

SUPREME COURT OF THE UNITED STATES

No. 92-8556

KENNETH O. NICHOLS, PETITIONER v.
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT
[June 6, 1994]

JUSTICE GINSBURG, dissenting.

In *Custis v. United States*, 511 U. S. ___ (1994), the Court held that, with the sole exception of convictions obtained in violation of the right to counsel, a defendant in a federal sentencing proceeding has no right to attack collaterally a prior state conviction used to enhance his sentence under the Armed Career Criminal Act of 1984. This case is dispositively different.

Custis presented a forum question. The issue was *where*, not *whether*, the defendant could attack a prior conviction for constitutional infirmity. See 511 U. S., at ___ (slip op., at 12) (*Custis* “may attack his state sentence in Maryland or through federal habeas review”).

Here, we face an uncounseled prior conviction tolerable under the Sixth Amendment “assistance of counsel” guarantee only because it did not expose defendant Nichols to the prospect of incarceration. See *Scott v. Illinois*, 440 U. S. 367 (1979). Today’s decision enlarges the impact of that uncounseled conviction. It turns what was a disposition allowing no jail time—a disposition made for one day and case alone—into a judgment of far heavier weight. Nichols does not attack his prior uncounseled conviction for what it was. He is seeking

only to confine that conviction to the term (no incarceration) that rendered it constitutional.

Recognizing that the issue in this case is not like

the one presented in *Custis*, I join JUSTICE BLACKMUN's dissenting opinion.