



With nearly 97% of all federal convictions in 2013 secured through plea agreements, the Department of Justice [announced yesterday](#) that it will no longer ask criminal defendants who plead guilty to waive their right to appeal on the basis of ineffective assistance of counsel (IAC).

In a [memorandum to all federal prosecutors](#), Deputy Attorney General James Cole instructed prosecutors to curtail the use of IAC waivers in future plea agreements, and to decline enforcement of existing waivers in certain cases—such as when ineffective assistance resulted in prejudice, or the claims raise an issue best resolved by the court. The waivers, which are used by roughly one-third of the U.S. attorneys' offices around the country, have been the subject of increased scrutiny in recent years. Both the American Bar Association (ABA) and the National Association of Criminal Defense Lawyers (NACDL) have issued [formal ethics opinions](#) advising defense counsel to [oppose plea agreements](#) that waive a defendant's right to claim ineffective assistance

of counsel. Such waivers, they argue, would prospectively insulate defense counsel's conduct from judicial review and create an unethical conflict of interest. While the DOJ has not moved from its position that IAC waivers are both legal and ethical, the new policy is expected to bring consistency across the 94 U.S. Attorneys' offices. The Department is touting the policy shift as outgoing Attorney General Holder's "latest step to reform the criminal justice system."

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