

Excerpt from legal brief written in 2018 about rideshare

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## VI. Transportation Network Companies

Ride-hailing services such as Uber and Lyft, commonly referred to as Transportation Network Companies (TNCs), have recently faced a number of class lawsuits alleging noncompliance with Title III.<sup>1</sup> Plaintiffs in these lawsuits allege one of two areas of ADA non-compliance: refusal to accommodate people who use service animals<sup>2</sup> and lack of provision for wheelchair accessible vehicles.<sup>3</sup>

### A. Coverage Issues

One legal issue facing courts in the early stages of these cases is whether TNCs are covered by Title III—i.e., whether they are places of public accommodation (42 U.S.C. § 12181), private entities providing specified transportation services primarily engaged in the business of transportation people (42 U.S.C. § 12184), both or neither.

Uber and Lyft have moved to dismiss Title III lawsuits against them by characterizing themselves as technology companies not covered by Title III. They have asserted that they provide only an application that connects riders to drivers, rather than providing transportation itself.<sup>4</sup> Courts have not yet determined, as a matter of law, whether TNCs fall under the ADA.

In one of the first cases on this issue, *Ramos v. Uber Technologies, Inc.*, the plaintiff challenged the NTC's failure to provide accessible vehicles for individuals who used wheelchairs.<sup>5</sup> The plaintiffs asserted that Uber and Lyft were specified transportation services. Uber argued that Title III applies only to places of public accommodation, and it was not a place of public accommodation. The court rejected this argument, explaining that Title III also applies to specific transportation services. Lyft and Uber both argued that they were not specific transportation services because they were simply mobile-based ridesharing platforms and provided no transportation services. The court rejected this argument as well, finding the companies plausibly subject to this part of the ADA, noting that the ADA has been found to apply to situations not expressly anticipated. This case settled under confidential terms before the court had an opportunity to substantively evaluate how the ADA applies to TNCs.

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<sup>1</sup> Rachael Reed, Disability Rights in the Age of Uber: Applying the Americans with Disabilities Act of 1990 to Transportation Network Companies, 33 Ga. St. U. L. Rev. 517, 518 (2017) (hereinafter "Reed"),

<sup>2</sup> See *National Federation of the Blind v. Uber Techs*, Case No. 14-cv-04086 (N.D. Cal. filed Sept. 9, 2014).

<sup>3</sup> See *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, (W.D. Tex. Filed Jun. 2, 2014); *Brooklyn Ctr. for Independence for the Disabled v. Uber Techs.*, 17-cv-6399 (S.D.N.Y. filed July 18, 2017); *Equal Rights Ctr. v. Uber*, 17-cv-001272 (D.D.C. filed June 28, 2017); *Crawford v. Uber Techs., Inc.*, 17-cv-02664 (filed May 9, 2017); *Access Living of Metro. Chicago v. Uber Techs.*, 16-cv-09690 (N.D. Ill. Filed Oct. 13, 2016)

<sup>4</sup> See, e.g., *Crawford v. Uber Technologies, Inc.*, 2018 WL 1116725, \*3-4 (N.D. Cal. Mar. 1, 2018); *Ramos v. Uber Techs., Inc.*, No. SA-14-CA-502-XR, 2015 WL 758087, at \*10 (W.D. Tex. Feb. 20, 2015); *Nat'l Fed'n of the Blind of California v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1081 (N.D. Cal. 2015).

<sup>5</sup> *Ramos v. Uber Technologies, Inc.*, 2015 WL 758087 (W.D. Tex. Feb. 20, 2015).

More recently, in *Crawford v. Uber Techs., Inc.*, a district court in California denied Uber's motion for judgment on the pleadings.<sup>6</sup> Uber argued that it merely facilitates connections between two sides of the ridesharing market, much like how Expedia connects patrons to hotel rooms. The court explained that Uber's argument "obscures the fact that Uber arguably *created* a market for this type of transportation."<sup>7</sup> Thus, it concluded that plaintiffs have plausibly alleged that Uber is "primarily engaged in the business of transporting people" within the meaning of Section 12184.

