meyer*, 868 F.3d at 76. Whether a company obtained assent to its contract depends on what a consumer "said, wrote, or did and the transactional context" in which they "verbalized or acted," *id.* at 74, including "the design and content of the relevant interface," *id.* at 75, the "[c]larity and conspicuousness" of the putative terms, *id.* (citing *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 233 (2d Cir. 2016)), and the relationship between the terms and the conduct deemed to constitute assent to them, *Starke v. SquareTrade, Inc.*, 913 F.3d 279, 293 (2d Cir. 2019).

That the inquiry is fact-intensive, however, does not mean that it must be difficult. For decades now, this Court and others have been clear about what companies need to do to obtain assent to terms they have proposed online. By far the "easiest method of ensuring terms are agreed to" is to require users to click an "I

agree" box after being presented with a list of terms and conditions of use—a so-called "clickwrap" agreement. *Nicosia*, 834 F.3d at 237–38. Consumers who click such a box can usually be said both to have actual notice of the company's terms and to have affirmatively manifested their assent to them. *See Register.com*, 356 F.3d at 429. Courts thus "routinely uphold" these sorts of contracts. *Meyer*, 868 F.3d at 75.

Yet, "[i]n a seeming effort to streamline consumer purchases," *Nicosia*, 834 F.3d at 237, some companies have foregone this straightforward approach. Instead, they have elected to rely on something far less clear—for instance, "simply displaying," somewhere on a web page, "a notice of deemed acquiescence and a link" to the putative terms. *Cullinane v. Uber Techs., Inc.*, 893 F.3d 53, 62 (1st Cir. 2018). In these circumstances, "actual notice" is often impossible to prove and any "purported assent is largely passive." *Schnabel*, 697 F.3d at 120. In that setting, as courts have explained, a company seeking to bind a consumer to contractual terms must still first demonstrate that a consumer had "actual notice of circumstances sufficient to put a prudent [person]" on notice that they should inquire further about the possibility of a contract. *Id.*; *see also Clay Props., Inc. v. Wash. Post Co.*, 604 A.2d 890, 895 (D.C. 1992). Therefore, the contract-formation question turns on a showing of "inquiry notice" and an inference of assent based on the user's behavior. *Selden v. Airbnb, Inc.*, 4 F.4th 148, 156 (D.C. Cir. 2021) (quoting *Meyer*, 868 F.3d at 74–75).

But, assuming the standard for inquiry notice is met, evaluating inquiry notice demands more than scrutinizing pixels and font size. As this Court has explained, the key question in this context is "whether reasonable people in the position of the parties would have known about the terms and the conduct that would be required to assent to them." *Id.* (quoting *Meyer*, 868 F.3d at 77); *see, e.g.*, *Forrest*, 805 A.2d at 1010 (analyzing the validity of a contract based on whether it was "reasonably communicated"); *Christian v. Uber Techs., Inc.*, 775 F. Supp. 3d 272, 278–79 (D.D.C. 2025) (analyzing whether a pop-up screen provided "a reasonable person with notice that he was entering into a contract"). Undertaking that analysis extends well beyond the digital interface and includes the full context and nature of the interaction along with the expectations of ordinary consumers. As the Restatement instructs, "reasonableness is determined on the basis of the totality of the circumstances, including consideration of the *ordinary behavior, perspective, and expectations of consumers* engaged in the type of transaction at issue." Restatement of Consumer Conts. § 1(b) (A.L.I. 2024) (emphasis added). In other words, a reasonable consumer's expectations are shaped by more than the design of an email or text message; they are also shaped by how the consumer views the underlying transaction and the circumstances in which they are interacting with the company.

That is why, beyond the way that any terms are communicated, relevant factors include "the form and nature of the transaction," "the totality of the

consumer's interactions with the business," and "the manner in which the consumer is asked to manifest assent to the transaction." *Id.* § 2 cmt. 2. Because "the form of the presentation of terms or of the invited manifestation of assent" is not determinative of inquiry notice, courts must engage in a "case-by-case, fact-intensive analysis." *Id.* As but one example, the Ninth Circuit's analysis in *Keebaugh v. Warner Brothers Entertainment Inc.* included examining: (1) whether the transaction was ongoing or one-time, (2) whether users were required to create an account, (3) whether users were made aware of future purchases, and (4) whether the product was designed for repeat engagement. 100 F.4th 1005, 1020 (9th Cir. 2024).

