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5 **BEFORE THE VICTIM COMPENSATION BOARD**
6 **OF THE STATE OF CALIFORNIA**
7

8
9 In the Matter:

10 **Marco Contreras**

11 Claim No. 17-ECO-11

Proposed Decision

(Penal Code § 4900 et seq.)

12 **I. INTRODUCTION**

13 On August 4, 2017, Marco Contreras (Contreras) submitted an application for compensation
14 as an erroneously convicted person to the California Victim Compensation (CalVCB) pursuant to
15 Penal Code section 4900. The application was based upon Contreras' imprisonment for two, 1997
16 convictions for attempted murder and robbery, both of which were vacated during a habeas
17 proceeding at which the prosecution conceded Contreras' innocence. The application requested
18 compensation in the amount of \$1,047,340 for the more than 20 year duration of Contreras'
19 incarceration. In a response letter filed June 21, 2018, the Attorney General partially conceded that
20 Contreras was entitled to just \$843,080 for only 6,022 of his 7,482 days imprisonment. The Attorney
21 General objected to compensation for the remaining 1,460 days, during which Contreras was
22 simultaneously serving a four-year prison sentence for a valid, 2001 assault conviction. On July 9,
23 2018, Contreras waived his right to an informal hearing and requested an expedited proposed
24 decision on the written record. The matter was assigned to CalVCB Senior Attorney Laura Simpton.

25 As detailed below, the Board is statutorily required to recommend that the Legislature
26 appropriate \$843,080 as payment to Contreras for being wrongfully imprisoned for 6,022 days, even
27 though Contreras contributed to his erroneous incarceration by failing to seek habeas relief until
28 2017, despite possessing significant exculpatory evidence since 1998 that identified the true culprit.

II. PROCEDURAL HISTORY

On October 3, 1996, Contreras was arrested and subsequently charged by the Los Angeles District Attorney (LADA) with the attempted murder and attempted robbery of Manuel Garcia (Garcia). Enhancements for personally using a firearm and inflicting great bodily injury were also alleged.¹ A jury convicted Contreras of all charges on April 30, 1997, and the trial court sentenced him to an indeterminate term of 32-years-to-life imprisonment.² The California Court of Appeal affirmed both convictions on May 15, 1998, and the California Supreme Court denied review on July 29, 1998.³ Contreras failed to file any petitions for habeas relief in state or federal court until 2017, when LADA did so on his behalf.⁴

On March 11, 2000, Contreras stabbed a fellow inmate, Manuel Arroyo, with a sharp metal rod.⁵ The Sacramento District Attorney (SDA) charged Contreras with assault by a life-term inmate, assault with a deadly weapon, and possession of a deadly weapon while in prison.⁶ SDA further alleged that Contreras had suffered a prior conviction within the meaning of California's Three Strikes law, based upon his 1997 conviction for attempted murder. On November 27, 2001, Contreras pleaded no contest solely to assault with a deadly weapon and further admitted personal use of the deadly weapon and having a prior strike conviction. In exchange, all other charges were dismissed, and Contreras received a four-year prison term for assault, doubled under the Three Strikes law, for a total term of eight years imprisonment. This sentence was imposed consecutively to Contreras' life

¹ AG Ex. 2; Pen. Code, §§ 664/187, 664/211, 12022.5, subd. (a), 12022.7, subd. (a).

² AG Exs. 3, 6.

³ California Courts, *Appellate Courts Case Information*, <http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=1803115&doc_no=S071381&request_token=NilwLSIkXkw4WyAtSSI9XE1IQFQ0UDxbJCJOSzJTICAgCq%3D%3D> (as of (Jul. 18, 2018)).

⁴ An online search of Westlaw and the California Courts Appellate Case Information does not reveal any habeas proceedings for Contreras in state or federal court, nor has either party cited any such proceeding in the supporting documentation. CalVCB, therefore, infers that no habeas petitions were filed until 2017.

⁵ AG Exs. 7, 8 at pp. 6-7, 12. According to Contreras, Arroyo and an accomplice had killed one of Contreras' brothers years earlier, and Contreras had testified against Arroyo. (AG Ex. 8 at p. 10.) The brother killed was not Miguel.

⁶ AG Ex. 7; Pen. Code, §§ 4500, 245, subd. (a)(1), 4502, subd. (a), 12022, subd. (b)(1).

1 term for Garcia’s attempted murder and robbery.⁷ Contreras did not appeal or otherwise challenge
2 his 2001 assault conviction.

3 On March 23, 2017, after Contreras had served over 20 years imprisonment, LADA filed a
4 habeas petition in the Los Angeles Superior Court on behalf of Contreras with the agreement of his
5 counsel from the Loyola Project for the Innocent (“LPI”). The petition sought to vacate both of
6 Contreras’ 1997 convictions and further stipulated that Contreras was factually innocent of Garcia’s
7 attempted murder and robbery. In an uncontested hearing conducted that same day, the superior
8 court granted the joint petition and dismissed Contreras’ convictions for attempted murder and
9 attempted robbery pursuant to Penal Code sections 1473.7 and 1385.⁸ The court ordered Contreras
10 released from custody “as to this case only, forthwith.”⁹

11 The next day on March 24, 2017, SDA filed a motion in the Sacramento Superior Court
12 seeking to modify Contreras’ sentence for his 2001 assault conviction. Specifically, SDA sought to
13 reduce the original eight-year sentence to four-years because the Three Strikes law no longer
14 applied, given Contreras’ factual innocence of the alleged strike prior. SDA further acknowledged
15 that Contreras had already completed the reduced, four-year sentence as a result of his continuous
16 and on-going incarceration from the date of the assault in 2000. At a hearing held that same day, the
17 superior court granted the motion and deemed Contreras’ sentence for the 2001 conviction fully
18 served.¹⁰

19 Two days later on March 28, 2017, Contreras reappeared before the Los Angeles Superior
20 Court. A hearing ensued on a joint motion by Contreras and LADA for a finding of factual innocence
21 for his 1997 convictions. Based upon the parties’ stipulation, the court expressly determined that
22 Contreras was actually innocent pursuant to Penal Code sections 1485.5 and 1485.55, subdivision
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24 ⁷ AG Exs. 8, 11.

