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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 OLATUNDE JAMES TEMITOPE  
15 AKINTONDE,

16 Defendant.

Case No. 21-cr-1178-JLS

**UNITED STATES' SENTENCING  
MEMORANDUM**

Date: November 24, 2021  
Time: 1:45 p.m.  
Courtroom: 4D

**Honorable Janis L. Sammartino**

17  
18 The UNITED STATES OF AMERICA, by and through its counsel, Randy S.  
19 Grossman, Acting United States Attorney, and Michael A. Deshong and Adam Gordon,  
20 Assistant United States Attorneys, hereby files its Sentencing Memorandum in the above-  
21 captioned case. This Sentencing Memorandum is based upon the files and records of this  
22 case.

23 **I.**

24 **INTRODUCTION**

25 The United States submits this memorandum in support of its recommendation for a  
26 180-month custodial sentence. This memorandum sets forth the extent of Defendant  
27 Olatunde James Temitope Akintonde's involvement in distributing controlled substances,  
28 promoting the use and distribution of controlled substances on social media, his distribution

1 of the pills that caused the death of the victim, Samuel Guenther (identified by his initials  
2 S.J.G., in the indictment), and his dishonest attempts to distance himself from Samuel  
3 Guenther's death.

4 **II.**

5 **STATEMENT OF THE CASE**

6 On November 25, 2019, the Government filed a criminal complaint charging  
7 Akintonde with distribution of fentanyl. Case No. 19cr5201-JM, ECF No. 1. On December  
8 24, 2019, Defendant waived indictment and was arraigned on an information charging him  
9 with distribution of fentanyl. Case No. 19cr5201-JM, ECF No. 17. On April 14, 2021, the  
10 Government filed an indictment on April 14, 2021 charging Akintonde with distribution of  
11 fentanyl and distribution of fentanyl resulting in death. Case No. 21cr1178-JLS, ECF No.  
12 1. On July 8, 2021, Akintonde pled guilty to distribution of fentanyl and agreed that the  
13 fentanyl he distributed caused the death of Samuel Guenther. ECF No. 17. As part of his  
14 plea agreement, Akintonde stipulated that the Guidelines for distribution resulting in death  
15 should apply. *Id.*

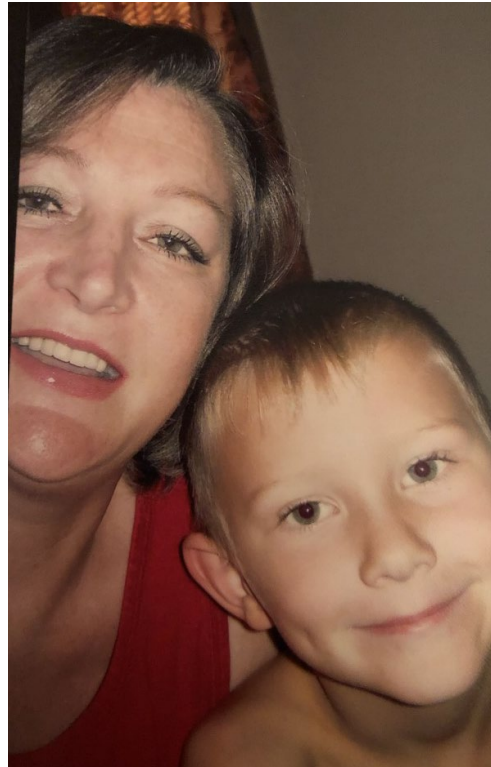
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III.

STATEMENT OF THE FACTS

A. Samuel Guenther—August 29, 1999 to February 28, 2019



At its core, this case is about the death of Samuel Guenther on February 28, 2019 after consuming two counterfeit pills containing fentanyl. Samuel’s mother, Donna, will speak at sentencing to describe her and her family’s loss, and to provide the Court with a sense of who Samuel was as a person. To help the Court have background on why Samuel’s death was so impactful, counsel would offer the following:

Samuel J. Guenther was born on August 29, 1998. Samuel’s arrival was especially meaningful to his family because he arrived in the wake of loss. At the time of Samuel’s birth, his parents had been attempting to conceive and—after several miscarriages—a medical issue put an end to their hopes of having another child of their own. Samuel was born just days after Donna underwent the surgery that would prevent her from carrying another child to term. Donna was present in the delivery room though during Samuel’s birth

1 and even got to cut the umbilical cord after delivery, which as she describes it “started his  
2 thread in [their] Family Tapestry.”