One particularly significant factor that courts must evaluate when determining inquiry notice is "the nature, including the size, of the transaction." *Kauders v. Uber Techs., Inc.*, 159 N.E.3d 1033, 1049 (Mass. 2021). In *Kauders*, the Massachusetts Supreme Judicial Court considered whether the "form and nature" of an Uber transaction would lead a reasonable person to expect "extensive terms and conditions." *Id.* at 1051. The answer was no: reasonable Uber users "may not understand that, by simply signing up for future ride services over the Internet, they have entered into a contractual relationship." *Id.* After all, an Uber ride is little more than a "short-term, small-money" transaction, so it would not be obvious why an occasional car ride would require a consumer to "to sign his or her life away." *Id.* Signing up for a rideshare service is not "comparable to the purchase or lease of an apartment or a

car, where the size of the personal transaction provides some notice of the contractual nature of the transaction even to unsophisticated contracting parties." *Id.* And it is an even further from "a large business deal where sophisticated parties hire legal counsel to review the fine print." *Id.* (explaining that it is "by no means obvious that signing up via an app for ride services would be accompanied by the type of extensive terms and conditions present here"—including provisions that "indemnify Uber from all injuries").

Courts across the country have taken a similar approach—considering not only the relevant interface conveying a contract, but also examining the "full context of the transaction" to evaluate whether inquiry notice existed. *Keebaugh*, 100 F.4th at 1016. As in the rideshare context, reasonable users are less likely to be on inquiry notice of contractual terms during casual or one-off transactions. For instance, "a consumer buying a single pair of socks" would not "expect to be bound by contractual terms" because it is a "trivial" transaction. *Sellers v. JustAnswer LLC*, 289 Cal. Rptr. 3d 1, 16, 26 (Ct. App. 2021). Or a person visiting a website offering a free debt relief consultation would have no reason "to know that there was an arbitration agreement" in place because nothing on the website suggested that the "content [was] being offered for consideration and not for free." *Vincent v. Nat'l Debt Relief LLC*, 2024 WL 3344227, at *11, *14 (S.D.N.Y. 2024). In these routine interactions, everything signals speed and convenience, not careful legal review.

On the other hand, courts find that users who engage in weightier transactions might reasonably expect to enter into binding contractual relationships. The significance or cost of an important transaction conveys to a consumer that legal obligations may be involved. Examples abound. A job application is a "consequential transaction" that would make a reasonable person more likely to "understand that a prospective employer may require acceptance of contractual terms." *Doe v. Morgan Stanley & Co.*, 2024 WL 3677615, at *5 (D. Mass. 2024); *see also Skelton v. Care.com, Inc.*, 2021 WL 5862447, at *5 (S.D. Cal. 2021) ("The weight of [seeking employment] can be contrasted with … simply seeking a ride using the Uber app."); *Emmanuel v. Handy Techs., Inc.*, 992 F.3d 1, 10 (1st Cir. 2021). A reasonable user of a peer-to-peer lending service would potentially "expect that relationship to be governed by some terms and conditions" because it is a continuous transaction. *Checchia v. SoLo Funds, Inc.*, 771 F. Supp. 3d 594, 608–09 (E.D. Pa. 2025). So too for a reasonable user of an online educational service: They would "similarly expect (or should expect) their access to the platform would be continual and governed by some terms of use." *Ghazizadeh v. Coursera, Inc.*, 737 F. Supp. 3d 911, 926 (N.D. Cal. 2024).

These cases all reflect a basic principle: courts cannot evaluate whether a company has met its burden to establish inquiry notice without understanding the behavior and perspective of ordinary consumers. Formatting and design alone are not enough. Instead, inquiry notice is contextual, so courts must also ask whether the

kind of transaction at issue would lead a reasonable person to expect contractual terms at all.

B. Applying this standard for analyzing inquiry notice, Uber has failed to meet its burden to demonstrate that a reasonable user—in this case an individual who did not request a ride, had no Uber account, did not enter into any transaction with Uber, and received only a single, unsolicited text message from Uber—would have been on inquiry notice that getting into a car would bind them to extensive contractual obligations. The sum total of Uber's attempt to meet its burden relies on the fact that a few minutes before the vehicle arrived to pick up Carroll Walker, Uber allegedly sent Carroll a single, unsolicited text message. *See* Uber Br. at 25 (arguing that inquiry notice is established based just on being "sent a text message").