25 ⁸ Penal Code section 1473.7 authorizes a person, who is no longer imprisoned, to move to vacate a
26 conviction on the basis of actual innocence. Penal Code section 1385 authorizes a judge to dismiss a
27 criminal action in furtherance in justice.

28 ⁹ Contreras Exs. A-B, C at pp. 3-4; AG Exs. 13-15.

¹⁰ AG Exs. 16-17.

1 (d).¹¹ The court ordered Contreras' immediate release. Accordingly, Contreras was unconditionally
2 released from custody on March 28, 2017.¹²

3 Immediately thereafter, LADA filed criminal charges against Antonio Salgado (Salgado),
4 Antonio Garcia (Antonio),¹³ and Ricardo Valencia (Ricardo)¹⁴ for Garcia's attempted murder.¹⁵ Those
5 charges are still pending for both Salgado and Antonio. Ricardo recently pleaded guilty to a reduced
6 charge of being an accessory after the fact.¹⁶

7 Meanwhile, on August 4, 2017, counsel Dale K. Galipo and Ricardo Perez submitted a claim
8 to CalVCB on behalf of Contreras seeking compensation as an erroneously convicted person under
9 Penal Code section 4900. The application requested \$1,047,340 for having served a total of 7,481
10 days imprisonment.¹⁷ The application included three supporting documents, which indicated that
11 Contreras' 1997 convictions for attempted murder and attempted robbery had been vacated on
12 habeas with LADA's stipulation of factual innocence on March 23, 2017. However, the
13 documentation failed to disclose the exact dates of Contreras' incarceration solely for these offenses
14 and indicated that Contreras may have been incarcerated for another felony offense during this same
15 period of time. Consequently, CalVCB informed counsel, as well as the Attorney General's
16 representative Deputy Attorney General Barton Bowers, that Contreras' application was received -
17 but not filed - pending counsel's production of additional supporting documentation.

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19 ¹¹ Penal Code section 1485.5 binds CalVCB to a court's factual findings when considering a habeas
20 petition, including a finding of factual innocence. Penal Code section 1485.55 requires, under limited
21 circumstances detailed *infra*, automatic compensation to erroneously-convicted felons who have
22 obtained a finding of factual innocence for each and every conviction underlying their incarceration.

23 ¹² AG Ex. 18 (minute order). Neither party has provided a copy of the motion or transcript for this
24 hearing.

25 ¹³ For clarity and convenience, this person is referred to by first name only. No relation appears to the
26 victim Garcia.

27 ¹⁴ For clarity and convenience, this person is similarly referred to by first name only.

28 ¹⁵ App. Letter at pp. 6-7; see also *People v. Antonio Salgado, Antonio Garcia, and Ricardo Valencia*,
Los Angeles County Superior Court case number TA142806.

¹⁶ Los Angeles Superior Court Online Services, *People v. Ricardo Valencia* (TA142806),
<<http://www.lacourt.org/criminalcasesummary/ui/Selection.aspx>> (as of July 18, 2018).

¹⁷ This calculation includes the date of Contreras' arrest on October 3, 1996, until the date of his
release on March 28, 2017, evidently excluding the last partial day of imprisonment.

1 For the next 10 months, Contreras' counsel requested and received multiple extensions of
2 time to gather the requested documentation, even after CalVCB invited counsel to submit whatever
3 documents were currently available and allow the Attorney General to respond. Counsel still had not
4 submitted any documentation when, on June 26, 2018, the Attorney General filed, sua sponte, a
5 response letter with 19 exhibits. In it, the Attorney General partially conceded that Contreras was
6 entitled to compensation in the amount of \$843,080 for only 6,022 of his 7,482 days imprisonment
7 resulting from his 1997 convictions.¹⁸ This calculation excluded 1,460 days for the four-year term that
8 Contreras simultaneously served for his assault conviction between March 2000 and March 2004,
9 which remains a valid and unchallenged conviction.¹⁹

10 Because the Attorney General's exhibits amply satisfied the supporting documentation
11 requested from Contreras' counsel, CalVCB deemed Contreras' application to be filed that same day
12 and so notified the parties on June 26, 2018. CalVCB further determined that, despite the superior
13 court's invocation of Penal Code section 1485.55, Contreras was not entitled to automatic
14 compensation because a finding of factual innocence was lacking for each and every conviction
15 underlying Contreras' incarceration (i.e., the 2001 assault conviction).

16 CalVCB invited Contreras' counsel to submit any additional supporting documentation for the
17 application on or before July 9, 2018. CalVCB further inquired whether Contreras wished to waive his
18 right to an informal hearing or further briefing and, instead, request an expedited proposed decision
19 on the written record. On July 9, 2018, counsel informed CalVCB that Contreras had decided to
20 proceed by expedited proposed decision on the written record. The record closed immediately
21 thereafter.

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24 ¹⁸ The Attorney General's aggregate calculation includes the date of Contreras' arrest on October 3,
25 1996, through and including the final day of his release on March 28, 2017, for a total 7,482 days. By
26 comparison, Contreras' calculation excludes the final, partial day for a total of only 7,481 days.
27 Because sentencing credits typically include partial days (see Pen. Code, § 2900.5), CalVCB adopts
28 the Attorney General's calculation.

¹⁹ CalVCB similarly adopts the Attorney General's undisputed calculation that Contreras served 1,460
days for his 2001 assault conviction.