3 Samuel’s family describes him as an energetic and affectionate young child: “He was  
4 not a child that would sit in front of the TV all day.” He loved to play, and he loved to be  
5 around his family. He became an athlete at a young age and developed a love for soccer. He  
6 would play on multiple teams each season so he could play year-round. His energy and his  
7 affection for his family were traits that persisted as Samuel grew into a young man.

8 When Samuel reached high school, he experienced challenges as a result of his  
9 Attention Deficit Hyperactive Disorder (ADHD). His parents went through a divorce when  
10 he was 15 years old, and his mother moved to Riverside County while his father remained  
11 in San Diego. For an affectionate child who loved his family, this separation hit Samuel  
12 especially hard. Samuel remained in San Diego with his father, and he tried to see his mother  
13 as much as he possibly could. Unfortunately, Samuel began to stumble. He began missing  
14 school and having conflict with his father.

15 In February 2019, Samuel was only nineteen years old and was trying to get his life  
16 back on track. On Thursday, February 28, 2019, the day before Samuel passed, he spoke  
17 with his mother to tell her he signed up for Urban Core so he could finish his high school  
18 education and get assistance with finding a job while he completed school. He told her he  
19 was scheduled to start on the following Monday. He said he wanted to get two tattoos and  
20 they joked about how the first tattoo better say “mom.”

21 Samuel would never get to start a job through Urban Core or complete his education  
22 because he purchased two counterfeit pills from Defendant James Akintonde on February  
23 28, 2019. The pills were blue and stamped with an “M” one side and a “30” on the other so  
24 they looked like 30 milligram oxycodone hydrochloride pills manufactured by Mallinckroft  
25 pharmaceuticals. But these pills were not manufactured by any reputable company. They  
26 were counterfeit. Those two pills contained the fentanyl that would cause Samuel Guenther  
27 to pass away in his bed that very same evening.

1 **B. February 28, 2019: The Death of Samuel Guenther**

2 On Friday, March 1, 2019, San Diego County Sheriff's Department (SDSD) Deputy  
3 C. Hill, and San Diego County Medical Examiner Investigator (MEI) C. Thompson  
4 responded to a report of a deceased subject at a residence on Abbeywood Road, Santee,  
5 California 92071 (the Residence). They found Samuel laying face up on his bed.

6 Samuel's father, C.G., told the officers that the last time C.G. had seen Samuel alive  
7 was around 10:30 p.m. the night before. C.G. said he and Samuel were watching television  
8 together in the living room and C.G. went to his bedroom to go to sleep while Samuel  
9 remained in the living room. On March 1, 2019, at approximately 6:15–6:30 a.m., C.G. left  
10 the house for work and did not see Samuel. When C.G. returned home from work sometime  
11 around 6:00 p.m., he went to Samuel's bedroom and turned on the light to find Samuel  
12 laying face up on his bed. C.G. tried to rouse Samuel—both verbally and physically—but  
13 could not. C.G. noticed Samuel was cold to the touch and had foam around his mouth and  
14 called 911 for assistance.

15 At approximately 6:08 p.m., the Sheriff's Office Dispatch received the call. Deputy  
16 Hill and his partner arrived at the Residence and confirmed the death at approximately 6:11  
17 p.m. Deputy Hill then contacted the Medical Examiner's Office and MEI Thompson  
18 arrived at the Residence at approximately 7:18 p.m. MEI Thompson identified the foam  
19 around Samuel's mouth as a possible indication of a drug overdose and the Drug  
20 Enforcement Administration (DEA) was notified. Group Supervisor (GS) Forbes and Task  
21 Force Officer (TFO) Ellington from DEA responded to the Residence.

22 **C. March 2019: Cooperating Witness Identifies Milliyagi as the Source of Pills**

23 As part of the investigation, GS Forbes contacted one of Samuel's friends  
24 (Cooperating Witness, or CW). CW told GS Forbes that he/she knew Samuel had  
25 purchased some Percocet pills on around noon on Thursday, February 28, 2019. CW told  
26 GS Forbes that he/she and Samuel exchanged messages throughout the night leading up to  
27 his death.