That is not nearly enough. To meet its burden, Uber was required to demonstrate that the "circumstances" surrounding the transaction and communication "support the assumption" that "a reasonable person in [the user's] shoes would have realized that he was assenting" to the contract terms. *Sgouros v. TransUnion Corp.*, 817 F.3d 1029, 1034–35 (7th Cir. 2016).

That the company made no effort to do so is unsurprising. The "ordinary behavior, perspective, and expectations" of a consumer in this context would not have led them to believe they were entering into a contractual transaction. Restatement of Consumer Conts. § 2 (A.L.I. 2024). That is especially true given that

courts have already recognized that reasonable users "signing up for future ride services over the Internet" may not understand that "they have entered into a contractual relationship." *Kauders*, 159 N.E.3d 1051; *see also Emmanuel*, 992 F.3d at 10; *Skelton*, 2021 WL 5862447, at *5. The circumstances here are even more attenuated. Carroll Walker never downloaded an app, registered for a rideshare service, or provided any personal information. Instead, he simply entered a vehicle that his wife called for him in a one-time situation. A reasonable person in Carroll's shoes—on his phone, waiting for a vehicle to arrive in a few minutes, unfamiliar with Uber's interface and never having previously received any communication from Uber—would not expect to be bound by any contractual obligations by simply entering a car. If a reasonable consumer who actively *registers* for a rideshare service is not necessarily on inquiry notice of terms of service, then a reasonable consumer who merely *participates* in another user's rideshare service is certainly not on inquiry notice. Unlike other valid contracts that require a user to scroll through or click an "I agree button," Uber's text message here does not necessitate any affirmative action on the part of the user. *E.g.*, *Gambo v. Lyft, Inc.*, 642 F. Supp. 3d 46, 51 (D.D.C. 2022).

To avoid this straightforward conclusion, Uber relies on *Selden v. Airbnb, Inc.*, 4 F.4th 148 (D.C. Cir. 2021), to claim that the text message it sent was sufficient for inquiry notice. *See* Uber Brief 30 n.3 (emphasizing that the text message contained a "complete sentence and a bright blue hyperlink"). *Selden* is of no help to Uber. For

starters, the nature of the transaction in *Selden* stands in stark contrast to the circumstances here. Airbnb allows "people to list and rent accommodations around the world," creating a "marketplace for property rentals and payment for bookings." *Id.* at 152. A reasonable person would be likely to understand that seeking to list and rent real property may require acceptance of contractual terms—because renting a home "is a more consequential transaction than, for example, using a ride-sharing app to request a ride." *Doe*, 2024 WL 3677615, at *5. What's more, the consumer in *Selden* "signed up for Airbnb," *Selden*, 4 F.4th at 152, whereas Carroll Walker did not sign up for anything at all. And even comparing just the contract interfaces in the two cases shows why Uber's argument here fails. The contract in *Selden* was a sign-in wrap, which is "designed so that a user is notified of the existence and applicability of the site's 'terms of use' when proceeding through the website's sign-in or login process." *Id.* at 156. Here, Uber did not require Carroll to advance through a sign-in screen, present him with any terms of service or contract, or require him to register for its services before entering the vehicle. A sign-in wrap, like the one in *Selden*, arguably gave far more notice than the single text message Uber relies on here, which has the effect of leaving consumers "unaware that contractual terms were even offered." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022).

II. Uber's attempt to radically expand the third-party beneficiary doctrine to permit enforcement of its arbitration clause against a non-contracting party should be rejected.

Falling back, Uber also argues that, even if no contract was formed with Carroll, this Court should expand the third-party beneficiary doctrine to enable a contracting party like Uber to enforce contractual obligations against third parties who never agreed to anything at all. The district court rejected this novel argument, and this Court should, too. As we explain below, the third-party beneficiary doctrine emerged as a narrow exception to the strict common-law rule of privity, which historically barred any non-party from enforcing a contract. Its purpose has never been to create contractual liabilities for those who did not bargain, consent, or exchange consideration. Instead, from its English common-law roots to its modern American form, the third-party beneficiary doctrine has consistently been understood to expand remedies for third parties, not as an offensive tool for contracting parties to enforce terms against non-signatories.

The concept of third-party beneficiaries—non-parties to a contract who might still benefit from it—traces back to early English common law. The early case of *Dutton v. Pool*, (1677) 83 Eng. Rep. 156 (KB), first carved out an exception to the strict rule of privity. In *Dutton*, a son promised his father that he would pay £1,000 to his sister in exchange for the father foregoing a sale of timber the son would later inherit. *Id.* at 156–57. When the son failed to pay after the father's death, his sister sued to

enforce the promise as a third-party beneficiary. In a short opinion, the King's Bench allowed the suit to proceed, holding that a suit can be brought either by the person "to whom the promise is made" or by the "*cestuy que use*"—the beneficiary. *Id.* at 157.