1 **III. FACTUAL SUMMARY**

2 **A. Trial Evidence**

3 On the morning of September 10, 1996, at approximately 8:45 a.m., 47-year-old Garcia was
4 repeatedly shot by a single gunman while at a gas station located on the corner of Acacia and
5 Alondra Boulevard in Compton. The perpetrator initially approached Garcia from behind when Garcia
6 was filling up the gas tank of his truck. The perpetrator asked Garcia his name and then inquired if
7 he was hiring. Garcia, who co-owned an independent trucking business, replied that he needed
8 drivers.²⁰ The perpetrator remained standing nearby and asked Garcia for some change. Garcia
9 finished filling his tank and returned the gas nozzle to the pump. When Garcia turned around, the
10 perpetrator was holding a gun aimed at him.²¹

11 The gunman fired once, striking Garcia in the chest. Garcia managed to run away and
12 crawled beneath a parked truck for cover. The gunman ran after Garcia and continued to fire several
13 more shots in his direction. The gunman looked under the parked truck, spotted Garcia, and fired
14 one last time. The gunman finally ran away, headed east on Alondra Boulevard. Five, expended
15 .380 caliber cartridge casings were recovered at the scene.²²

16 These events were witnessed by Alicia Valladolid (Valladolid), who worked at the Los Angeles
17 County Sheriff's Department and was driving a county vehicle with the Sheriff's emblem on the door
18 and a yellow light on top. Valladolid was stopped at a red light next to the gas station when the
19 shooting occurred. After the light turned green, Valladolid turned east down Alondra Boulevard and
20 observed the fleeing gunman get into the front passenger seat of a Ford Bronco. Valladolid wrote
21 down the Bronco's license plate number. Valladolid eventually passed the Bronco and observed the
22 gunman's face. Valladolid also observed the driver, who suddenly accelerated, cut across two lanes
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25 ²⁰ At that time, Garcia co-owned the business with Francisco Ayon (Ayon), who was awaiting trial on
26 constructive possession of 494 kilograms of cocaine and \$300,000 cash. Ayon was convicted in
27 January 1998 and sentenced to 35 years imprisonment. (AG Ex. 13 at p. 14.)

28 ²¹ AG Ex. 5 at pp. 2-3, AG Ex. 13 at pp. 1-2.

²² AG Ex. 5 at p. 3, AG Ex. 13 at pp. 2-3.

1 of traffic, and entered the freeway. Valladolid drove directly to the Sheriff's Department and reported
2 these events.²³

3 Meanwhile, Garcia crawled out from under the truck, entered the gas station, and told the
4 cashier to call the police. Garcia subsequently lost consciousness. Garcia had been struck by two
5 bullets, one in the chest and the other in the hip. Garcia was transported to the hospital, where he
6 remained for 23 days undergoing six surgeries. Garcia survived. When subsequently speaking to
7 law enforcement, Garcia claimed not to know why he was shot. Garcia had no criminal record and
8 denied any involvement in illegal activities. Significantly, Garcia did not mention his business partner
9 Ayon's pending trial for drug trafficking, nor did Garcia disclose that he had offered his own home as
10 collateral for Ayon's bail.²⁴

11 Moments after the shooting, Department of Motor Vehicle (DMV) records confirmed that the
12 license plate reported by Valladolid matched a Bronco that had been officially purchased by
13 Contreras. However, Contreras' brother Miguel Contreras (Miguel) actually owned and regularly
14 drove the Bronco.²⁵ Hours later, officers located the Bronco parked in front of Contreras' residence,
15 where he lived with his parents, Miguel, and Miguel's wife. Miguel was not home. Officers
16 impounded the Bronco. At the time, Contreras was 20 years old.²⁶

17 That same afternoon, Miguel arrived at the station to retrieve his Bronco and was interrogated
18 by police. Miguel denied any involvement in Garcia's shooting. According to Miguel, he left his home
19 at 5:25 a.m. and drove his Bronco to Conex Trucking,²⁷ which was located less than half a mile from
20 the gas station where Garcia was shot. After being told there was no work for him, Miguel left Conex
21 Trucking at 6:50 a.m., still driving his Bronco. Miguel insisted he was at the home of his friend and
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24 ²³ AG Ex. 5 at p. 3.

25 ²⁴ AG Exs. 1 at pp. 8-9, 5 at 3, 13 at pp. 2, 14.

26 ²⁵ For clarity and convenience, Contreras' brother is referred to by his first name Miguel. No disrespect
27 is intended.

28 ²⁶ AG Exs. 1 at p. 6, 5 at p. 4, 13 at p. 3.

²⁷ Evidently, Conex Trucking is a different business than the one co-owned by Garcia.

1 co-worker Jose Valencia (Jose)²⁸ between 7:00 a.m. and 10:00 a.m. when the shooting occurred.
2 Miguel acknowledged driving his Bronco on Alondra Boulevard earlier that day, supposedly to see a
3 friend named "Samuel," only to discover that his friend's home had burned down. Miguel
4 acknowledged this friend was a member of the CV70 gang. At the end of the interrogation, Miguel
5 was arrested and charged as an accomplice with Garcia's attempted murder and robbery, and as an
6 accessory-after-the-fact for being the get-away driver.²⁹

7 Later that evening, officers went to the home of Miguel's friend, Jose. Jose, his brother
8 Ricardo,³⁰ and Contreras were all present. Jose insisted he had been at work between 8:00 a.m. and
9 11:30 a.m. that morning. Ricardo mentioned that their friend Salgado³¹ lived near the crime scene
10 and recently had his home burned, but Ricardo had already told Miguel about it weeks earlier.
11 Contreras added that Miguel had probably been with Salgado, who worked with Miguel at Conex,
12 when the shooting occurred.³²

13 Contreras attended Miguel's preliminary hearing on October 3, 1996. Eyewitness Valladolid
14 was also at the hearing when she spotted Contreras. Unbeknownst to Valladolid, Contreras and
15 Salgado shared strikingly similar physical features, at least according to their DMV photographs from
16 this time period.³³ Valladolid believed Contreras was the gunman. Valladolid immediately informed
17 the investigating detective, Detective Reynolds, who arrested Contreras on the spot for Garcia's
18 shooting. After being advised of his *Miranda* rights,³⁴ Contreras refused to speak to Detective
19 Reynolds.³⁵

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22 ²⁸ For clarity and convenience, this person is referred to by first name only.

