

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 MOSED SHAYE OMAR,

7 Plaintiff,

8 v.

9 JOHN KERRY, et al.,

10 Defendants.
11

Case No. [15-cv-01760-JSC](#)

**ORDER TO THE UNITED STATES
DEPARTMENT OF JUSTICE**

12 Plaintiff Mosed Shaye Omar, a United States citizen, contends that the United States
13 Department of State unlawfully revoked his passport based a written statement (“the Statement”)
14 that Omar contends is unreliable. The Court heard oral argument on Omar’s motion for a
15 preliminary injunction on September 8, 2015. At the hearing, the Court questioned the
16 government at length about the undisputed facts in the record that supported Plaintiff’s assertion
17 that the Statement is unreliable and cannot be the basis for revocation of his passport. At the
18 conclusion of the hearing the Court took the motion under submission to give Plaintiff the
19 opportunity to make a supplemental submission regarding irreparable harm. Following the
20 hearing, the parties agreed to participate in a settlement conference before Judge Orrick on
21 October 8, 2015.

22 By letter dated September 28, 2015, Plaintiff Mosed Shaye Omar advised the Court that
23 nine days after the hearing, the United States Attorney’s Office obtained a warrant from another
24 magistrate judge of this Court to obtain Plaintiff’s DNA. (Dkt. No. 35.) Plaintiff expressed
25 concern that the affidavit in support of the warrant (which was not disclosed to Plaintiff) relied
26 upon the very Statement that in this lawsuit is being challenged as unreliable. Accordingly, the
27 Court ordered the government to file the affidavit submitted to the magistrate judge in support of
28 the warrant. (Dkt. No. 36.) The government did so and also provided a copy to Plaintiff.

1 The Court has now reviewed the warrant application and directs the Department of Justice
2 to answer the following questions in writing on or before **5:00 p.m. on Thursday, October 1,**
3 **2015.**

4 1. The affidavit omits any reference to: this lawsuit, Plaintiff’s challenge to the
5 Statement’s reliability, this Court’s questions about the Statement’s reliability, and any of the facts
6 surrounding the Statement. Was any of this information otherwise provided to the magistrate
7 judge in connection with the warrant application?

8 2. If any of the above information was not provided, why was the information not
9 disclosed to the magistrate judge?

10 3. Was the federal agent who signed the affidavit in support of the warrant at all
11 aware of the proceedings before this Court? If not, how did he come to seek the warrant just nine
12 days after the preliminary injunction hearing and more than two and half years after the Statement
13 on which the affidavit is based was made?

14 4. Was the Assistant United States Attorney who signed the application for the search
15 warrant aware of the litigation before this Court or Mr. Omar’s challenge to the Statement’s
16 reliability?

17 5. Was the Department of Justice Attorney appearing in this action aware that the
18 United States was seeking a warrant? If so, when did he become aware of the possibility of a
19 warrant application and was he aware of what information was not disclosed to the magistrate
20 judge.

21 **IT IS SO ORDERED.**

22 Dated: September 29, 2015

23
24
25
26
27
28


JACQUELINE SCOTT CORLEY
United States Magistrate Judge