1 After GS Forbes's initial conversation with CW, TFOs Ellington and Whisler met  
 2 CW in a public location to interview CW. During this interview, CW identified the person  
 3 that sold Samuel Percocet pills on February 28, 2019 as an African-American male that  
 4 goes by the moniker, "Milli." CW allowed TFOs Wisler and Ellington to view his/her cell  
 5 phone and photograph a series of messages between CW and Samuel on Thursday,  
 6 February 28, 2019. CW also provided his/her Instagram username and identified Samuel's  
 7 Instagram username as "stayslidin."

8 **D. Milliyagi's Social Media Shows He Sold Pills that Caused Samuel's Death**

9 TFOs Whisler and Ellington subsequently obtained warrants to search Samuel's  
 10 Instagram and Snapchat accounts. Records from Samuel's Instagram account indicate that  
 11 on February 28, 2019, he discussed purchasing drugs with Akintonde, arranged a meeting  
 12 to conduct the transaction, and then texted Defendant afterwards to comment on the quality  
 13 of the drugs he purchased. Throughout Samuel's conversations with Akintonde, Samuel  
 14 periodically exchanged messages with CW as well.

15 **1. Conversations Showing Samuel Bought Drugs from Defendant**

16 Samuel and Akintonde discussed Samuel buying drugs from Defendant the night of  
 17 February 27, 2019, but it appears that they did not conduct a transaction that evening.  
 18 Defendant resumed talking with Samuel about selling drugs on February 28, 2019.

Time	Sender	Content
11:10:33 a.m.	Samuel	Sh*t I'm get it tn [tonight]
11:10:49 a.m.	Samuel	To [sic] many Feds last night
11:10:55 a.m.	Samuel	How much?
11:11:00 a.m.	milliyagi	Hella bliid [blood] f*ck em
11:11:05 a.m.	milliyagi	Nd [And] what time
11:11:41 a.m.	Samuel	Idk [I don't know] yet deciding if I want perks [Percocet pills] or yay [cocaine]



1	11:12:21 a.m.	Samuel	I'll lyk [let you know] by tn [tonight] tho just put away 2 perks just in case
2	11:12:32 a.m.	Samuel	I hope they fire [good quality] doe [though]
3	11:12:46 a.m.	milliyagi	They fire [good quality]
4	11:12:55 a.m.	milliyagi	But blood I got like 20
5	11:13:01 a.m.	milliyagi	Ima have some for you
6	11:45:31 a.m.	milliyagi	Wya [Where you at?]
7	11:45:35 a.m.	milliyagi	I can bring it to you
8	11:45:40 a.m.	milliyagi	Which one you want?
9			
10			
11			

12 Almost immediately after this exchange with Defendant, at 11:48:10 a.m., Samuel  
13 messaged CW to say to ask “So I’m bouta have [about to have] the plug [drug dealer] pull  
14 up bit idk [but I don’t know] if I want perks or white girl [cocaine] suggestions.” At  
15 12:22:39 p.m., CW responded “Perks.” At 12:48:43 p.m., Samuel messaged CW that “I  
16 think these the little round ones” and then followed up to say “There [sic] expensive”  
17 (12:49:22 p.m.), and “He sells them 25 pop” (12:50:18 p.m.).<sup>1</sup>

18 After deciding to purchase Percocet pills (“perks”) from Defendant, they discussed  
19 when and where they would meet.

20	Time	Sender	Content
21	2:26:08 p.m.	milliyagi	I have work around 5:30 tho
22	2:26:59 p.m.	Samuel	Lemme think real quivk [quick]
23	2:27:16 p.m.	milliyagi	Aigjt [Alright]
24	3:18:58 p.m.	Samuel	I'll meet you at ur work
25			
26			
27			

28 <sup>1</sup> This exchange between S.J.G. and CW between noon and 1:00 p.m. explains why CW believed Samuel purchased the pills around noon.

1	3:19:33 p.m.	milliyagi	How much you need so I can have it read [ready]
2	3:19:40 p.m.	Samuel	I'ma get 2 perks
3	3:19:51 p.m.	milliyagi	Oh okay

5 As Samuel arranged to purchase Percocet pills from Defendant, he simultaneously  
6 made plans with CW to meet after CW got off work to take the Percocet pills and go to a  
7 jacuzzi. At around 5:00 p.m., Defendant contacted Samuel to say he was going to work.

