

21-5227  
No.: \_\_\_\_\_

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Sergio Bahena-Petitioner;  
V.

Supreme Court, U.S.  
FILED  
**JUL 19 2021**  
OFFICE OF THE CLERK

The People of the  
State of Illinois-Respondent;

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"On Petition for a Writ of Certiorari to  
The Illinois Appellate Court for the  
First Judicial District"

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"Petition for Writ of Certiorari"

Sergio Bahena  
Doc# Y-26870  
Lawrence Correctional Center  
10930 Lawrence Road  
Sumner Illinois, 62466  
Petitioner/Pro se

RECEIVED  
**JUL 27 2021**

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Did the Appellate Court of Illinois violate Petitioners Fourth Amendment to the U.S. Constitution, by denying his petition due to the differentiation within the First District concerning the constitutionality of Investigative Alerts.
2. Did the use of Investigative Alert by Chicago Police Department hold the grounds to be serve as as arrest warrant of the Petitioner at his home.

LIST OF PARTIES

- 1.) All parties appear in the caption of the case on the cover page.

## TABLE OF CONTENTS

Questions Presented.....	pg1
List of Parties.....	pg2
Table of Contents.....	pg3
Index to Appendices.....	pg3
Table of Authorities.....	pg4
Opinions Below.....	pg5
Jurisdiction.....	pg6
Constitutional Provisions and Statutes.....	pg7
Statement of the Case.....	pg8,9,10,11
Reasons For Granting The Writ.....	pg12,13,14,15
Conclusion.....	pg16

## INDEX TO APPENDICES

Appendix A- Decision of State Court Of Appeal

Appendix B- Decision of State Supreme Court Denying Review

Appendix C- Chicago Police Department, Special Order 504-16,  
Investigative Alerts System

TABLE OF AUTHORITIES CITED

Illinois Constitution Article I, Section 6; pg12,13,14

People v. Bass, 2019 Ill. App(1st)160640; pg12,14

People v. Bass, 2021 Ill. 125434; pg12,13

People v. Braswell, 2019 Ill. App(1st)172810; pg12,13,14

People v. Hyland, 2012 Ill. App(1st)110966, 981 N.E.2d 414, 367 Ill. Dec. 89. pg12

Peyton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); pg13,14

Silverman v. United States, 365, U.S. 505, 511, 81 S.Ct. 678, 683 5 L.Ed.2d 734; pg14

United States Constitutional Amendment IV; pg13,14

United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300(1976); pg13

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari to review the judgement below.

OPINION BELOW

The opinion of the highest state court to review the merits appears at Appendix "B" to the petition and is unpublished.

The opinion of the Appellate Court appears at Appendix "A" to the petition and is reported at W.L.2210669(ILL, May 26, 2021)

JURISDICTION

The date on which the highest state court decided my case was May 26, 2021. A copy of that decision appears at Appendix "A". No petition for rehearing was timely filed in my case. No extension of time to file for a writ of certiorari was filed on petitioners behalf. The jurisdiction of this court is invoked under 28 U.S.C. §1257(A).

CONSTITUTIONAL PROVISIONS AND STATUTES

Petitioners, Fourth Amendment to The United States Constitution, The right of the people to be secure in their houses, against unreasonable searches and seizures, was violated by The Appellate Court of Illinois when denying petitioner relief, petitioner was contesting the use of Investagative Alerts by Chicago Police Department, which is a deliberative process to circumvent obtaining a warrant from a Neutral Magistrate Judge, petitioner raises a purely legal question, whether an Investagative Alert supported by probable cause may serve as the basis for an arrest, if the police do not obtain a warrant.

STATEMENT OF THE CASE

Sergio Bahena was convicted of attempt first degree murder, aggravated battery, and aggravated discharge of a firearm after a bench trial was conducted before Judge Erica Reddick beginning on September 11, 2017. This trial was in connection with the non-fatal shooting of a man named Ruben Saldivar that occurred on March 9, 2013 near the location of 4884 S. Archer Avenue in Chicago, Illinois. (The relevant facts are discussed in Mr. Bahena's opening brief. See. Appellant's Brief, pp. 4-20. In this supplemental filing, Mr. Bahena, through counsel, is raising the additional issue of whether the trial court erred in denying his motion to quash arrest and suppress evidence. The relevant facts for this issue are recounted below.)

