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IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE  
KING COUNTY, WASHINGTON

CITY OF SEATTLE,	)	
Plaintiff,	)	Nos.
	)	
vs.	)	MOTION TO VACATE
	)	JUDGMENTS AND
	)	DISMISS MARIJUANA
SEATTLE MUNICIPAL COURT	)	CHARGES
MARIJUANA POSSESSION	)	
DEFENDANTS, <sup>1</sup>	)	
Defendant.	)	
	)	

**A. MOTION**

Pursuant to CrRLJ 7.8(b)(5), the City moves to vacate the judgments in these cases. Pursuant to CrRLJ 8.3(a), the City moves to dismiss the complaints in each case. The City has discussed this motion with the Department of Public Defense (DPD), which supports this motion and will file a response in support.

**B. CERTIFIED STATEMENT IN SUPPORT OF MOTIONS**

Peter S. Holmes states as follows:

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<sup>1</sup> The names of the defendants subject to this motion are attached in Exhibit A.

1           1. I am the City of Seattle's elected City Attorney and, together with Assistant City  
2 Attorney Kelly Harris and other attorneys in the Criminal Division, represent the City of  
3 Seattle in these cases. I am over 18 years of age, am competent to be a witness and testify,  
4 and have personal knowledge of the facts stated herein.

5  
6           2. The cases subject to this motion involve convictions during the years 1996  
7 through 2010 for Possession of Marijuana under either RCW 69.50.401(e) or RCW  
8 69.50.4014. When I first became City Attorney, I made good on my promise to stop  
9 prosecuting marijuana possession cases.  
10

11           3. Initiative 502, approved by Washington state's voters on November 6, 2012,  
12 eliminated all state criminal penalties for possession of personal use amounts marijuana  
13 by adults.<sup>2</sup>  
14

15           4. A drug conviction, even for the misdemeanor offense of Possession of  
16 Marijuana, can have significant negative collateral consequences affecting a person's  
17 employment opportunities, education options, qualification for government benefits and  
18 programs, travel, and immigration status.  
19

20           5. According to a report by the ACLU, African-Americans are 3.73 times more  
21 likely to be arrested for possession of marijuana than Caucasians, even though both  
22 groups consume marijuana at similar rates. The perception among many persons that  
23 enforcement of drug laws discriminates against African-Americans has profound adverse  
24 effects on their cooperation with law enforcement, respect for the law and participation in  
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1 the court system.

2 6. Now that Washington's legal marijuana regulatory system is in effect, I believe  
3 vacating and dismissing all prior adult marijuana possession convictions from the Seattle  
4 Municipal Court, all of which were originally prosecuted by the Seattle City Attorney's  
5 Office, best serves the interests of equity and justice.  
6

7 **C. STIPULATION**  
8

9 Solely for the purposes of this motion, the City and DPD stipulate that noncitizen  
10 defendants convicted of marijuana possession between 1996 and 2010 were not  
11 adequately advised of immigration consequences as required by *Padilla v. Kentucky*, 559  
12 U.S. 356 (2010) and *State v. Sandoval*, 171 Wn.2d 163, 249 P.3d 1015 (2011).  
13

14 **D. ARGUMENT**  
15

- 16 1. Since the conduct upon which the conviction in these cases was based is no  
17 longer unlawful and to promote the interests of fairness and justice, the  
18 Court should vacate the judgments.

19 CrRLJ 7.8(b) provides:

20 **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered**  
21 **Evidence; Fraud; etc.** On motion and upon such terms as are just, the court  
22 may relieve a party from a final judgment, order, or proceeding for the  
23 following reasons:

24 . . .  
(5) Any other reason justifying relief from the operation of the  
25 judgment.

26 The motion shall be made within a reasonable time and for reasons  
27 (1) and (2) not more than 1 year after the judgment, order, or proceeding  
28 was entered or taken, and is further subject to RCW 10.73.090, .100, .130,  
29

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<sup>2</sup> See RCW 69.50.401(3).

1 and .140. A motion under this section does not affect the finality of the  
2 judgment or suspend its operation.

