



4. Those cut-offs have operated as unlawful barriers to entry for women, who are screened out at substantially higher rates than men. Because of well-established physiological differences in upper-body strength, requiring women and men to perform the same number of push-ups imposes a significantly greater burden on women. As a result, women who are otherwise qualified, who passed other parts of the hiring process, and who are capable of performing the CBPO job have been denied employment simply because they missed an arbitrary push-up threshold.

5. The challenged push-up requirements are not necessary to identify applicants who can safely and effectively perform the CBPO job. The ability to complete a fixed number of push-ups in one minute is not a minimum qualification for successful CBPO job performance. In fact, CBP does not require incumbent CBPOs to satisfy comparable push-up requirements at any other point during their careers.

6. CBP knew before adopting the push-up requirements that they would disproportionately exclude women, and its own data confirmed the same pattern after implementation of the tests.

7. Moreover, CBP chooses to implement the push-up requirements even though less discriminatory alternatives are available that measure actual job ability without imposing an unnecessary sex-based barrier.

8. Plaintiffs bring this class action on behalf of themselves and other women who were denied CBPO employment or had their CBPO trainee employment terminated because they failed to meet one or more of CBP's push-up cut-offs.

**JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3).

10. Venue is proper in this District under 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3) because DHS and CBP headquarters are located in the District of Columbia, the challenged policies were directed or approved by officials in this District, and relevant personnel records are located here.

**THE PARTIES**

11. Plaintiff Michelle Candemeres is a citizen of the United States and a resident of Florida. She is a woman. She applied for and was selected as a CBPO trainee, but her conditional employment was terminated after CBP determined that she failed the FGS push-up requirement by two push-ups.

12. Plaintiff LaTanja Outlaw is a citizen of the United States and a resident of Virginia. She is a woman. CBP rejected her CBPO application after determining that she failed the PFT-1 push-up requirement by two push-ups.

13. Plaintiff Jennifer Cimins, formerly known as Jennifer Toolen, is a citizen of the United States and a resident of Florida. She is a woman. CBP rejected her CBPO application after determining that she failed the PFT-2 push-up requirement by one push-up.

14. Defendant Mullin is currently Secretary of DHS, which is an agency of the United States. At all times relevant to this complaint, DHS has been an employer within the meaning of Title VII, 2000e(b). CBP is a component of DHS. CBP's headquarters are located at 1300 Pennsylvania Avenue Northwest, Washington, DC 20229.

**ADMINISTRATIVE EXHAUSTION**

15. Plaintiffs timely exhausted their administrative remedies.

16. On June 10, 2014, Plaintiff Candemeres sought EEO counseling with DHS for sex discrimination, challenging CBP's use of the push-up requirement.

17. On July 21, 2014, Plaintiff Candemeres filed a formal EEO complaint, alleging that the push-up requirement violated Title VII by unlawfully screening out women applicants and trainees.

18. On April 27, 2015, Plaintiff Candemeres filed a Notice of Class Complaint pursuant to 29 C.F.R. § 1614.204, notifying the EEOC and DHS of her intention to pursue the matter as a class complaint on behalf of a putative class of women who failed any of CBP's pre-employment push-up tests.

19. In an appeal of a denial of class certification, the EEOC Office Federal Operations ("OFO") ordered that Plaintiffs Cimins and Outlaw be permitted to participate in the administrative proceeding and were added as representatives of the administrative class. *Candice B. v. Department of Homeland Security, Customs and Border Protection*, EEOC Appeal No. 0120160714, 2016 WL 3361292 (June 1, 2016). OFO defined the class as "all women who were required to take the [PFT-1, PFT-2, and FGS]<sup>1</sup> and failed to pass the push-up qualification standard at any stage." *Id.* at \*8.

20. In appointing Plaintiffs Outlaw and Cimins as class agents, OFO found that they alleged a common injury (failure to pass the push-up requirements resulting in their inability to advance towards permanent employment) that fit squarely within Plaintiff Candemeres's

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<sup>1</sup> In defining the class, OFO mislabeled the three tests as "PCE-1, PCE-2, and the FCS." *Id.* at \*8.

complaint, which “from the beginning” challenged “the push-up tests as a whole.” *Id.* at \*5.

21. On September 28, 2020, an EEOC Administrative Judge entered a decision granting summary judgment to the Agency. The OFO affirmed that decision on October 21, 2024, and denied Plaintiffs’ request for reconsideration on March 3, 2026. Plaintiffs timely filed this action within 90 days of the denial of reconsideration. *See* 29 C.F.R. § 1614.407(c).

