

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

UNITED STATES OF AMERICA	)	
	)	
v.	)	DEFENSE OBJECTION TO
	)	GOVERNMENT MOTION
	)	TO PRE-ADMIT
SSGT KINYADA J. JOHNSON	)	
552d Operations Support Squadron (AETC)	)	
Tinker Air Force Base, OK	)	4 February 2026
	)	

COMES NOW the Accused, SSgt Johnson, by and through counsel, and respectfully moves this Honorable Court DENY the Government's motion to pre-admit evidence outside the view and consideration of the panel.

The Defense DOES request an Article 39(a) UCMJ, session to present additional argument in opposition of the Government's motion.

SUMMARY

On 26 January 2026, the Government filed a motion to pre-admit evidence in the case of *United States v. SSgt Johnson*. Specifically, the Government seeks to pre-admit the exhibits in Table 1:

Table 1

Prosecution Exhibit 1 for ID	DDRP Records (redacted) and Certification for 31 January 2025 Urinalysis (Specimen F529-0048-245)	various dates	8 pages
Prosecution Exhibit 2 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0048-245	10 July 2025	35 pages
Prosecution Exhibit 3 for ID	DDRP Records (redacted) and Certification for 10 February 2025 Urinalysis (Specimen F529-0048-579)	various dates	8 pages
Prosecution Exhibit 4 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0048-579	2 January 2026	35 pages
Prosecution Exhibit 5 for ID	DDRP Records (redacted) and Certification for 20 February 2025 Urinalysis (Specimen F529-0048-628),	various dates	8 pages
Prosecution Exhibit 6 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0048-628	31 December 2025	34 pages

Prosecution Exhibit 7 for ID	DDRP Records (redacted) and Certification for 27 February 2025 Urinalysis (Specimen F529-0048-831)	various dates	8 pages
Prosecution Exhibit 8 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0048-831	31 December 2025	35 pages
Prosecution Exhibit 9 for ID	DDRP Records (redacted) and Certification for 6 March 2025 Urinalysis (Specimen F529-0049-023)	various dates	8 pages
Prosecution Exhibit 10 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0049-023	12 January 2026	34 pages
Prosecution Exhibit 11 for ID	DDRP Records (redacted) and Certification for 13 March 2025 Urinalysis (Specimen F529-0049-217)	various dates	8 pages
Prosecution Exhibit 12 for ID	FDTL Drug Testing Report (redacted) and Certification for Specimen F529-0049-217	14 July 2025	34 pages
Prosecution Exhibit 13 for ID	DDRP Records (redacted) and Certification for 21 March 2025 Urinalysis (Specimen F529-0049-260)	various dates	8 pages
Prosecution Exhibit 14 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0049-260	9 July 2025	36 pages
Prosecution Exhibit 15 for ID	DDRP Records (redacted) and Certification for 31 Mar 2025 Urinalysis (Specimen F529-0049-494)	various dates	8 pages
Prosecution Exhibit 16 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0049-494	9 July 2025	34 pages
Prosecution Exhibit 17 for ID	DDRP Records (redacted) and Certification for 8 Apr 2025 Urinalysis (Specimen F529-0049-752)	various dates	8 pages
Prosecution Exhibit 18 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0049-752	9 July 2025	33 pages
Prosecution Exhibit 19 for ID	DDRP Records (redacted) and Certification for 16 Apr 2025 Urinalysis (Specimen F529-0049-859)	various dates	8 pages
Prosecution Exhibit 20 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0049-859	11 July 2025	35 pages
Prosecution Exhibit 21 for ID	DDRP Records (redacted) and Certification for 24 Apr 2025 Urinalysis (Specimen F529-0050-018)	various dates	8 pages

Prosecution Exhibit 22 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0050-018	8 January 2026	34 pages
Prosecution Exhibit 23 for ID	DDRP Records (redacted) and Certification for 5 May 2025 Urinalysis (Specimen F529-0050-268)	various dates	8 pages
Prosecution Exhibit 24 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0050-268	9 January 2026	35 pages
Prosecution Exhibit 25 for ID	DDRP Records (redacted) and Certification for 9 June 2025 Urinalysis (Specimen F529-0051-089)	various dates	8 pages
Prosecution Exhibit 26 for ID	AFDTL Drug Testing Report (redacted) and Certification for Specimen F529-0051-089	10 July 2025	34 pages