23 ²⁹ Pen. Code, §§ 664/187, 664/211, 32; see also AG Ex. 13 at pp. 1 n.2, 3-6; App. Letter, at p. 3.

24 ³⁰ As previously noted, Ricardo recently pleaded guilty to a reduced charge of being an accessory-after-
the-fact in Garcia's attempted murder.

25 ³¹ As previously noted, Salgado is presently charged with Garcia's attempted murder.

26 ³² App. Letter at p. 3; AG 13 at pp. 3-4.

27 ³³ AG Ex. 13 at p. 8.

28 ³⁴ *Miranda v. Arizona* (1966) 384 U.S. 436.

³⁵ App. Letter at pp. 3-4; AG Exs. 5 at p. 4, 13 at p. 4.

1 On January 23, 1997, Garcia attended a live line-up and tentatively identified Contreras.
2 However, Garcia added that another participant in the line-up “also looks like” the gunman.³⁶ Garcia
3 again identified Contreras at the preliminary hearing, but Garcia emphasized that he was not sure
4 Contreras was the shooter. Garcia explained that Contreras “looks like him, yes, but I don’t know
5 how many would be like him.”³⁷

6 Contreras and Miguel were prosecuted separately for Garcia’s shooting. The prosecution
7 theorized that Contreras was the gunman, Miguel was the get-away driver, and they had planned to
8 rob Garcia. On February 27, 1997, Miguel pleaded guilty to being an accessory-after-the-fact in
9 exchange for a 16-month prison sentence and dismissal of all remaining charges.³⁸ Contreras
10 proceeded to jury trial, which commenced in April 1997.³⁹

11 At trial, Contreras presented an alibi defense. Multiple witnesses, most of whom were either
12 related to or friends with Contreras, swore that Contreras was working as a hospital security guard in
13 Bellflower until 8:00 a.m. on the day of shooting, after which he returned home at 8:30 a.m., ate
14 breakfast, and slept until at least 2:00 p.m. that afternoon. In addition, Contreras had no criminal
15 record. However, Contreras did not subpoena his brother Miguel to testify as to who had actually
16 shot Garcia.⁴⁰

17 The jury ultimately convicted Contreras of all charges on April 30, 1997.⁴¹ Contreras was
18 sentenced on June 9, 1997, to 25-years-to-life for Garcia’s attempted murder and robbery, plus seven
19 years for the enhancements.

21 ³⁶ AG Exs. 5 at p. 4, 13 at p. 4.

22 ³⁷ AG Ex. 13 at p. 4.

23 ³⁸ Los Angeles Superior Court Online Services, *People v. Miguel Contreras* (TA036360),
24 <<http://www.lacourt.org/criminalcasesummary/ui/Selection.aspx>> (as of July 18, 2018).

25 ³⁹ Los Angeles Superior Court Online Services, *People v. Marco Antonio Contreras* (TA036467),
26 <<http://www.lacourt.org/criminalcasesummary/ui/Selection.aspx>> (as of July 18, 2018).

27 ⁴⁰ Since Miguel had already been convicted and sentenced, the Fifth Amendment right against self-
28 incrimination no longer applied. (See, e.g., *Mitchell v. United States* (1999) 526 U.S. 314, 326
(confirming Fifth Amendment privilege is extinguished once a conviction and sentence has been
imposed because “there can be no further incrimination” or “legitimate fear of adverse consequences”).)

⁴¹ AG Ex. 13 at pp. 4-6.

1 **B. Post-Trial Events**

2 Miguel was paroled sometime in 1997. In January 1998, Miguel went to the Compton Police
3 Department and spoke to Detective Reynolds about his brother’s case. Miguel told Detective
4 Reynolds that Contreras was not the gunman.⁴² It is not clear whether Miguel identified Salgado as
5 the gunman at that time.⁴³ Regardless, after their discussion, Detective Reynolds attempted to
6 interview Salgado but was unable to locate him. Detective Reynolds reviewed Salgado’s criminal
7 history and confirmed that Salgado was a documented gang member with a prior conviction for
8 armed robbery. Salgado also physically resembled Contreras. After learning of Detective Reynolds’
9 investigation, Salgado fled California and relocated in Missouri.⁴⁴

10 In March 1998, while Contreras’ appeal was pending, Detective Reynolds notified Contreras’
11 appellate attorney Barbara Michel (Michel) of the results of his investigation. Michel, in turn, notified
12 LADA of these developments, but LADA did not take any further action. In July 1998, after Contreras’
13 convictions had been affirmed on appeal and a petition for review was pending in the California
14 Supreme Court, Detective Reynolds provided a signed declaration to Contreras’ attorney Michel.
15 Significantly, his declaration expressly opined that Salgado, rather than Contreras, had shot Garcia.
16 Shortly thereafter, the California Supreme Court denied review on July 29, 1998.

17 Despite the new and exculpatory evidence from Detective Reynolds, Contreras did not file any
18 petitions for habeas relief in state or federal court until 2017, when LADA filed one on his behalf.⁴⁵
19 Contreras offers no explanation for this inexplicable omission.⁴⁶ Had Contreras done so, he may
20 have been released substantially earlier. Instead, Contreras waited until 2012, after having served 16
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23 ⁴² AG Ex. 13 at p. 6.

24 ⁴³ LADA’s habeas petition suggests that Miguel did not, but Contreras’ counsel’s letter claims he did.
25 (AG Ex. 13 at p. 6; cf. App. Letter at p. 6.)