Although the third-party beneficiary doctrine remained in flux in English common law for the next few centuries, American common law treated the doctrine as relatively settled by the mid-19th century. The New York Court of Appeals' decision in *Lawrence v. Fox*, 20 N.Y. 268 (1859), is often considered the seminal case addressing third-party beneficiaries. There, Holly loaned money to Fox under a contract in which Fox agreed to pay Lawrence, Holly's creditor. *Id.* at 269. When Fox failed to pay, Lawrence sued Fox despite not being a party to the contract. *Id.* The court declared that Lawrence could sue because in a "promise made to one for the benefit of another, he for whose benefit it is made may bring an action for its breach." *Id.* at 274. *Lawrence* was typical of the broader landscape of American common law at the time. *See* Peter Karsten, *The 'Discovery' of Law by English and American Jurists the Seventeenth, Eighteenth, and Nineteenth Centuries: Third-Party Beneficiary Contracts as a Test Case*, 9 Law & Hist. Rev. 327, 333 (1991); *see, e.g.*, *Harper v. Ragan*, 2 Blackf. 39 (Ind. 1827); *Felton v. Dickinson*, 10 Mass. 287, 289 (1813). Indeed, the Supreme Court noted that it was the "prevailing rule in this country" that third parties had the right to sue on a contract that was explicitly made for their benefit. *Hendrick v. Lindsay*, 93 U.S. 143, 149 (1876).

But this rule is one directional. As the Restatement explains, the doctrine only applies to permit a third party to assert a claim *against a contracting party*. It does not extend to situations where a contracting party seeks to enforce contractual terms *against* a non-contracting third party. *See, e.g.*, Restatement (First) of Contracts § 133 cmt. (A.L.I. 1932) (illustrations focusing only on beneficiaries suing promisors); *see also* 3 E. Allan Farnsworth, Farnsworth on Contracts § 10.2 (3d ed. 2004); Restatement (Second) of Contracts § 302 (A.L.I. 2024) (explaining that the doctrine applies only if the contracting parties have expressed an "express or implied intention to benefit" a third party); *id.* §§ 302, 304 (noting that the doctrine permits any intended beneficiary to enforce a contract against a contracting party); *see also Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1064 (D.C. 2008).

Courts have, therefore, consistently refused to apply the third-party beneficiary doctrine to permit enforcement of a contract *against* a third party *unless* the third party is themselves suing to enforce the contract between the contracting parties. In *Mendez v. Hampton Ct. Nursing Ctr., LLC*, 203 So. 3d 146 (Fla. 2016), for example, the Florida Supreme Court explicitly recognized that "the third-party beneficiary doctrine enables a non-contracting party to enforce a contract against a contracting party—not the other way around." *Id.* at 149. The only exception, the court explained, was if the third party had "sued to enforce a contract between other parties." *Id.* at 149 (holding that such an exception was absent because the plaintiff

alleged "negligence and statutory violations" but did not seek "to enforce the [] contract").

Mendez is consistent with other states' understanding of the doctrine as well. *See Szantho v. THI of N.M. at Sunset Villa, LLC*, 570 P.3d 203, 216–17 (N.M. App. 2025) (holding that the third-party beneficiary doctrine does not "work[] 'the other way around' to enable a contracting party to enforce a contract against a non-signatory") (quoting *Mendez*, 203 So. at 149). As other courts have acknowledged, the only exception is where "the third party is attempting to enforce the contract"—and in that circumstance, it is the doctrine of equitable estoppel that kicks in to permit a contract party to enforce the contract against the non-signatory. *See Dickerson v. Longoria*, 995 A.2d 721, 742 (Md. 2010); *see also Thompson v. Pruitt Corp.*, 784 S.E.2d 679, 687 (S.C. Ct. App. 2016); *Cent. Tr. Bank v. Graves*, 495 S.W.3d 797, 803 (Mo. Ct. App. 2016) ("Mere status as a third-party beneficiary, alone, is not sufficient to support binding an unwilling nonsignatory[.]"); *Bates v. Andaluz Waterbirth Ctr.*, 447 P.3d 510, 515 (Or. Ct. App. 2019) ("[T]o hold a third-party beneficiary bound to a [contract], the third-party beneficiary must have manifested assent to be bound by the agreement.") (cleaned up); *Harvey ex rel. Gladden v. Cumberland Tr. & Inv. Co.*, 532 S.W.3d 243, 271 (Tenn. 2017) ("[A] nonsignatory third-party beneficiary is bound to … a contract to the extent that the beneficiary's claims seek to enforce the contract."); *JSM Tuscany, LLC v. Super. Ct.*, 123 Cal. Rptr. 3d 429, 1239–40 (Ct. App.