8	Time	Sender	Content
9	5:00:03 p.m.	milliyagi	I'm bout to go to work
10	5:00:46 p.m.	Samuel	Just keep it on u I'll pull up to ur work eventually
11	5:01:01 p.m.	Samuel	And send a video of em
12	5:05:43 p.m.	Samuel	What they say 30?
13	5:06:00 p.m.	milliyagi	Yea
14	5:08:44 p.m.	Samuel	U take any of em?
15	5:09:05 p.m.	Samuel	I swear some perks just don't get u high
16	5:11:54 p.m.	Samuel	Shit ima just trust [you] I'll slide yo [to] ur work to 17 pick em up
18	5:37:03 p.m.	milliyagi	I'm at work
19	<i>[messages omitted for brevity]</i>		
20	5:56:26 p.m.	Samuel	Omw [on my way]
21	6:25:18 p.m.	milliyagi	Only take one tho
22	6:30:59 p.m.	Samuel	I'm here



1 Defendant appeared to already know the drugs he sold Samuel were particularly  
 2 potent. As noted above, he told Samuel before they met to “[o]nly take one tho.” After their  
 3 meeting, Samuel followed up on that comment.

Time	Sender	Content
6:58:54 p.m.	milliyagi	Aye
7:17:42 p.m.	Samuel	Wassup
7:17:54 p.m.	Samuel	Why take one they that strong
7:19:34 p.m.	milliyagi	Yea
7:19:34 p.m.	milliyagi	Nd it to first tine [And it’s your first time]
7:20:12 p.m.	Samuel	I’ve popped perks
7:20:23 p.m.	Samuel	But hella
8:14:34 p.m.	milliyagi	oh aight

## 2. Conversations Showing Samuel’s Reaction to Defendant’s Drugs

17 After Samuel messaged Defendant at 6:30 p.m. to say he was at Defendant’s  
 18 work, he began messaging CW to and described the effects of the drugs he had  
 19 purchased.

Time	Sender	Content
6:56:15 p.m.	Samuel	Dam b these perks are fucking fire [high quality]
6:57:20 p.m.	Samuel	Issa wrap
6:58:47 p.m.	CW	How you feeling?
6:58:52 p.m.	Samuel	Sooo high
7:26:07 p.m.	Samuel	I just fell asleep sitting uo [up]
7:30:37 p.m.	Samuel	way [wya or where you at?]
7:34:35 p.m.	Samuel	Close?

1 At around 8:20 p.m., the CW sent Samuel a message stating he/she was not feeling well and  
2 would not be meeting him. Samuel did not send any additional responses from his social  
3 media account after 7:34 p.m. Samuel’s father said he went to bed at 10:30 p.m. and Samuel  
4 was still sitting on the couch watching television. That was the last time anyone saw Samuel  
5 alive.

6 **E. Medical Examiner’s Report Confirms Samuel Died from Fentanyl Overdose**

7 The Medical Examiner listed fentanyl intoxication as the cause of Samuel’s death.  
8 His blood contained 5.3 ng/mL of fentanyl and evidence of marijuana use but tested  
9 negative for alcohol and other illicit drugs of abuse. The autopsy did not find any evidence  
10 of trauma or significant natural disease. As a result, the Medical Examiner concluded that  
11 fentanyl intoxication caused Samuel’s death.

12 **F. Pre-February 2019: Defendant Regularly Sold and Rapped About Pills**

13 A review of Defendant’s social media posts and Soundcloud page indicate he  
14 regularly boasted about dealing drugs and brandished firearms in the months leading up to  
15 Samuel’s death on February 28, 2019. In other words, Defendant was not a novice at selling  
16 prescription pills at the time he sold Samuel the counterfeit pills that caused Samuel’s death.  
17 While Defendant repeatedly referred to the pills as “Perks” or “Percocets” in his  
18 conversations with Samuel, the pills are commonly called “blues” based on their color.  
19 Defendant refers to them by this name in his conversation with others and in his rap music.

20 **1. Defendant’s Soundcloud Page Includes Songs Glorifying Opiates**

21 Soundcloud is a website that allows aspiring musicians to post their music for others  
22 to hear. Defendant is an aspiring rap artist, and he created a public Soundcloud page where  
23 he posted his music: <https://soundcloud.com/milli-yagi>. Defendant’s page includes files for  
24 each of his songs and an image associated with each one. Many of the images associated  
25 with the songs are also posted on Defendant’s social media. One song, aptly named  
26 “Percocet,” is entirely devoted to glorifying the abuse of opioid drugs. In another song,  
27 “huncho bandit,” Defendant boasts that he “flip that coke” and “flip them blues.” “Blues”  
28 is a common slang term for the blue pills—supposedly M30 Oxycodone Hydrochloride—

1 that Defendant sold to Samuel Defendant's songs also include numerous references to  
2 possessing and shooting firearms. *See* Exhibit 1, Images from Akintonde Soundcloud Page.

