

OCT 04 2011

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>KAREN JEAN FREYLING,</p> <p>Defendant - Appellant.</p>
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No. 10-10268

D.C. No. 1:08-cr-00384-OWW

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Oliver W. Wanger, District Judge, Presiding

Submitted September 27, 2011\*\*

Before: SILVERMAN, W. FLETCHER, and MURGUIA, Circuit Judges.

Karen Jean Freyling appeals from the 121-month sentence imposed following her jury-trial conviction for conspiracy, fraud, smuggling, and various other offenses related to the operation of a business that sold unauthorized DVDs over the Internet, as well as for Social Security fraud. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Freyling contends that when the district court modified her advisory Sentencing Guidelines range at the sentencing hearing of her co-defendant, she was denied: (1) her right under Fed. R. Crim. P. 43 to be present at sentencing, and (2) her Sixth Amendment right to counsel. We agree and conclude that remand is necessary. *See United States v. Berger*, 473 F.3d 1080, 1094 (9th Cir. 2007); *United States v. Hamilton*, 391 F.3d 1066, 1070 (9th Cir. 2004).

The government does not oppose a remand but requests that we limit its scope to allow the district court merely to clarify which Guidelines range it relied upon in choosing the 121-month term of imprisonment. We reject such a limitation; however, remand shall be limited to consideration of the issues raised in this appeal.

Our resolution of these issues renders it unnecessary to resolve Freyling's remaining contentions.

**VACATED AND REMANDED.**