3 The prosecution may bring a motion under this rule, even though it was the  
4 prevailing party at trial. In *State v. Hall*,<sup>3</sup> the court held that the State had the authority  
5 under CrR 7.8(b)(5) (identical to CrRLJ 7.8(b)(5)) to move to vacate the defendant's  
6 felony murder conviction that was invalid under *In re Personal Restraint of Andress*.<sup>4</sup> The  
7 language of CrR 7.8 does not restrict either party's ability to move for relief.<sup>5</sup> Likewise,  
8 the language of CrRLJ 7.8 does not restrict the City's ability to move for relief.  
9  
10

11 Relief under CrRLJ 7.8(b)(5) is limited to extraordinary circumstances not covered  
12 by any other section of the rule and must involve circumstances that did not exist at the  
13 time the judgment was entered.<sup>6</sup> Vacating a conviction for a crime based on conduct that  
14 is no longer criminal is not covered by any other section of CrRLJ 7.8 and the legalization  
15 of Possession of Marijuana occurred years after the judgments were entered in these  
16 cases.  
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19 Vacating these convictions also serves as evidence that the criminal justice system  
20 acknowledges the racial disproportionality of enforcement of drug laws and is capable  
21 and willing to respond to that concern. Steps to refute the perception of racial  
22 discrimination in the criminal justice system, regardless of the validity of that perception,  
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24

25  
26 <sup>3</sup> 162 Wn.2d 901, 905, 177 P.3d 680 (2008).

27 <sup>4</sup> 147 Wn.2d 602, 56 P.3d 981 (2002).

28 <sup>5</sup> *Hall*, 162 Wn.2d at 905.

29 <sup>6</sup> See *State v. Florencio*, 88 Wn. App. 254, 259, 945 P.2d 228 (1997), *review denied*, 134  
Wn.2d 1026 (1998); *State v. Aguirre*, 73 Wn. App. 682, 688, 871 P.2d 616, *review denied*, 124

1 serves to foster cooperation with law enforcement officers, respect for the law and greater  
2 participation in the court system. For these reasons, the court should vacate the judgment  
3 in these cases.

4  
5 2. RCW 9.96.060 does not apply to a motion brought by the City to vacate a  
6 conviction.

7 The statute authorizing vacation of a non-felony conviction addresses a motion to  
8 vacate a conviction made by the defendant, as opposed to the prosecution. RCW 9.96.060  
9 provides, in pertinent part:  
10

11 (1) Every person convicted of a misdemeanor or gross misdemeanor  
12 offense who has completed all of the terms of the sentence for the  
13 misdemeanor or gross misdemeanor offense may apply to the sentencing  
14 court for a vacation of the applicant's record of conviction for the offense. .

15 (3) Subject to RCW 9.96.070, every person convicted of prostitution  
16 under RCW 9A.88.030 who committed the offense as a result of being a  
17 victim of trafficking, RCW 9A.40.100, promoting prostitution in the first  
18 degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor,  
19 RCW 9.68A.101, or trafficking in persons under the trafficking victims  
20 protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the  
21 sentencing court for vacation of the applicant's record of conviction for the  
22 prostitution offense. . . .

23 (4) Every person convicted prior to January 1, 1975, of violating any  
24 statute or rule regarding the regulation of fishing activities . . . may apply to  
25 the sentencing court for vacation of the applicant's record of the  
26 misdemeanor, gross misdemeanor, or felony conviction for the offense.

27 The express language of this statute allows “[e]very person convicted” to apply to  
28 vacate a conviction. The statutory language does not include the prosecuting authority.  
29 Under the age old rule of statutory construction, *expressio unius est exclusio alterius*, (“to

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Wn.2d 1028 (1994).

1 express or include one thing implies the exclusion of the other”), where a statute  
2 specifically designates the things upon which it operates, there is an inference that the  
3 Legislature intended all omissions.<sup>7</sup> RCW 9.96.060 does not apply to a motion brought by  
4 the City to vacate a conviction.  
5

6 3. To promote the interests of justice, the Court should dismiss the Possession  
7 of Marijuana charges.