On July 5, 2015, counsel for Mr. Bahena filed a written motion to quash arrest and suppress evidence. C 113-115. In that filing, counsel argued, *inter alia*, that Mr. Bahena's November 5, 2013 arrest was effected in violation of his constitutional rights under both the Illinois Constitution and the Constitution to the United States. *Id.* As a result, counsel requested that his arrest be quashed and that any and all fruits of his arrest-including any post-arrest statement-be suppressed in this criminal proceeding. *Id.*

An evidentiary hearing was held for this motion on July 12, 2016. R 57. At that hearing, the defense called Mr. Bahena to the stand. R 66. After testifying to his age and background, he indicated that on November 5, 2013, at approximately 5:00p.m., he was sleeping and awoken by his girlfriend. R 67. She informed him that some officers were present and wished to speak with him. *Id.* Mr. Bahena immediately got dressed and went downstairs to talk to the officers. *Id.* As Mr. Bahena stepped outside, he recognized Detective Perez, an officer who previously investigated his cousin's murder. R 68. Mr. Bahena refused to allow the officer to come inside because children were pres-

ent watching television. R. 70.

Detective Perez, and his fellow officers, then handcuffed Mr. Bahena and placed him into custody. R 70. Mr. Bahena was never informed that the officers had an arrest warrant, and at the time, he was not violating any law. R 71.

On cross-examination, the state elicited that Mr. Bahena spoke with officer Perez at his home on two or three in or around August 2013, and that he would recognize officer Perez. R 72-78.

The defense then rested, and the hearing was continued until August 2, 2016 at which time the state called Detective Terry Teahen. R 79-80; 88-89.

Detective Teahen testified that he was assigned to investigate the shooting of Ruben Saldivar on March 9, 2013, which took place at approximately 10:00 p.m. in the vicinity of 4884 S Archer Avenue in Chicago, Illinois. R 90. Detective Teahen stated that he recovered a surveillance video from a liquor store at the location, which depicted a Hispanic male walk up to a conversion van parked in front of the store. Id. The video then depicted the individual walk to the passenger window and shoot into the van before fleeing southbound on Archer. R 91. Detective Teahen took stills from the video, created an information or lookout bulletin, and posted it in various police stations. R 91-93. On October 30, 2013 Detective Teahen was contacted and learned that Officer Perez recognized Mr. Bahena as the offender. R 94. On November 4, 2013, Detective Teahen showed the victim, Mr. Saldivar, a photo array that included Mr. Bahena. R 95. Mr. Saldivar identified Mr. Bahena in the photo array as the individual who shot him. R 96. Detective Teahen then issued an investigative alert with probable cause to arrest Mr. Bahena. R 97. He went on to describe the process of creating the alert and the manner in which it was disseminated amongst the Chicago Police Department. Id.

On November 5, 2013, Detective Teahen learned that Mr. Bahena was placed under arrest by Officer Perez. R 97-98. Detective Teahen identified Mr. Bahena in court as the individual who was arrested on November 5, 2013 at approximately 5:00 p.m.

at the address of 5137 S. Kostner Avenue. R 98. On cross-examination, Detective Teahen was questioned regarding the information bulletin (R 99-101). The photo array shown to Mr. Saldivar (R 101-102), and his contact with Officer Perez. R 103. Importantly, counsel also elicited that Detective Teahen prepared an investigative alert, submitting to his Chicago Police Department Supervisor, and did not obtain an arrest warrant or a search warrant. R 102-103.

In argument, defense counsel began by referencing the United States Constitution and the Illinois Constitution, as well as the fact that no arrest warrant or search warrant was obtained. R 106. He then went on to critique the constitutionality of the process of obtaining an investigative alert, including the fact that it was submitted to a supervisor, as opposed to a judicial officer, and no warrant was obtained. R 107.