3 **2. Defendant's Social Media Includes Public Offers to Sell Drugs**

4 Second, Defendant's Instagram and Facebook accounts contain images  
5 demonstrating Defendant had a long history of selling oxycodone pills prior to Samuel's  
6 death. For example, as far back as August 26, 2018, Defendant sent a video advertising he  
7 had 30 milligram oxycodone pills and hydrocodone pills for sale.

8 ***Figure 1: Images and Video Screenshots from Defendant's Snapchat Account***

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15 Video sent from  
16 Defendant's Snapchat  
17 account on August 26,  
18 2018 advertising drugs for  
19 sale (video screenshot).  
20 AK-SW-SC-001069.



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Video sent from Defendant’s Snapchat account on February 14, 2019—two weeks before Samuel’s death—where he brandishes a firearm and shows bag of 30 milligram oxycodone pills (video screenshot 1). AK-SW-SC\_001463.



Video sent from Defendant’s Snapchat account on February 14, 2019—two weeks before Samuel’s death—where he brandishes a firearm and shows bag of 30 milligram oxycodone pills (video screenshot 1). AK-SW-SC\_001463.



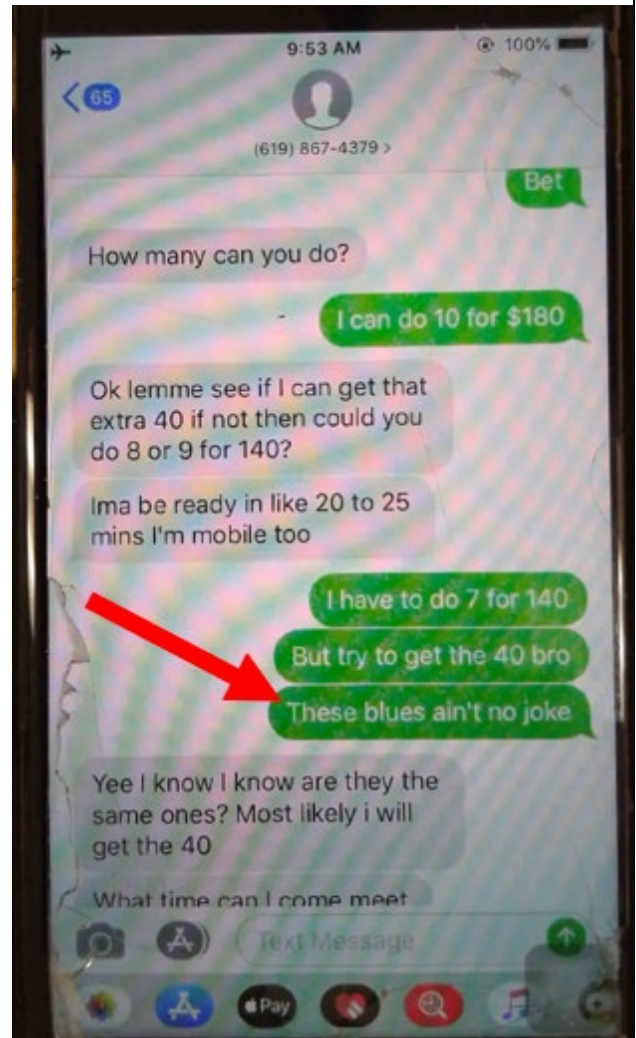


1           **3. “These Blues Ain’t No Joke—Defendant Knew the Danger**

2           On February 13, 2019, a person using telephone number 619-XXX-4379 contacted  
3 Defendant and asked, “How many do you got for sale fam?” Defendant responded by  
4 asking “How much you got?” The user of -4379 said he had \$140, and Defendant  
5 responded: “I can do 10 for \$180” or “I have to do 7 for 140.” Defendant sent two additional  
6 messages to say “These blues ain’t no joke.” Defendant sent this message just 15 days  
7 before Defendant sold Samuel the “blue” that caused his death.