26 ⁴⁴ AG Ex. 13 at pp. 6, 8.

27 ⁴⁵ App. Letter at p. 6; AG Ex. 13 at p. 1, 6.

28 ⁴⁶ In a letter accompanying the application, Contreras’ counsel summarily asserts that “Mr. Contreras continued to fight to prove his innocence” after receiving Detective Reynold’s exculpatory declaration in 1998. (App. Letter at p. 6.) No further explanation is provided.

1 years imprisonment for Garcia’s attempted murder, before finally requesting assistance from the
2 Loyola Project for the Innocent (“LIP”).

3 **C. LADA Investigation**

4 In 2014, LIP asked LADA to review Contreras’ case. A three-year collaborative investigation
5 ensued, which ultimately led to Contreras’ exoneration of his 1997 convictions.⁴⁷

6 **1. Miguel’s 2014 Statement**

7 As part of that investigation, Miguel was interviewed by LADA and LIP. Miguel unequivocally
8 confirmed that Salgado, not Contreras, was the shooter. Miguel added the shooting was a murder-
9 for-hire. According to Miguel, a coworker at Conex named Antonio had brokered the deal for Salgado
10 to kill Garcia in exchange for \$10,000. Antonio provided Salgado with information about Garcia, his
11 vehicle, and likely whereabouts. Both Valencia brothers were also aware of the deal, and, at least
12 once, Ricardo drove Salgado when searching for Garcia. Miguel acknowledged helping Salgado
13 search for Garcia on numerous occasions, during which Miguel drove his Bronco and Salgado was
14 armed with a .380 semi-automatic handgun. Miguel denied receiving any payment from Salgado for
15 his assistance.

16 Miguel recalled that, after Garcia was shot, he drove Salgado to Salgado’s sister’s home to
17 hide the gun. Salgado was concerned that the landlord may have seen him. Miguel eventually drove
18 home and left the Bronco parked out front. Shortly thereafter, Miguel and Salgado separately arrived
19 at the Valencia brothers’ home.⁴⁸ Miguel later heard that Jose had driven Salgado back to his sister’s
20 home to retrieve the gun. Salgado then gave the gun to Jose, and Jose disposed of it.

21 Miguel confided to his trial attorney that Contreras was not involved with the shooting, but he
22 refused to identify the actual gunman. Miguel did not take any further action because he thought
23 Contreras would be acquitted at trial, and then, after the jury’s guilty verdicts, he believed Contreras
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26 ⁴⁷ App. Letter at p. 6; AG Ex. 13 at pp. 1, 6.

27 ⁴⁸ Notably, Contreras was also present at the Valencia home on the evening of the shooting, when he
28 suggested to officers that Miguel had been with Salgado earlier that morning. The record does not
reveal whether Contreras was present at the same time as Salgado or Miguel.

1 would only serve seven years in prison. Miguel feared being viewed as a “rat.” Miguel claimed he
2 had since matured and was now committed to proving his brother’s innocence.⁴⁹

3 Miguel described an encounter with Salgado that occurred shortly after he was released on
4 parole in 1997. Miguel had returned to work at Conex, where Salgado was still employed. Salgado
5 told Miguel that the murder-for-hire contract was still active and asked Miguel to help him kill Garcia.
6 Miguel refused and confronted Salgado about Contreras’ incarceration for Salgado’s crime. Salgado
7 replied, “He’s doing seven years. Tell him not to say nothing and I’ll take care of him, I’ll send him the
8 money.”⁵⁰

9 Miguel described another encounter between his father and Salgado that occurred in late
10 1997. By then, Miguel had told his family that Salgado was the gunman who shot Garcia, although
11 his parents were already suspicious of Salgado when he shaved his head and mustache immediately
12 after the shooting and ceased visiting their home. Miguel’s father and one of Miguel’s brothers
13 confronted Salgado in front of Conex about Contreras’ situation. According to Miguel, his father
14 demanded Salgado go to the police station and turn himself in. Supposedly, Salgado agreed, but
15 then he fled the area and was not seen again.⁵¹

16 **2. Antonio’s Recorded Statement**

17 To assist the investigation, Miguel wore a hidden recording device and met with Antonio, who
18 had arranged the hit with Salgado. As part of the ruse, Miguel told Antonio that his family was being
19 sued by Garcia for his medical expenses and, as a result, his family may lose their home. Since
20 “they” paid “this homeboy” to “fuck up” Garcia, Miguel asked for Antonio’s help. Antonio agreed to
21 “talk with those guys so I can see what they have and I’ll contact you.” After this discussion, Antonio
22 never contacted Miguel again.⁵²

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24 ⁴⁹ AG Ex. 13 at pp. 6-8.

25 ⁵⁰ AG Ex. 13 at p. 7. The record does not disclose whether Contreras received money in exchange for
26 his silence.

27 ⁵¹ AG Ex. 13 at pp. 6-8.

28 ⁵² AG Ex. 13 at pp. 8-9. As previously noted, Antonio was charged as an accomplice with Garcia’s
attempted murder.

1 sustained injury through his erroneous conviction and imprisonment.⁵⁹ If the claimant satisfies his
2 burden of persuasion for both elements, then pursuant to Penal Code section 4904, CalVCB shall
3 recommend to the Legislature an award of compensation equal to \$140 per day of incarceration,
4 including pre-trial confinement in county jail.⁶⁰

5 **A. Automatic Compensation Provision Does Not Apply**

6 An exception to CalVCB's standard procedure occurs when a claimant has obtained a
7 finding of factual innocence for each and every conviction underlying his incarceration. Under
8 limited circumstances set forth in Penal Code section 1485.55, the claimant is entitled to an
9 automatic recommendation for compensation, without a hearing, and within 30 days from filing
10 an application. In effect, section 1485.55 compels CalVCB to assume both requisite elements
11 of innocence and injury for a successful claim under Penal Code section 4900 and to
12 recommend compensation accordingly.