2011) ("When a [third party] brings a claim which *relies on contract terms* against a defendant, the [third party] may be equitably estopped from repudiating [a] clause contained in that agreement.").

The understanding is also consistent with how courts have applied the doctrine under the law of this jurisdiction. *See, e.g.*, *Flynn v. Tiede-Zoeller, Inc.*, 412 F. Supp. 2d 46, 49, 55 (D.D.C. 2006) (enforcing contract against third-party beneficiary because the third party sought to enforce performance of the contract); *Oehme, van Sweden & Assocs., Inc. v. Maypaul Trading & Servs. Ltd.*, 902 F. Supp. 2d 87, 100 (D.D.C. 2012) (refusing to bind a third-party to a contract because she had "not asserted any claims based on her alleged third-party beneficiary status"); *Mariano v. Gharai*, 999 F. Supp. 2d 167, 171–72 (D.D.C. 2013) (noting that a contracting party can seek to enforce a contractual term against a third-party beneficiary only if the third party "were suing on the contract" (quoting *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 370 (1984)).

The cases Uber relies on are no different. For instance, Uber asserts (at 3) that *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009), stands for the proposition that "non-signatories may be compelled to arbitrate under traditional state-law contract principles like third-party beneficiary status." But that just begs the question—what rule would apply under "traditional state-law contract principles" in a circumstance like this one, where Uber seeks to enforce binding contractual terms against a third

party who never signed any contract and is not attempting to enforce any terms of the contract against Uber?

The other cases that Uber cites just reinforce these basic limitations as well. *See, e.g.*, *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 200 (3d. Cir. 2001) (observing that "courts prevent a non-signatory from embracing a contract, and then turning its back on the portions of the contract, such as an arbitration clause, that it finds distasteful"); *Am. Bureau of Shipping v. Tencara Shipyards S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999) (binding third party that received the "direct benefits" of "significantly lower insurance rates" to contract); *Indus. Elecs. Corp. v. iPower Distrib. Grp.*, 215 F.3d 677, 680–81 (7th Cir. 2000) (holding that a third party was not bound by arbitration clause because the "injuries alleged by [the plaintiff] do not arise under or relate to the" contract); *Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 202–04 (3d Cir. 1983) (enforcing forum-selection clause against third-party beneficiary pleading "contract claims"), *overruled on other grounds by Lauro Lines v. Chasser*, 490 U.S. 496 (1989); *InterGen N.V. v. Grina*, 344 F.3d 134, 146 (1st Cir. 2003) (citing cases qualifying circumstances where third parties can be bound by arbitration clauses).

Here, none of the factors allowing contracts to be enforced against third parties are present. First, Carroll Walker has neither pled a claim sounding in contract nor relied on any contractual term that Uber may have had with another

party. Allowing Uber to enforce binding contractual terms in such a circumstance against Carroll is therefore flatly incompatible with the third-party beneficiary doctrine.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

/s/ Matthew W.H. Wessler
MATTHEW W.H. WESSLER
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
matt@guptawessler.com

LORI ANDRUS
President
JEFFREY R. WHITE
Senior Associate General Counsel
AMERICAN ASSOCIATION FOR JUSTICE
777 6th Street NW, #200
Washington, DC 20001
(202) 617-5620
jeffrey.white@justice.org

Counsel for Amicus Curiae

September 2, 2025

CERTIFICATE OF COMPLIANCE WITH RULE 32(g)(1)

I hereby certify that my word processing program, Microsoft Word, counted 4,963 words in the foregoing brief, exclusive of the portions excluded by Rule 32(f). The document also complies with the typeface requirements of Fed. R. App. P. 32(a)(6) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in proportionally spaced typeface in 14-point Baskerville font.

September 2, 2025

/s/ Matthew W.H. Wessler
Matthew W.H. Wessler

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Matthew W.H. Wessler
Matthew W.H. Wessler