The bench trial for this matter commenced on September 11, 2017. R 160. Relevant to the issue raised in this (petition for Writ of Certiorari) at trial the state introduced a physical line up viewed by Mr. Saldivar, which included Mr. Bahena. See. R 328-347; 446-447; 470-492; 509-520. Those post arrest statements include a handwritten statement taken in the presence of assistant States Attorney. See R 515-520.

"After closing arguments concluded, the trial court found Mr. Bahena guilty of all counts, with the exception of counts five and six of the indictment. R 733-735; 678-713.

On January 1, 2018 the trial court denied Mr. Bahena's post-trial motions and sentenced him to 31 years in the Illinois Department of Corrections. R 768-785.

Mr. Bahena filed a timely notice of appeal in the Appellate Court of Illinois. Through counsel Mr. Bahena, filed two appellate briefs Case No. 1-18-0197, first brief was filed on September 27, 2018 within contesting the trial courts denial of a motion filed to suppress the photo array and physical line up.

A second supplemental brief was filed through counsel on August 19, 2019 within contesting the trial courts denial of a motion filed to quash arrest and suppress the fruits thereof. The relevant facts for that motion are recounted in this petition for Writ of Certiorari. In the supplemental brief Mr. Bahena raises a purely legal question regarding his arrest, namely, whether an investigative alert that is supported by probable cause may serve a basis for an arrest, if the police do not obtain a warrant. The decision was reached by appellate court on March 31, 2020 denying Mr. Bahena appellate briefs. No petition for rehearing was filed on Mr. Bahena's behalf. Mr. Bahena pro-se moved to file a motion for an extension of time to file a Petition for Leave to Appeal to the Supreme Court of Illinois, motion was acknowledged April 30, 2020. Mr. Bahena pro-se filed Petition to Leave to Appeal on June 5, 2020, Case No. 126062. Petition was denied on May 26, 2021. No petition for rehearing was filed on Mr. Bahena's behalf.

REASONS FOR GRANTING THE WRIT

Divisions within the Appellate First District of Illinois are in conflict between the use of "Investigative Alerts" by Chicago Police Department. The fourth division which filed there opinion on petitioners appellate brief explicitly rejected the findings in People v. Bass, 2019 IL App.(1st)160640. "We decline to Follow the reasoning or precedent of Bass and find that Bass was incorrectly decided". See petitioners Appendix(A)opinion [redacted] And it would follow it's more recent ruling in People v. Braswell, 2019 IL App(1st)172810. Defendant Hyland was the first to address the use of investigative alerts, that appellate court found that arrests based on investigative alert was Unconstitutional. See. People v. Hyland, 2012 IL App(1st)110966, 981 N.E. 2d 414, 367 ILL. Dec.89. In Bass, a divided panel of the appellate court concluded that an arrest is unconstitutional under the Illinois Constitution when it is based on an investigative alert, even where the investigative alert is supported by probable cause. Ill. Const.Art 1, §6. See People v. Bass, 2019 Ill App(1st)160640 [redacted]. However, in Braswell this court found that Brass incorrectly decided and declined to follow it. The Braswell court observed that Brass "created the somewhat paradoxical situation where police may arrest an individual without a warrant and without an investigative alert if they have probable cause to do so, but that same arrest becomes unconstitutional if police issue an investigative alert based on the same facts that gave rise to the probable cause." Braswell, 2019 IL App(1st)172810 [redacted]. Braswell court thus adopted the reasoning outlined by (Justice Mason) in her partial dissent in Bass. See Bass, 2019 IL App(1st)160640 [redacted]. Other panels of this court have followed the reasoning of Braswell and Justice Mason's dissent. Our Supreme Court Of Illinois recently handed down it's decision in People v. Bass, 2021 IL 125434, 144 N.E. 3d. 542, aff'd in part, vacated in part, having disposed of the case it declined to "express any opinion limited lockstep analysis, its application to warrants or investigative alerts, or the constitutionality of investigative alerts. Those portions of the appellate opinion dealing

with these issues are vacated." Bass, 2021 IL 125434, 91912931. However Justice Neville, concurring in part and dissenting in part, disagree with the majority's use of constitutional avoidance to vacate the appellate court's holding that Bass arrest was unconstitutional under the warrant clause of the Illinois Constitution, Ill. Const.1970, Art I, §6, See Justice Neville dissent, in People v. Bass, 2021 IL 125434