### **FACTUAL BACKGROUND**

#### **A. CBPO Hiring Process and Physical Fitness Tests**

22. CBPOs are employed to work at ports of entry to enforce federal customs, immigration, agriculture, and related laws. Their duties include inspecting travelers, baggage, cargo, merchandise, and carriers; identifying and interdicting contraband; processing cargo and travelers; and apprehending, detaining, or arresting individuals who violate federal law at ports of entry.

23. CBP’s hiring process for the CBPO position begins when candidates apply through USAJOBS. Applicants who pass the written entrance examination and meet minimum qualifications receive a tentative offer of employment.

24. After receiving a tentative offer, applicants must satisfy additional requirements, including passing a medical clearance, a background investigation, a drug test, and other pre-employment screening requirements.

25. CBP also requires applicants to pass the PFT-1. Since 2009, the PFT-1 has included a push-up component requiring applicants to perform at least 12 “proper form” push-ups in one minute. An applicant who fails the push-up component fails the PFT-1, regardless of her performance on other components.

26. From approximately 2010 until April 2017, CBP also required applicants to pass the PFT-2 before entering the training Academy. The PFT-2 included a push-up component requiring applicants to perform at least 17 push-ups in one minute. Applicants who failed the PFT-2 push-up requirement were removed from the hiring process.

27. Applicants who successfully complete CBP's pre-employment requirements receive a final job offer and an entrance-on-duty date. They then enter the Academy as CBPO trainees for paid training.

28. At the Academy, trainees receive classroom, law-enforcement, firearms, and physical training. Physical training is a regular part of the Academy program, and trainees can improve their fitness during that training period.

29. At the end of the approximately eighteen-week Academy program, trainees must pass the FGS. Since 2009, the FGS has required trainees to complete at least 24 push-ups in one minute. Trainees who fail to meet the FGS push-up requirement are terminated from their conditional employment. Trainees who pass the FGS become permanent employees.

30. After they become permanent employees, CBPOs are never required to satisfy the push-up requirements again.

31. Incumbent CBPOs hired before implementation of the push-up requirements in 2009 were not required to pass the new push-up requirements to keep their positions.

**B. CBP Adopted Push-Up Requirements That It Knew Would Disproportionately Exclude Women**

32. Before 2009, CBP's hiring process for the CBPO position included physical assessments, but it did not include the push-up requirements challenged here.

33. In or around 2008, CBP undertook a review of the physical fitness requirements for the CBPO position and commissioned a job analysis and validation studies relating to pre-

employment and Academy fitness testing.

34. The data collected by the consultants who conducted the validation studies showed substantial sex-based differences in push-up performance. Women, including successful incumbent CBPOs and CBPO trainees, performed far fewer push-ups on average than men.

35. The commissioned validation studies did not validate the push-up cut-off scores that CBP ultimately implemented. CBP chose the cut-off scores and made the decision to use the cut-offs as pass/fail screens for CBPO applicants and trainees.

36. The validation studies also did not establish that the push-up cut-off scores measure the minimum qualifications necessary to perform the CBPO job. Nor did they establish that the ability to complete 12, 17, or 24 push-ups in one minute predicts successful CBPO job performance or is necessary for safe and effective performance of essential CBPO duties.

37. CBP set push-up cut-off scores that were beyond the number of push-ups that were performed by successful incumbent female CBPOs during the validation studies.

38. CBP continued to use the push-up requirements even after subsequent pass-rate data confirmed that women were disproportionately failing the challenged requirements.

39. CBP's use of the challenged push-up requirements has denied qualified women CBPO employment opportunities, delayed or ended their careers, and caused lost wages, lost benefits, emotional distress, and other harms.

**C. Plaintiff LaTanja Outlaw**

40. Plaintiff LaTanja Outlaw applied for a CBPO position in or about September 2012. She passed the written examination and proceeded through the application process.

41. To prepare for the physical fitness requirements, Plaintiff Outlaw engaged in extensive strength and conditioning training at gym and at home.

42. On or about February 18, 2013, Plaintiff Outlaw completed a comprehensive medical examination and was cleared to continue in the CBPO hiring process.

43. That same day, Plaintiff Outlaw took the PFT-1. She passed the other physical components of the PFT-1 and achieved an overall score that would have been passing absent the push-up cut-off.

44. CBP nevertheless determined that Plaintiff Outlaw failed the PFT-1 because it credited her with only 10 approved push-ups, two short of the 12 push-ups required.

45. Because CBP determined that she failed the push-up component, CBP rejected Plaintiff Outlaw's CBPO application.

46. Plaintiff Outlaw was qualified and capable of performing the CBPO position. After CBP rejected her application, she obtained a position as a Pentagon Police Officer with the U.S. Department of Defense, where she performs demanding federal law-enforcement work to protect one of the most sensitive sites in the nation. Plaintiff Outlaw believes that her current work at the Department of Defense is more physically demanding than the CBP Officer position.