8           ***Figure 2: Defendant’s Text Message Saying “These Blues Ain’t No Joke”***

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16 Photo of Defendant’s Cell Phone  
17 Showing February 13, 2019 Text  
18 Conversation Where Defendant Tells  
19 One of His Customers “These Blues  
20 Ain’t No Joke.” AK-SW-IPHONE-  
21 000410.



1 **G. July 2019: Defendant Claims He Stopped Selling Pills After Samuel’s Death**

2 On July 22, 2019, DEA agents executed a search warrant at Defendant’s residence.  
 3 After the execution of the search warrant, agents and officers took Defendant into custody  
 4 and advised him of his *Miranda* rights. He elected to waive his rights and make a statement.  
 5 During the interview, Defendant confirmed he went by the aliases “Milli” and “Milliyagi  
 6 Da Bandit.” Defendant initially said he had given Samuel cocaine before his death but  
 7 denied selling him drugs and claimed his “girlfriend” must have given him the drugs.  
 8 During the interview, TFO Whisler used Defendant’s cell phone, with his consent, to access  
 9 Defendant’s Instagram account and saw that Defendant’s conversation with Samuel was  
 10 empty, indicating it had been deleted from Defendant’s phone.

11 Defendant then changed his story to admit that he had given Samuel one pill.  
 12 Defendant said he gave Samuel one “Percocet” and described the pill as blue with an “M30”  
 13 imprinted on it. The pills Defendant described are not Percocets, but rather blue 30  
 14 milligram oxycodone hydrochloride pills manufactured by Mallinckroft pharmaceuticals  
 15 (hence, the M and 30 imprinted on them), and are commonly counterfeited with fentanyl.<sup>2</sup>

16 Defendant then admitted he met Samuel the prior to his death and they consumed one  
 17 “Percocet” pill together, and then he gave Samuel a second “Percocet” pill. Defendant  
 18 further claimed he was terrified after Samuel’s death and stopped selling drugs. Upon  
 19 further investigation, this statement proved to be false.

20 **H. Evidence Defendant Promptly Learned Drugs Caused Samuel’s Death**

21 On March 2, 2019, the day after Samuel was found dead, Defendant engaged in a  
 22 Snapchat conversation with a person with username coreyhaynes12. At approximately  
 23 11:13 a.m., coreyhaynes12 began the conversation by messaging Defendant to say “[b]ro  
 24 we gott stop taking theses [sic] drugs” and he did not want to lose any more of his friends.  
 25

26 \_\_\_\_\_  
 27 <sup>2</sup> Defendant appears to have called these pills by multiple names. In another  
 28 conversation with telephone number 619-XXX-4379, on February 13 (before S.J.G.’s  
 death), Defendant negotiated the sale of eight or nine pills and told the buyer that “[t]hese  
 blues ain’t no joke.”



1 Defendant responded and told coreyhaynes12 “[n]o blood you gotta stop” and went on to  
 2 claim that he did not need to stop taking controlled substances because he only used  
 3 marijuana, alcohol, and “lean” (promethazine cough syrup). At the end of the conversation,  
 4 Defendant and coreyhaynes12 made plans to meet to smoke marijuana together and  
 5 Defendant told coreyhaynes12 Defendant wanted to “blow it down for my n\*gga [Samuel].”  
 6 Based on the timing of this message and the reference to Samuel, it appears that  
 7 coreyhaynes12 was aware that drugs were the cause of Samuel’s death. Based on  
 8 Defendant’s responses to coreyhaynes12, it appears that Defendant was already aware that  
 9 drugs caused Samuel’s death by March 2, 2019.

10 Two days later, March 4, 2019, the day of Samuel’s memorial service, at  
 11 approximately 1:21 p.m., Defendant sent another Snapchat user (dzonbeats)<sup>3</sup> an image of  
 12 the notice for Samuel’s memorial. A few hours later, at around 4:51 p.m., dzonbeats  
 13 responded by saying “fentanyl??” There are no intervening messages on Snapchat.  
 14 However, it is telling that one Defendant’s close associates was specifically aware of  
 15 fentanyl and immediately brought up fentanyl upon learning of Samuel’s death.

16 **I. Evidence Shows Defendant Continued Selling Drugs After Samuel’s Death**

17 When DEA agents reviewed the contents of Defendant’s cell phone after his arrest,  
 18 they found evidence that contradicted his statement that Defendant had stopped selling  
 19 narcotics after Samuel’s death. Evidence obtained from Defendant’s cell phone indicated  
 20 that not only had he continued selling narcotics after Samuel’s death, Defendant continued  
 21 selling the same kind of pills that caused Samuel’s overdose death. In text message  
 22 conversations, Defendant referred to selling both “perks” [Percocets] and “oxy” (a reference  
 23 to oxycodone, the more common term for the blue pills with an M30 imprint).