13 To explain, Penal Code section 1485.55, subdivision (a), specifically provides,

14 In a contested proceeding, if the court has granted a writ of habeas corpus or when,
15 pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that
16 the person is factually innocent, that finding shall be binding on the California Victim
17 Compensation Board for a claim presented to the board, and upon application by the
18 person, the board shall, without a hearing, recommend to the Legislature that an
19 appropriation be made and the claim paid pursuant to Section 4904.

20 Subdivision (b) of section 1485.55 further provides,

21 In a contested or uncontested proceeding, if the court grants a writ of habeas corpus and
22 did not find the person factually innocent in the habeas proceedings, the petitioner may
23 move for a finding of factual innocence by a preponderance of the evidence that the
24 crime with which he was charged was either not committed at all or, if committed, was
25 not committed by him or her.

26 Subdivision (c) adds,

27 If the court vacates a judgment pursuant to Section 1473.6 on any ground, the petitioner
28 may move for a finding of factual innocence by a preponderance of the evidence that the
crime with which he or she was charged was either not committed at all or, if committed,
was not committed by him or her.

59 Pen. Code, §§ 4903, subd. (a), 4904.

60 Pen. Code, § 4904.

1 Finally, subdivision (d) concludes,

2 If the court makes a finding that the petitioner has proven his or her factual innocence by
3 a preponderance of the evidence pursuant to subdivision (b) or (c), the board shall,
4 without a hearing, recommend to the Legislature that an appropriation be made and any
claim filed shall be paid pursuant to Section 4904.

5 Penal Code section 4902 clarifies that, if section 1485.55 applies to an application, then CalVCB
6 “shall, within 30 days of the claim, calculate the compensation for the claimant pursuant to Section
7 4904 and recommend to the Legislature payment of that sum.”⁶¹

8 Plainly understood, subdivision (a) of section 1485.55 compels automatic compensation when
9 a claimant has obtained both habeas relief and a finding of factual innocence in a single, contested
10 proceeding. But if the court granted habeas relief without a finding of factual innocence or the
11 proceeding was uncontested, then under subdivision (b), the claimant may return to court and file a
12 separate motion for a finding of factual innocence. Subdivision (c) similarly provides that, if the court
13 vacated the judgment of conviction without a finding of factual innocence, then the claimant may
14 return to court and move for a finding of factual innocence. If the court ultimately grants the separate
15 motion authorized by subdivision (b) or (c) of section 1485.55, then subdivision (d) compels automatic
16 compensation, without a hearing. Under section 4902, these events must occur within 30 days of
17 filing the application.

18 Despite this plain language, an ambiguity nevertheless appears. Specifically, section 1485.55
19 fails to identify for which particular convictions a finding of innocence must be secured to trigger an
20 automatic compensation recommendation. Will a finding of factual innocence for a single erroneous
21 conviction suffice, even if the claimant was lawfully incarcerated for another felony? Or must the
22 finding encompass all convictions underlying the claimant’s imprisonment? As previously concluded
23 by CalVCB, the only reasonable answer is the latter, as demonstrated by the statutory scheme for
24 compensation as a whole and the legislative history for section 1485.55.⁶² Thus, section 1485.55

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26 ⁶¹ Pen. Code, § 4902, subd. (a).

27 ⁶² Proposed Decision for *In the Matter of the Claim of George E. Shull* (16-ECO-11) at p. 16 n.79,
28 located on CalVCB Website, < <https://victims.ca.gov/docs/pc4900/PC-4900-Denied-Shull-2.pdf> > (Jul.
18, 2018) (interpreting automatic compensation statutes).

1 applies if the claimant has obtained a finding of factual innocence for each and every conviction
2 underlying his or her entire length of incarceration. This construction ensures that compensation is
3 automatically awarded only to those claimants who necessarily spent every day of their imprisonment
4 illegally behind bars for offenses they did not commit.

5 Construed in this manner, section 1485.55 does not apply to Contreras's application. True,
6 the Los Angeles Superior Court did find that Contreras was entitled to habeas relief for both of his
7 1997 convictions and further granted a separate motion declaring Contreras was factually innocent.
8 However, the court's finding of factual innocence was limited to Contreras' 1997 convictions and
9 excluded Contreras' 2001 assault conviction. Contreras's 2001 assault conviction remains legally
10 valid and is unchallenged in this proceeding. Consequently, of the 20 years that Contreras was
11 wrongfully imprisoned for his 1997 convictions, Contreras was properly incarcerated for four of those
12 years for his 2001 conviction.

13 Having failed to obtain a finding of factual innocence for each and every conviction underlying
14 his incarceration, section 1485.55 is inapplicable. Under these circumstances, logic precludes any
15 presumption under section 1485.55 that Contreras was both innocent and injured throughout the
16 duration of his 7,482 days imprisonment. Indeed, it would be a perverse insult to victim Arroyo, who
17 was stabbed by Contreras, to award Contreras \$140 for each of the four years he served for that
18 assault (i.e., \$204,400).⁶³ Thus, despite the Superior Court's express invocation of section 1485.55,
19 Contreras is not entitled to an automatic recommendation of compensation.

20 **B. Contreras Has Demonstrated Actual Innocence for Attempted Murder and Attempted**
21 **Robbery but Not Assault**

22 Because compensation is not automatically compelled, Contreras bears the burden to
23 demonstrate both requisite elements of (1) innocence and (2) injury by a preponderance.⁶⁴ As stated in
24 Penal Code section 4903,

25 The claimant shall prove facts set forth in the statement constituting the claim, including
26 [1] the fact that the crime with which he or she was charged was either not committed at

27 ⁶³ This figure was calculated by multiplying the daily rate of \$140 by 4 years by 365 days per year.