Without contesting the validity of the decisions in Braswell or Bass, petitioner asserts that the investigative alert used in the instant case violated his constitutional rights under the Ill. Const. Art I, §6 and the United States Constitution 4th Amendment petitioner raise a purely legal question on his appellate brief regarding his arrest, namely, whether an investigative alert that is supported by probable cause may serve as the basis for an arrest if the police do not obtain a warrant and that Sgt. Perez's "Authority" to arrest petitioner "derived" entirely from the investigative alert" by itself, was sufficient.

Warrantless arrest of Petitioner at his home on the grounds of an "Investigative Alert" violated the Fourth Amendment of the United States Constitution, "The right of the people to be secure in their...home.. Shall not be violated and to be arrested in the home involves not only the invasion of the sanctity of the home which is to substantial an invasion to allow without a warrant in the absence of exigent circumstances even when it is accomplished under Statutory Authority".

Peyton v. New York 445 U.S. 573, 100 S.Ct 1371, 63 L.Ed. 2d. 639(1980).

On November 5, 2013 at approximately 5:00 p.m. Sgt. Perez and his partner, with the intent to arrest petitioner knocked on petitioner's home door and once petitioner revealed himself at the front door of his home Sgt. Perez commanded the petitioner step out onto the porch of his home then arrest petitioner, likewise petitioner's arrest was set in motion while in his home. See United States v. Santana U.S. 38, 96 S.Ct 2406, 49 L.Ed. 2d 300(1976) where our Supreme Court held that Santana's arrest had been set in motion by officers shouting "police

before Santana" retreated into her home, to negate an lawful arrest in a public place. Petitioner contends that at the very core of the Fourth Amendment stands the right of a man to retreat into his home and there be free from unreasonable goverment intentions. Silverman V. United States 365 U.S. 505,511, 81 S.Ct 679 683, 5 L.Ed. 2D 734. This right was violated by Sgt.Perez when after commanding that petitioner step out onto the porch instantly arresting petitioner without a warrant and absent exigent circumstances but instead armed only with an "Investigative Alert".

Petitioners circumstances leading up to the arrest are distinguishable from both Bass or Braswell, Bass was in a "Public Place" when the investigative alert was executed while defendant was committing and/or committed a separate crime. Braswell defendant was already in "Police custody" on a separate crime, when he was arrested for the instant offense based on a investigative alert. Furthermore recognizing, "Braswell did not contest the propriety of the investigative alert on his pre-trial motion to suppress or his opening brief before the appellate court, defendant raised the issue regarding the constitutionality of the alert in his reply brief after the courts opinion in Bass, 2019, IL App(1st)160640." See People v. Braswell, 2019 IL App(1st)172810, [redacted] By contrast in the case at bar petitioner was at home, when officers executed the alert, petitioner having a greater Constitutional Protection under the Fourth Amendment of the United States Constitution and ILL.Const.1970. Art I. §6. Which were violated by the Chicago Police Department's use of an "Investigative Alert" at his home to circumvent the warrant requirement being that the Fourth Amendment has drawn a firm line at the entrance to the house, absent exigent Circumstances. That threshold may not reasonably be crossed without a warrant, Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed. 2d. 639 (1980). Being that petitioner having been in his home was arrested absent warrant and/or exigent circumstances but based on a process that allowed C.P.D. to side step a Judge and is a deliberative process and not a response to actions

unfolding in real time. Detectives had ample time to seek a warrant from a "Neutral Magistrate Judge". See Appendix "C"

CONCLUSION

"Wherefore, Petitioner, Sergio Bahena, states the reasons herein, respectfully requests that this Court vacate his conviction, order a new trial, and grant any and all other relief deemed appropriate.

Executed on: July 18, 2021

Respectfully Submitted,

Sergio Bahena  
Petitioner, pro se