47. CBP's rejection of her CBPO application caused Plaintiff Outlaw lost employment opportunities, lost wages and benefits, emotional distress, humiliation, and other harm.

**D. Plaintiff Jennifer Cimins**

48. Plaintiff Jennifer Cimins has worked for DHS since 2006 and successfully performed public safety work for the Transportation Safety Administration ("TSA") before applying to the CBPO position.

49. In or about 2007, Plaintiff Cimins applied for a CBPO position and passed the written examination.

50. To prepare for the physical aspects of the CBPO application process, Plaintiff

Cimins engaged in extensive physical training, including CrossFit, personal training, weightlifting, strength training, and cardiovascular training.

51. In or about October 2009, Plaintiff Cimins took and passed the PFT-1, including the push-up component. CBP credited her with 24 push-ups in one minute, and she received an overall passing score.

52. After passing the PFT-1, several years went by before she heard from the Agency regarding her application. She routinely updated her medical information and submitted to updated drug testing, as her information had lapsed while she waited to learn about the status of her application from the Agency.

53. On or about July 31, 2013, Plaintiff Cimins took the PFT-2. She passed both the running and sit-up components.

54. CBP then required Plaintiff Cimins to complete 17 push-ups in one minute. CBP credited her with 16 push-ups.

55. Because CBP determined that she failed the PFT-2 push-up component by one push-up, CBP rejected Plaintiff Cimins's CBPO application. CBP did not allow her to review the video of her test or retake the push-up test. By that time, she had exceeded the maximum age to submit a new CBPO application.

56. Plaintiff Cimins was qualified and capable of performing the CBPO position. Ms. Cimins currently works as a Master Transportation Security Officer and Master Security Training Instructor for the TSA. She has worked closely with CBPOs performing similar airport security duties.

57. CBP's rejection of her CBPO application caused Plaintiff Cimins lost employment opportunities, lost wages and benefits, emotional distress, humiliation, depression, and other harm.

**E. Plaintiff Michelle Candemeres**

58. Plaintiff Michelle Candemeres first applied for a CBPO position in or about 2011. She passed the written exam, provided information for a background investigation, and submitted to a pre-employment drug screening.

59. On or about December 15, 2011, Plaintiff Candemeres took and passed the PFT-1, including the push-up component.

60. After passing the PFT-1, Plaintiff Candemeres continued through the CBPO hiring process, satisfying a background investigation, medical screening, and polygraph requirements.

61. Plaintiff Candemeres engaged in extensive physical training to prepare for the CBPO physical fitness requirements, including CrossFit, small group personal training, weight training, cardiovascular exercise, high-intensity exercise, and running.

62. On or about February 8, 2013, Plaintiff Candemeres took the PFT-2. CBP determined that she failed the PFT-2 push-up component and rejected her application.

63. Plaintiff Candemeres promptly reapplied. She again passed the PFT-1 and later passed the PFT-2. CBP then offered her a conditional CBPO trainee position.

64. Plaintiff Candemeres started working as a CBP Officer Trainee at the Miami International Airport on or about December 16, 2013. She underwent about a month of training at the airport before reporting to the training Academy on or about January 17, 2014.

65. At the Academy, Plaintiff Candemeres received training on laws and rules relating to the CBPO position, firearms training, and physical fitness training. She successfully completed her written examinations and firearms requirements.

66. On or about May 6, 2014, CBP terminated Plaintiff Candemeres's conditional CBPO employment after the FGS because CBP credited her with only 22 approved push-ups—

two fewer than the required 24.

67. Plaintiff Candemeres was qualified and capable of performing the CBPO position. After her termination, she successfully performed federal security and law-enforcement-related work for TSA and U.S. Immigration and Customs Enforcement.

68. CBP's termination of her CBPO employment caused Plaintiff Candemeres lost employment opportunities, lost wages and benefits, emotional distress, humiliation, depression, anxiety, and other harm.

69. On July 21, 2014, Plaintiff Candemeres filed a EEO complaint of sex discrimination with DHS generally challenging CBP's use of the push-up requirement as a prerequisite to employment as a CBPO.

### **CLASS ALLEGATIONS**

70. Plaintiffs bring this as a class action pursuant to Federal Rules of Civil Procedure 23 on behalf of the following class that was certified by the Office of Federal Operations: all women who were required to take the PFT-1, PFT-2, or FGS for the CBPO position and failed to pass the push-up qualification standard at any stage. *See Candice B*, 2016 WL 3361292, at \*8.