28 ⁶⁴ Pen. Code, § 4903, subd. (a).

1 all, or, if committed, was not committed by him or her, and [2] the pecuniary injury
2 sustained by him or her through his or her erroneous conviction and imprisonment.⁶⁵

3 Regulations confirm that the claimant bears the burden of proof, by a preponderance of the evidence,
4 on all issues necessary to establish eligibility.⁶⁶

5 On the issue of innocence, Contreras is significantly aided by Penal Code section 4903,
6 subdivision (b). This subdivision specifically provides,

7 In a hearing before the board, the factual findings and credibility determinations
8 establishing the court's basis for granting a writ of habeas corpus, a motion for new trial
9 pursuant to Section 1473.6, or an application for a certificate of factual innocence as
described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and
the board.⁶⁷

10 Thus, CalVCB is bound by a court's finding of factual innocence.

11 Here, the Los Angeles Superior Court invoked Penal Code section 1485.5 when determining
12 that Contreras was actually innocent of his 1997 convictions for attempting to murder and rob Garcia.
13 In accordance with subdivision (b) of section 4903, CalVCB unequivocally accepts that Contreras is
14 actually innocent of attempted murder and robbery. Indeed, from the documents provided, it does
15 appear that Salgado, not Contreras, repeatedly shot Garcia as part of a hit job orchestrated by Antonio.
16 It is undisputed that Contreras' brother Miguel drove the get-away car after this shooting. Furthermore,
17 Salgado is currently facing charges for attempting to murder Garcia, as is Antonio who arranged the hit.
18 Ricardo already pleaded guilty as an accessory for assisting Salgado. Thus, Contreras has proven, by
19 a preponderance, that he is factually innocent of both 1997 convictions.

20 Nonetheless, Contreras remains guilty of assault. Specifically, on March 11, 2000, Contreras
21 personally used a sharp, metal rod to stab his fellow inmate Arroyo. Based upon this attack, Contreras
22 pleaded no-contest to personally assaulting Arroyo with a deadly weapon. Contreras' assault
23 conviction remains valid and has not been disputed in this or any other legal proceeding. Accordingly,
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26 _____
26 ⁶⁵ Pen. Code, § 4903, subd. (a).

27 ⁶⁶ Cal. Code Regs., tit. 2, § 644, subd. (c).

28 ⁶⁷ Pen. Code, § 4903, subd. (b).

1 Contreras has not proven that he is factually innocent of his 2001 assault conviction, for which he
2 received a four-year prison sentence.

3 In sum, Contreras has satisfied his burden to demonstrate actual innocence for his 1997
4 convictions, but not his 2001 conviction.

5 **C. Contreras’s Demonstrated Injury Is Limited to 6,022 Days**

6 In addition to innocence, the claimant must demonstrate that he sustained injury through his
7 erroneous conviction and imprisonment in order to obtain compensation under Penal Code section
8 4900. As explained in Penal Code section 4904,

9 If the evidence shows that [1] the crime with which the claimant was charged was either
10 not committed at all, or, if committed, was not committed by the claimant, and that [2] the
11 claimant has *sustained injury* through his or her erroneous conviction and imprisonment,
12 the California Victim Compensation Board shall report the facts of the case and its
13 conclusions to the next Legislature, with a recommendation that the Legislature make an
14 appropriation for the purpose of indemnifying the claimant for the injury. The amount of
the appropriation recommended shall be a sum equivalent to one hundred forty dollars
(\$140) per day of incarceration served, and shall include any time spent in custody,
including in a county jail, that is considered to be part of the term of incarceration.⁶⁸

15 Notably, the injury need not be pecuniary, as this particular requirement was expressly removed by the
16 Legislature in the current version of section 4904.⁶⁹ Consequently, the claimant no longer must
17 demonstrate a monetary loss resulting from his erroneous conviction in order to receive compensation
18 as an erroneously-convicted person.⁷⁰

19 Nonetheless, some injury still must be proven. Given the manner by which compensation is
20 calculated, the injury contemplated under section 4904 is “each day ... spent illegally behind bars, away
21 from society, employment, and [] loved ones.”⁷¹ Thus, injury occurs within the meaning of section
22 4904 upon a showing that, but for the erroneous conviction and imprisonment, the claimant would have

23 ⁶⁸ Pen. Code, § 4904 (emphasis added).

24 ⁶⁹ Former Pen. Code § 4904 (West 2015) (requiring proof of “pecuniary injury”); Cal. Code Regs., tit. 2,
25 § 640, subd. (c) (defining “pecuniary injury”).

26 ⁷⁰ Cal. Code Regs., tit. 2, § 640, subd. (c) (defining “pecuniary injury”); see also *Holmes v. Calif. Victim*
27 *Comp. & Gov’t Claims Board* (2015) 239 Cal.App.4th 1400, 1409-1410 (affirming CalVCB’s denial of
compensation for claimant who was unemployed, homeless, and recently released from prison at the
time of his erroneous arrest).

28 ⁷¹ *Holmes, supra*, at p. 1405 (explaining purpose behind compensation provisions).