24 On April 20, 2019, a Snapchat user with the name samcronan messaged Defendant  
 25 at approximately 4:08 p.m. and asked Defendant “Do u have blues[?]” Defendant responded  
 26

27 \_\_\_\_\_  
 28 <sup>3</sup> On Defendant’s Soundcloud page, Dzonbeats is identified as the producer of songs such as “Percocet.” See Exhibit 1.

1 that he would sell 5 blues for \$100 and they agreed to meet at Bank of America, presumably  
2 for Defendant to sell the “blues.”

3 On May 13, 2019, a person sent Defendant a text message asking if he had “oxy.”  
4 After some discussion, Defendant confirmed he had “oxy” for sale. On June 3, 2019,  
5 Defendant told a Snapchat user with the name moose.47 that the “blues” were “20 a pop.”  
6 On June 4, 2019, a Snapchat user named Jacobeeee\_cx had a dispute with Defendant that  
7 appears to involve Defendant selling him “oxy” but not providing as many as jacobeeee\_cx  
8 paid for. During the dispute, jacobeeee\_cx told Defendant he would “need that doe [money]  
9 back or another oxy or there finna be problems.” Defendant responded that he had already  
10 given jacobeeee\_cx “two of ‘em.”

11 On May 15, 2019, a San Diego Police Officer acting in an undercover capacity  
12 contacted Defendant through Instagram. After some casual conversation, Akintonde offered  
13 to sell the undercover officer five “Perc[s]” for one-hundred dollars. The undercover officer  
14 asked if the pills were the Mexican kind and Akintonde responded “all ik [I know] is they  
15 hit.” “Hit” is a slang term meaning that the pills are strong.

16 On July 13, 2019, just days before his arrest, a contact saved as “Tray” asked  
17 Defendant “Any more percs?” and Defendant responded that they could meet at his “crib  
18 [home].”

## 19 **J. Plea Agreement**

20 On July 8, 2021, Akintonde pled guilty to distribution of fentanyl. As part of his plea  
21 agreement, he admitted to facts that establish the more serious offense of distribution  
22 resulting in death and stipulated that the Guidelines for that offense should apply. Pursuant  
23 to the parties’ plea agreement, the United States recommends the following Guideline  
24 calculations, including departures and variances:

25 Base Offense Level [U.S.S.G. §§ 2D1.1(a)(2) and 1B1.2(c)]	38
26 Acceptance of Responsibility [U.S.S.G. § 3E1.1]	-3
27 Combination of Circumstances [U.S.S.G. § 5K2.0]	-2
28 <b>Adjusted Offense Level</b>	<b>33</b>

1	Criminal History Category	III
2	Guideline Range	168–210 months
3	Variance Under 18 U.S.C. § 3553(a)	-1
4	Effective Offense Level	32
5	Effective Guideline Range	151–188 months
6	Government Recommendation	180 months

7 The parties further agreed that the United States would recommend that Defendant  
8 be sentenced within the guideline range as calculated by the Government and that  
9 Defendant was permitted to request or recommend additional downward adjustments,  
10 departures, or sentence reductions under 18 U.S.C. § 3553 but not advocate for a sentence  
11 less than 108 months. Plea Agreement 9, ECF No. 17. The plea agreement permits the  
12 United States to oppose any downward adjustments, departures, or reductions not listed  
13 above. *Id.*

#### 14 IV.

#### 15 ARGUMENT FOR SENTENCING RECOMMENDATION

16 The United States recommends the Court impose a 180-month, or 15-year, sentence  
17 on Defendant. Prior to Samuel’s death, Defendant engaged in a criminal lifestyle that  
18 included brandishing firearms, selling multiple types of opioid pills and other  
19 pharmaceuticals, and creating music that glorified such criminal activity. After Defendant  
20 learned of Samuel’s death, he failed to change his lifestyle in any way. He not only  
21 continued selling drugs, but he continued selling the *exact* same drugs that caused Samuel’s  
22 death. Defendant’s callousness and choice to place his own greed above the safety others  
23 caused Samuel’s death. In imposing a sentence that meets the sentencing objectives set  
24 forth in Section 3553(a), this Court should look at Defendant’s conduct in the months  
25 before and after Samuel’s death and the tragic consequences that flowed from Defendant’s  
26 actions to sell counterfeit pills to Samuel on February 28, 2019.

