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Attorney General Holder Announces New Policy to Enhance Justice Department's Commitment to Support Defendants' Right to Counsel

Attorney General Eric Holder, along with Deputy Attorney General James M. Cole, announced today that the Department of Justice will no longer ask criminal defendants who plead guilty to waive their right to bring future claims of ineffective assistance of counsel. The new policy bolsters the department's commitment to ensuring that individuals are ably represented as they face criminal charges and marks the Attorney General's latest step to reform the criminal justice system.

"Everyone in this country who faces criminal legal action deserves the opportunity to make decisions with the assistance of effective legal counsel," said Attorney General Holder. "Under this policy, no defendant will have to forego their right to able representation in the course of pleading guilty to a crime. I am confident in the ability of our outstanding prosecutors to ably and successfully perform their duties without the use of these waivers, as the vast majority of them already do. Moving forward, I am certain that this more consistent policy will help to bring our system of justice closer in line with our most fundamental values and highest ideals."

"This new policy reaffirms the commitment by the department's prosecutors to protecting the right to counsel and enhancing due process," said Deputy Attorney General Cole. "As reflected in our recent intervention to secure greater public defender services in New York, the criminal justice system is best served when parties have competent and unbiased legal representation."

Deputy Attorney General Cole unveiled the new policy through a memorandum to all federal prosecutors and through a conference call today. Prior to today's action, 35 of the department's 94 U.S. Attorney's Offices sought waivers of future claims that included claims of ineffective assistance of counsel. While the department believes such waivers are legal and ethical, the new policy will create a uniform policy for all U.S. Attorneys to follow.

The memo directs federal prosecutors to no longer ask defendants to waive future claims of ineffective assistance of counsel in plea agreements. It also instructs prosecutors to decline to enforce waivers that have already been signed in cases where defense counsel provided ineffective assistance resulting in prejudice or where the defendant's ineffective assistance claim raises a serious issue that a court should resolve.

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