1 been free. Injury is therefore lacking if the erroneously-convicted “claimant remained incarcerated on a
2 separate, unrelated conviction” that was valid.⁷² In that scenario, the sentence for the valid conviction
3 “vitiates any claim of damage attributable to the [erroneous] conviction.”⁷³

4 Here, Contreras’ application characterizes his injury as having “lost nearly 21 years of his life to
5 unlawful incarceration.” He seeks compensation for the entire duration of his imprisonment, which
6 amounts to 7,482 days from his arrest on October 3, 1996, to the day of his release on March 28, 2017.
7 Contreras does not address the Attorney General’s contrary position that, as a result of his valid 2001
8 assault conviction, “for four years of his incarceration, claimant suffered no injury resulting from his
9 convictions for attempted murder and attempted robbery.”⁷⁴

10 CalVCB agrees with the Attorney General on this point. Contreras was erroneously
11 incarcerated for his 1997 convictions from October 3, 1996, through March 28, 2017, for a total of 7,482
12 days. Nonetheless, Contreras was lawfully incarcerated for 1,460 days between March 10, 2000, and
13 March 10, 2004, as a result of his 2001 assault conviction. Thus, Contreras has failed to demonstrate
14 that, but for his erroneous 1997 convictions, he would have been free for all 7,482 days of his
15 confinement. Accordingly, Contreras’ sustained injury within the meaning of section 4904 is limited to
16 6,022 days (i.e., 7,482 – 1,460). Pursuant to section 4904, CalVCB must recommend the Legislature
17 appropriate \$140 for each of these 6,022 days, for a total award of \$843,080.

18 **D. Contreras Intentionally Contributed To His Erroneous Incarceration**

19 However, this statutorily-compelled recommendation is given with reservations. By July 1998,
20 Contreras knew the name of the actual shooter and even possessed an exonerating declaration from
21 the investigating detective. Despite this significant evidence of innocence, Contreras failed to pursue
22 relief in any court until 2017, when LADA filed a habeas petition on his behalf. Contreras offers no
23 explanation for his prolonged silence for almost 20 years. Perhaps Contreras feared retribution if he
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25 ⁷² *Fudger v. State* (N.Y 1987) 131 A.D.2d 136, 141 (denying compensation under New York statute for
26 erroneous offenders because claimant’s valid conviction “vitiates any claim of damage attributable to
27 the [erroneous] conviction”).

27 ⁷³ *Ibid.*

28 ⁷⁴ AG Response Letter at pp. 6-7.

1 publicly identified Salgado as the shooter. Perhaps Contreras remained silent out of a sense of loyalty
2 to his brother and their friends. Or perhaps Contreras received some benefit in exchange for his
3 silence as promised by Salgado. Whatever the reason, Contreras' erroneous convictions and ensuing
4 20-year imprisonment largely resulted from his own gamesmanship, rather than any defect in the
5 judicial system.

6 Indeed, Contreras likely knew the culprit's identity within hours after the shooting occurred on
7 September 10, 1996, given the close ties between Contreras, his brother Miguel, the Valencia brothers
8 Jose and Ricardo, and Salgado. Notably, police contacted Contreras on the evening of the shooting at
9 the Valencia brothers' home, at which time Contreras suggested that Miguel had been with Salgado
10 earlier that morning. The Valencia brother's home is where Miguel and Salgado had both taken refuge
11 within hours after the shooting. Furthermore, the Valencia brothers knew about the contract to murder
12 Garcia and each had assisted Salgado complete the hit. Specifically, Ricardo drove Salgado while
13 searching for Garcia, and Jose drove Salgado to retrieve the attempted-murder weapon and briefly
14 stored it. Finally, Salgado was a frequent visitor at Contreras' home, at least before the shooting
15 occurred. Under these circumstances, it seems entirely likely that Contreras was told - or at least
16 suspected - that Salgado was the shooter on the same day that the shooting occurred. In fact, Miguel
17 admitted that his parents suspected Salgado long before Miguel confessed. Nonetheless, Contreras
18 declined to give any statement when arrested in October 1996, further failed to subpoena Miguel to
19 testify at his trial in April 1997, and did not pursue habeas relief until March 2017. Accordingly,
20 Contreras' own actions directly contributed to his erroneous arrest, conviction, and subsequent
21 incarceration for 20 years.

22 Despite these concerns, none disqualify Contreras from receiving compensation. Under former
23 Penal Code section 4903, a claimant seeking compensation was required to prove, in addition to actual
24 innocence and injury, "that he or she did not, by any act or omission on his or her part, *intentionally*
25 *contribute to the bringing about* of his or her arrest or conviction for the crime with which he or she was
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1 charged....”⁷⁵ This statutory bar to compensation was deleted in 2014. In its place, subdivision (c) of
2 section 4903 currently precludes compensation only “if the board finds by a preponderance of the
3 evidence that a claimant *pled guilty with the specific intent to protect another* from prosecution for the
4 underlying conviction for which the claimant is seeking compensation.”⁷⁶ Because Contreras did not
5 plead guilty, he is still entitled to a recommendation for compensation by CalVCB.

6 **V. CONCLUSION**

7 CalVCB hereby grants, in part, Contreras’ application for compensation under Penal Code
8 section 4900 based upon his 1997 convictions for attempted murder and robbery. CalVCB accepts that
9 Contreras is actually innocent of these offenses, for which he was incarcerated a total of 7,482 days.
10 However, Contreras remains guilty of his 2001 assault conviction, for which he simultaneously served
11 1,460 days imprisonment. Consequently, Contreras’ demonstrated injury is limited to 6,022 days of his
12 total incarceration. Pursuant to Penal Code sections 4903 and 4904, CalVCB is required to
13 recommend that the Legislature appropriate \$843,080 as payment to Contreras for being wrongfully
14 imprisoned for 6,022 days, even though Contreras’ own actions contributed to his incarceration for 20
15 years.

16
17 Date: August 13, 2018

18 _____
19 Laura Simpton
20 Hearing Officer
21 California Victim Compensation Board

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26 _____
27 ⁷⁵ Former Pen. Code, § 4903 (West. 2013), added by Stats. 2009, c. 432 (A.B. 316), § 6 (emphasis
added).

28 ⁷⁶ Pen. Code, § 4903, subd. (c), added by Stats. 2013, c. 800 (S.B. 618), § 7 (emphasis added).

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**BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA**

In the Matter:

Marco Contreras

Claim No. 17-ECO-11

Notice of Decision

(Penal Code § 4900 et seq.)

On October 18, 2018, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: October 19, 2018

Michelle Greer
Board Liaison
California Victim Compensation Board