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28 //

1 **A. Evidence for Inference Defendant Knew the Pills Were Counterfeit**

2 To be clear, there is no direct evidence that Defendant knew the pills he sold  
3 contained fentanyl. However, there is ample evidence to support the inference that  
4 Defendant ignored the risk associated with his drug sales before Samuel’s death—and then  
5 disregarded the risks of his continued drug sales after Samuel’s death. The evidence shows  
6 that Defendant had ample experience with that kind of pill and knew they were not standard  
7 pharmaceutical pills. Standard pharmaceutical pills are manufactured to be consistent and  
8 uniform in dosage and strength. Individual pills are not strong or weak because they are all  
9 the same. In contrast, counterfeit pills are not uniform and vary in potency because they  
10 are not manufactured under the same stringent conditions as approved pharmaceutical pills.  
11 Counterfeit pills can be strong or weak because they vary in potency. It is this variation  
12 that makes them so dangerous because the user does not know the dosage in any individual  
13 pill before consuming it.

14 Defendant made multiple statements prior to Samuel’s death saying that his pills  
15 were “strong” or “no joke.” These statements indicate that he knew he was selling pills that  
16 were particularly potent. In other words, he knew he was selling a batch of counterfeit pills  
17 that were particularly strong. This explains why he warned one customer “these blues ain’t  
18 no joke” and warned Samuel—after selling him the pills that killed him—to only take one  
19 and they were “that strong.” While Defendant may portray these statements as expressions  
20 of concern, the Government does not view them that way. If Defendant were concerned for  
21 the safety of others, he would not have sold them pills that were “no joke” or “that strong.”  
22 Instead, Defendant chose to sell these pills that were “no joke” to others. Tragically, Samuel  
23 paid the price for that decision.

24 Further, when Defendant notified one of his friends—known only as dzonbeats—  
25 about Samuel’s death, his response was “Fentanyl?” Defendant did not ask dzonbeats why  
26 he thinks fentanyl caused Samuel’s death or what fentanyl is. Dzonbeats message and the  
27 lack of any response from Defendant seeking clarification support an inference that (1)  
28 Defendant knew what fentanyl was at the time of Samuel’s death, and (2) Defendant knew

1 why dzonbeats thought fentanyl caused Samuel's death. While this does not show that  
2 Defendant explicitly knew he was selling fentanyl at the time of Samuel's death, the Court  
3 should certainly take this context into account in assessing the credibility of Defendant's  
4 claims if he pleads ignorance about the dangers of fentanyl.

5 **B. The Sentence Should Account for the Cost of Defendant's Conduct**

6 In contrast to many of the drug cases that come before this Court, this case is not just  
7 about Defendant's criminal conduct. It is about the immeasurable damage that resulted  
8 from Defendant's criminality: the death of Samuel Guenther. Samuel was only nineteen  
9 years old at the time he passed. Like many young people, he had his stumbles. However,  
10 he also had grit and was just beginning the process of getting back up after those stumbles.  
11 Samuel was moving in the direction that his family wanted to see him go by trying to finish  
12 his high school education and finding a job. Unfortunately, Samuel never got the chance to  
13 pursue those opportunities because his life was cut short by counterfeit pills containing  
14 fentanyl. His mother will speak at sentencing and address the devastating impact the loss  
15 of her son has had on her and will continue to have on her for the rest of her life.

16 **V.**

17 **CONCLUSION**

18 For the foregoing reasons, the United States respectfully requests that the Court  
19 impose a 180-month custodial sentence, followed by five years of supervised release, no  
20 fine, and a \$100 special assessment.

21 DATED: November 15, 2021

Respectfully submitted,

22 RANDY S. GROSSMAN  
23 Acting United States Attorney

24 s/ Michael A. Deshong  
25 Michael A. Deshong  
26 Adam Gordon  
27 Assistant United States Attorney  
28

**Exhibit 1**

**Images from Defendant's  
SoundCloud**



Songs and Images from Milli Yagi Sound Cloud Page

Title section of Defendant's Soundcloud page

Defendant's song called Percocet boasting about the abuse of Percocet

Defendant's song where he boasts about "flippin' coke" and "flippin' blues"