FACTS

1. SSgt Johnson faces one charge and one specification of wrongful use of delta-9 tetrahydrocannabinol under Article 112a, UCMJ. This charge was preferred on 10 September 2025, referred on 18 December 2025, and served on 19 December 2025. A motions hearing is scheduled for 10 February 2026.
2. On 16 January 2026, the Government filed notice under M.R.E. 902(11) of its intent to admit twenty-six separate DDRP records and AFDTL drug testing records associated with SSgt Johnson’s alleged random urinalysis and “positive Bickel test results” from 22 January 2025 to 09 June 2025. (Attachment 1).
3. On 26 January 2026, the Government filed a motion to pre-admit evidence in the case of *United States v. SSgt Johnson*. Specifically, the Government seeks to pre-admit the twenty-six exhibits in Table 1.

BURDEN

4. Pursuant to RCM 905(c)(2)(A), the Government as the moving party has the burden of proof. Pursuant to RCM 905(c)(1), the standard of proof on any factual issue necessary to decide this motion is by a preponderance of the evidence.

LAW

5. The Sixth Amendment guarantees the right of the accused “to be confronted with the witnesses against him.” U.S. Const. amend. VI.
6. M.R.E. 902(11) permits the self-authentication of *non-testimonial* domestic business records, allowing their admission without foundational testimony if accompanied by a written certification from a qualified person. This certification must attest that the record was made at or

near the time by someone with knowledge, kept in the course of a regularly conducted business activity, and that it was a regular practice of that business to make such a record.

7. M.R.E. 803(6) offers a hearsay exception for business records, allowing their admission if they were made at or near the time by someone with knowledge, kept in the course of a regularly conducted business activity, and if it was a regular practice to create such records. Admissibility also requires authentication by a qualified person or certification, and that the circumstances do not indicate a lack of trustworthiness.

8. In *Crawford*, the Supreme Court held that testimonial evidence may not be admitted unless the declarant is unavailable and the accused had a prior opportunity to cross-examine. *Crawford v. Washington*, 541 U.S. 36 (2004).

9. M.R.E. 403 authorizes the Court to exclude relevant evidence if its “probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the fact finder, undue delay, wasting time, or needlessly *presenting cumulative evidence*.”

DDRP Records – Specifically the “Electronic Printout of the Results”

10. The Supreme Court has held that sworn certificates of forensic drug analysis are testimonial statements. Admission of these certificates without live testimony violate the accused’s Sixth Amendment right to confrontation. The Court rejected the idea that such certificates were “business records.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

11. In 2011, the Supreme Court further ruled that introducing forensic results without producing the declarant analyst violates the Confrontation Clause, even when another qualified analyst is available to explain laboratory procedures. Only the analyst who actually performed or observed the test could testify about it. *Bullcoming v. New Mexico*, 564 U.S. 647 (2011).

12. Specific to the military, CAAF held that AFDTL “drug testing reports,” including cover memoranda summarizing positive results, were testimonial statements under *Crawford*. Further elaborating that these documents were created specifically for use at trial and not as part of routine business activity. *U.S. v. Blazier (Blazier I)*, 68 M.J. 439 (C.A.A.F. 2010).

ARGUMENT

14. The Defense is challenging the admissibility of all listed proposed Government Exhibits for Identification.

5th Amendment and 6th Amendment

15. Generally speaking, admitting this evidence without affording SSgt Johnson the opportunity to challenge its reliability (e.g. challenging foundation) *in front of the factfinder* violates 5th Amendment due process and 6th Amendment confrontation rights. See *United States v. Bess*, 75 MJ 70 (C.A.A.F. 2016).