71. The proposed class meets all the requirements of Rule 23(a) and (b)(3).

72. The class is so numerous that joinder is impracticable. Based on the data to which the parties stipulated in the EEOC proceeding, between 2009 and 2017 alone, CBP administered the PFT-1 to approximately 10,996 women, the PFT-2 to approximately 1,043 women, and the FGS to approximately 1,179 women. Of those applicants, approximately 2,047 women failed the push-up component of the PFT-1, approximately 53 women failed the push-up component of the PFT-2, and approximately 15 women failed the push-up component of the FGS. Upon information and belief, the push-up requirement continues to be used to screen candidates for the CBPO

position and, as women continue to fail to satisfy the requirement disproportionately, they are sufficiently numerous to make joinder impracticable.

73. There are questions of law and fact common to the class, including whether CBP's push-up requirements disproportionately exclude women; whether the requirements are job related and consistent with business necessity; whether less discriminatory alternatives are available; and whether CBP intentionally maintained requirements it knew would exclude women.

74. Plaintiffs' claims are typical of the class because Plaintiffs, like other class members, were qualified to perform the duties of the CBPO position but were denied employment because they failed the challenged push-up requirements. Therefore, they challenge the same practice as members of the proposed class and seek the same relief.

75. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have no interests antagonistic to the class, and they have retained counsel experienced in civil-rights, employment-discrimination, and complex class-action litigation.

76. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy. Plaintiffs' and class members' claims arise from the same standardized employment practices, common proof will determine Defendant's liability, and classwide adjudication will avoid duplicative proceedings and inconsistent results.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **Disparate Impact in Violation of Title VII (On Behalf of Plaintiffs and the Proposed Class)**

77. Plaintiffs incorporate and reallege paragraphs one through 76 as if fully set forth herein.

78. CBP's use of the challenged push-up requirements in the PFT-1, PFT-2, and FGS has disproportionately denied employment to women applicants and trainees for the CBPO position.

79. The challenged push-up requirements are not job-related or consistent with business necessity. The requirements do not measure the minimum physical qualifications necessary to perform the CBPO job and do not validly predict successful job performance.

80. Less discriminatory alternatives are available that would serve CBP's legitimate business needs while reducing adverse impact on women. CBP has refused to adopt those alternatives.

81. The foregoing conduct constitutes unlawful discrimination in violation of Title VII, 42 U.S.C. 2000(e) *et seq.*

## **COUNT TWO**

### **Disparate Treatment in Violation of Title VII (On Behalf of Plaintiffs and the Proposed Class)**

82. Plaintiffs incorporate and reallege paragraphs one through 76 as if fully set forth herein.

83. CBP knew before and after implementing the challenged push-up requirements that the requirements would impose a substantially greater burden on women than on men and would exclude qualified women from CBPO employment opportunities.

84. Despite that knowledge, CBP intentionally adopted and maintained push-up cut-off scores that disproportionately excluded women from employment, it rejected or failed to implement available alternatives, and it continued using the challenged requirements after data confirmed their discriminatory effect on women.

85. CBP's intentional adoption and maintenance of the challenged requirements, with knowledge of their discriminatory effect and without a job-related basis sufficient to justify that burden, constitutes intentional sex discrimination in violation of Title VII, 42 U.S.C. 2000(e) *et seq.*

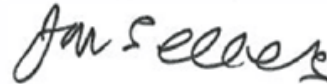
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and grant the following relief:

- a. Certify this action as a class action under Federal Rule of Civil Procedure 23;
- b. Appoint Plaintiffs as Class Representatives and appoint Plaintiffs' counsel as Class Counsel;
- c. Declare that Defendant's acts or omissions set forth in this Complaint constitute unlawful actions in violation of Title VII;
- d. Order Defendant to cease and desist from engaging in the discriminatory policies and practices described in this Complaint in a manner that violates Title VII;
- e. Order Defendant to adopt and implement lawful, validated, job-related selection procedures that do not unnecessarily exclude women and that minimize adverse impact consistent with Title VII;
- f. Award back pay to all class members for lost wages and benefits and compensatory damages for humiliation, emotional distress, and mental pain and anguish caused by Defendant's unlawful conduct;
- g. Award reasonable attorneys' fees, litigation expenses, and costs; and
- h. Grant such other and further relief as the Court deems just and proper.

May 29, 2026

Respectfully submitted,



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Joseph M. Sellers (#318410)  
Phoebe M. Wolfe (#90014711)  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Avenue, Eighth Floor  
Washington, DC 20005  
Tel: (202) 408-4600  
Fax: (202) 408-4699  
jsellers@cohenmilstein.com  
pwolfe@cohenmilstein.com

Jeremy D. Wright (#483297) (pro hac vice  
application forthcoming)  
Nicole E. Portnov (#1046989)  
Kator, Parks, Weiser & Wright, PLLC  
1150 Connecticut Ave., Ste. 705  
Washington, DC 20036  
Tel: (202) 898-4800  
Fax: (202) 289-1389  
jwright@katorparks.com  
nportnov@katorparks.com

*Attorneys for Plaintiffs and the Proposed  
Class*