In other cases, plaintiffs have asserted that TNCs fall within Title III's definition of places of public accommodation. In *National Federation of the Blind of California v. Uber*, plaintiffs brought claims under both 42 U.S.C. § 12182 (public accommodation) and 42 U.S.C. § 12184 (specified public transportation service), arguing that Uber failed to accommodate passengers with service animals.<sup>8</sup> Uber filed a motion to dismiss, arguing only that it is not a place of public accommodation. In so doing, it relied on the website access cases in the Ninth Circuit finding that places of public accommodation must have a nexus to a physical place. The court, however, denied Uber's motion allowing the case to move forward. It reviewed the ADA's twelve categories of places of public accommodation and found that Uber plausibly qualifies as a travel service.

## **B. Requirements for TNCs**

It remains unsettled exactly what the ADA requires of TNCs regarding the provision of wheelchair accessible vehicles. Perhaps the most substantive answer on this question to date comes from a district court in California, *Crawford v. Uber Techs., Inc.*, address above, which denied Uber's motion for judgment on the pleadings.<sup>9</sup> In addition to arguing that it was not covered by the ADA, Uber asserted that the plaintiffs' claim could not proceed because Section 12184 does not require private entities to "furnish" or "acquire" wheelchair accessible vehicles. The court found this argument "unavailing in light of the broad language of the ADA ... [which requires] ... an affirmative obligation to make reasonable accommodations, to provide auxiliary aides and services, and remove barriers to access."<sup>10</sup> It said "Uber could very well be required to provide WAV service through some mechanism in order to comply with the anti-discrimination provisions of Section 12184(b)(2)."<sup>11</sup> There are a number of cases currently pending challenging these issues, so the courts may answer this question soon.<sup>12</sup>

There have been two settlements about TNCs and service animals. In the *National Federation of the Blind of California v. Uber* case, referenced above, the plaintiffs presented stories where drivers shouted "no dogs" and left passengers without transportation. In 2016, the court approved a class settlement.<sup>13</sup> As a result, Uber has implemented a more robust enforcement mechanism removing drivers who refuse to transport service animals, now requires drivers to expressly confirm that they understand their legal

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<sup>6</sup> *Crawford v. Uber Techs., Inc.*, 2018 WL 1116725, at \*3–4 (N.D. Cal. Mar. 1, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *National Federation of the Blind of California v. Uber*, 103 F.Supp.3d 1073 (N.D. Cal. 2015).

<sup>9</sup> *Crawford v. Uber Techs., Inc.*, 2018 WL 1116725, at \*3–4 (N.D. Cal. Mar. 1, 2018).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *Brooklyn Ctr. for Independence for the Disabled v. Uber Techs.*, 17-cv-6399 (S.D.N.Y. filed July 18, 2017); *Equal Rights Ctr. v. Uber*, 17-cv-001272 (D.D.C. filed June 28, 2017); *Crawford v. Uber Techs., Inc.*, 17-cv-02664 (filed May 9, 2017); *Access Living of Metro. Chicago v. Uber Techs.*, 16-cv-09690 (N.D. Ill. Filed Oct. 13, 2016).

obligations to transport rides with service animals, and has implemented an enhanced complaint response system to track data.

In 2017, Lyft resolved its own class action where plaintiffs asserted that Lyft's policies, practices and procedures failed to ensure that individuals who are blind travelling with service animals received reliable transportation. Lyft's settlement, which was reached through structured negotiations, required Lyft to adopt a new policy requiring drivers to accommodate service animals, regardless of the driver's preference or circumstances, to immediately and permanently deactivate noncompliant drivers, and to implement a new education system with videos, announcements and other outreach.<sup>14</sup>

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<sup>13</sup> *National Federation of the Blind of California v. Uber Technologies, Inc.*, Settlement agreement available at: <http://dralegal.org/case/national-federation-of-the-blind-of-california-et-al-v-uber-technologies-inc-et-al/>

<sup>14</sup> This settlement is available at <http://dralegal.org/case/lyft-access-riders-service-animals/>.