Final Page of all DDRP Records – (Prosecution Exhibits 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, and 25 for ID)

16. The eighth page of each of the above-listed Pro. Exhibits contain an "Electronic Printout of the Results" page. (Attachment 2). This page is created as a summary of the testing results for the base. The document provides the DoD ID, LAN number, abbreviation for the drug screening that was completed, and *the results, including whether the sample with positive, the substance, and the numerical level.*

17. The Government lists the business records exception under MRE 803(6) as a basis for admissibility. However, that rule does not apply to records "prepared for use in litigation" or under circumstances indicating a lack of trustworthiness. C.A.A.F. has repeatedly held that military drug testing reports are not neutral business records but documents prepared for potential disciplinary or criminal proceedings. *Blazier I*, 68 M.J. at 442–43; *Blazier II*, 69 M.J. at 222; and *Tearman*, 72 M.J. at 60. Here, the "Electronic Printout of the Results" page at issue is functionally identical to an AFDL "Test Summary Page," as it contains a conclusory statement made for the sole purpose of proving a past event, a positive drug test, for use in a later criminal prosecution. As such, it falls squarely outside the rationale of M.R.E. 803(6) and constitutes inadmissible hearsay.

18. Next, the *Sixth Amendment* guarantees SSgt Johnson the right to confront the witnesses against him. The "Electronic Printout of the Results" is a testimonial statement under the standard established in *Crawford*, and its progeny. This document's primary purpose is to establish or prove a fact, the presence and level of a controlled substance. C.A.A.F. has directly held that laboratory reports and cover memoranda that summarize drug testing results are testimonial because their function is to accuse. The "Electronic Printout" serves no other purpose than to provide a declaration of the test result, acting as a direct substitute for the live testimony of the analyst who performed the test.

19. Finally, even if this Court were to find the "Electronic Printout of the Results" page admissible, it should still be excluded under M.R.E. 403. M.R.E. 403 grants the Court authority to exclude relevant evidence if its probative value is substantially outweighed by a danger of "*needlessly presenting cumulative evidence.*" The Government has indicated it will seek to admit the full redacted AFDL records, which contain the same data points. Specifically, the positive result and its corresponding numerical value that are summarized on the "Electronic Printout" are contained in the redacted AFDL report. The admission of a separate, highlighted summary page offers no new information and is therefore entirely duplicative. Its only effect is to place undue emphasis on a single piece of evidence that is already contained within a more comprehensive exhibit. Any minimal probative value is substantially outweighed by the danger of misleading the members and wasting time.

20. Following a full hearing on the evidentiary issues surrounding the items of evidence the Government seeks to pre-admit, and an opportunity for the Court to rule on the issues contained therein, the Defense argues that pre-admission will not be deemed appropriate. Admitting this evidence without affording the SSgt Johnson the opportunity to challenge its reliability *in front*

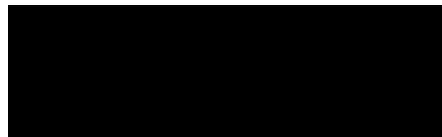
of the factfinder violates his 5th Amendment due process and 6th Amendment confrontation rights.

RELIEF REQUESTED

21. Based upon the above stated arguments, the Government should be required to *lay the appropriate foundation at trial* and move the items into evidence during the course of the Government's case-in-chief.

22. Wherefore, the Defense respectfully requests that the Military Judge deny the Government's motion for pre-admission of evidence.

Respectfully Submitted,



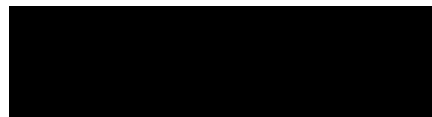
TRAVIS F. ELLIS, Capt, USAF
Defense Counsel

2 Attachments

1. Government's MRE 902(11) Notice, dated 16 January 2026, 7 pages
2. DDRP "Electronic Printout of the Results", various dates, 13 pages

CERTIFICATE OF SERVICE

I hereby certify that I delivered a copy of the Defense Response to the Government's Motion to Pre-admit on the Military Judge and Trial Counsel, via electronic mail, on 4 February 2026.



TRAVIS F. ELLIS, Capt, USAF
Defense Counsel