8 CrRLJ 8.3(a) provides:

9  
10 **On Motion of Prosecution.** The court may, in its discretion, upon  
11 motion of the prosecuting authority setting forth the reasons therefor,  
12 dismiss a complaint or citation and notice.

13 Dismissing this charge is consistent with, and something of a corollary to, the  
14 discretion of the City Attorney to charge this offense initially. A prosecutor’s inherent  
15 charging discretion necessarily is broader than a mere consideration of sufficiency of  
16 evidence and likelihood of conviction, and this “most important prosecutorial power”  
17 allows for the consideration of individual facts and circumstances when deciding whether  
18 to enforce criminal laws, and permits the prosecuting attorney to seek individualized  
19 justice; to manage resource limitations; to prioritize competing investigations and  
20 prosecutions; to handle the modern proliferation of criminal statutes; and to reflect local  
21 values, problems, and priorities.<sup>8</sup> Likewise, dismissing this charge reflects Seattle’s  
22 values and recognizes the negative collateral consequences of a drug conviction,  
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27 <sup>7</sup> *State v. LG Electronics, Inc.*, 186 Wn.2d 1, 9, 375 P.3d 636 (2016); *State v. Ortega*, 177  
28 Wn.2d 116, 124, 297 P.3d 57 (2013).

29 <sup>8</sup> *State v. Rice*, 174 Wn.2d 884, 901–02, 279 P.3d 849 (2012).

1 including difficulty in finding employment or getting into college or the military,  
2 obtaining student loans or government subsidized housing, qualifying for food stamps or  
3 other government assistance, being allowed entry into some foreign countries and  
4 obtaining child custody or adoption. Also, the public perception that the criminal justice  
5 system is fair and responsive to changes in societal attitudes regarding what conduct is  
6 sufficiently dangerous to warrant the condemnation of the criminal law would be  
7 enhanced by dismissing this charge. For these reasons, the City asks that the complaints  
8 be dismissed.

11 4. Additional legal concerns apply in cases involving noncitizens.

13 Following discussions with and based on representations made by DPD, and  
14 because the City is already seeking to vacate these convictions and dismiss these  
15 complaints, the City stipulates that noncitizen defendants convicted of marijuana  
16 possession between 1996 and 2010 were not adequately advised of immigration  
17 consequences as required by *Padilla v. Kentucky*, 559 U.S. 356 (2010) and *State v.*  
18 *Sandoval*, 171 Wn.2d 163, 249 P.3d 1015 (2011). To reflect this stipulation, the City  
19 respectfully requests that the Court include Proposed Finding of Fact No. 4 and Proposed  
20 Conclusion of Law No. 5 in the Proposed Order to reflect this stipulation.

24 The City has included this language at the request of DPD, the Washington  
25 Defender Association (WDA), and several community organizations, who have  
26 represented to the City that this language is necessary for the vacations and dismissals  
27 requested by this motion to be recognized by federal immigration authorities. The City  
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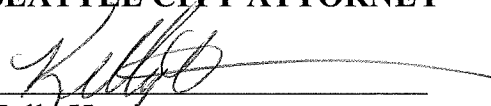
1 has a longstanding policy of treating citizens and noncitizens equally in its criminal  
2 justice system to the extent possible under the law and supports doing so in these cases if  
3 possible. The City understands that DPD will further address this issue in its response in  
4 support of this motion and that WDA and several community organizations intend to file  
5 and amicus pleading further explaining the immigration issues.  
6

7 **E. CONCLUSION**  
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9 Based on the forgoing argument, this court should vacate the judgment in these  
10 cases and dismiss the complaints.  
11

12 Respectfully submitted this 27<sup>th</sup> day of April, 2018.  
13

14 **PETER S. HOLMES**  
15 **SEATTLE CITY ATTORNEY**

16 By   
17 Kelly Harris  
18 Assistant City Attorney  
19 Criminal Division Chief  
20 WSBA #24019  
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