

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

October 6, 2010

## Before

DANIEL A. MANION, *Circuit Judge*

ANN CLAIRE WILLIAMS, *Circuit Judge*

JOHN W. DARRAH, *District Judge\**

Nos. 09-1500, 09-1525, 09-1875,  
& 09-2431

Appeals from the United States District  
Court for the Western District of  
Wisconsin.

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

No. 08-CR-105

*v.*

Barbara B. Crabb,  
*Judge.*

T E O D U L O P I N E D A -  
BUENAVENTURA, OTONIEL  
MENDOZA, GERARDO PINEDA-  
SORIA, and ARTURO PINEDA-  
LOPEZ,

*Defendants-Appellants.*

## ORDER

On consideration of the petition for panel rehearing filed by Plaintiff-Appellee on September 29, 2010, the opinion issued in the above-entitled case on September 15, 2010, is hereby **AMENDED** as follows:

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\*The Honorable John W. Darrah, United States District Court Judge for the Northern District of Illinois, Eastern Division, sitting by designation.

Page 5, lines 11-15, the following sentence is deleted: "Under this standard of review, we affirm a sentence unless, after considering all the evidence, we have a "definite and firm conviction that a mistake has been committed." *United States v. Haynes*, 582 F.3d 686, 709 (7th Cir. 2009) (quotation omitted).";

Page 5, line 21, the following sentence is added to the end of the paragraph: "This constitutes plain error that affected Pineda-Buenaventura's substantial rights and seriously affected the fairness of the proceedings. *See United States v. Garrett*, 528 F.3d 525, 527 (7th Cir. 2008).";

Page 6, line 31, the following sentence is added to the end of the paragraph: "This was plain error that seriously affected the integrity of the proceedings, because Pineda-Buenaventura was sentenced based on an incorrect Guideline range. *See Farmer*, 543 F.3d at 375; *see also United States v. Avila*, 557 F.3d 809, 822 (7th Cir. 2010) ("It appears that the district court simply applied the wrong range, which constitutes plain error.").";

Page 7, lines 4-7, the following citation is deleted: "*See, e.g., United States v. Salem*, 597 F.3d 877, 887-88 (7th Cir. 2010) (remanding for resentencing when findings were insufficient to support sentence imposed)" and is replaced with "*See, e.g., Garrett*, 528 F.3d at 530 (finding plain error and remanding to district court when "we have no reason to believe its error in the application of the Guideline range did not affect its selection of the particular sentence.")."; and

Page 7, line 14, the following citation is deleted: "*See id.* at 888" and is replaced with "*See United States v. Salem*, 597 F.3d 877, 888 (7th Cir. 2010)"

All members of the original panel have otherwise voted to **DENY** the petition for rehearing. Accordingly, the petition for rehearing is **DENIED**.