

REFUGEE UPDATE

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The Bill against Smugglers Steals Refugees' Rights

HIDDEN IN THE LEGISLATION TO
DEAL WITH SMUGGLERS WERE
MEASURES THAT AFFECT
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THE BILL AGAINST SMUGGLERS STEALS REFUGEES' RIGHTS

TOM CLARK

When this edition was planned, we intended to include a lead article attacking the myths about refugees arriving by boat. It addressed the negative media surrounding the Summer arrival of one boat of Tamil refugee claimants in Vancouver. Supposedly, smugglers were involved. Our intended article is included. Similarly, other articles are published as planned. However, a new government initiative begun on our deadline for going to press cannot be ignored. After repeated media rumblings, in late October the government introduced legislation, Bill C-49, to “crack down” on human smugglers. Toronto refugee law expert Lorne Waldman wrote in the Star Oct 28th the Bill tabled: “misses the mark. Instead of focusing on the real problem — the human smugglers who exploit people for a profit — it directs the reprisals at their victims — the refugees fleeing persecution.”

Waldman noted the Bill proposed did almost nothing to advance its stated purpose. The only part to address human smuggling provided mandatory minimum sentences. Yet studies have shown that such mandatory sentences are not effective in deterring criminal activity. They can only be less effective for human smuggling because the perpetrators use proxies. Since they never set foot in Canada they never face the sentence. At the same time the bill made it easier to convict people who innocently assist refugees to be charged for human smuggling.

The Bill also went beyond the supposed purpose of responding to boat arrivals. The language was broad enough to single out for rights restricting treatment any two or more asylum seekers who arrived together by land, sea or air. The minister simply had to designate them as an “irregular arrival.” The wide discretion and ambiguity allowed almost any asylum seekers who come to Canada to be designated and subject to the sanctions. All designated faced mandatory detention for 12 months without review, even women and children. Those subsequently found to be Convention Refugees would not get the travel document required under the 1951 Convention for 5 years and so cannot travel anywhere. These could not apply for permanent residence for five

years, preventing them from settling and robbing them of their right to family life by preventing family reunion during the five-year period and the usual years of delay after.

Worse, hidden in the legislation to deal with smugglers were measures that affect all non-citizens. Any non-citizen, even a permanent resident who has lived in Canada for years, had to be detained while the minister investigates a suspicion that they might have committed a criminal offence outside of Canada.

The Bill tried to undo the compromise reached in the refugee reform legislation passed in June. The Bill eliminated the right of appeal against certain decisions made by the Immigration and Refugee Board. The right was given to refugees as part of the June 2010 parliamentary compromise. Waldman noted this measure applied even when such a person was not part of an irregular arrival.

To our mind the "real" solution is not this kind of legislation which should be scrapped. Evidently the better solutions come from international cooperation among States. Yet so far, the international initiatives have focussed only on agreements to prosecute smugglers. Steps of international agreement for better sharing the load of asylum seekers amongst attractive developed countries are underdeveloped. The international regime goes only so far as to place obligations on a country like Canada once a refugee manages to appear there in some manner to claim the international status. Then, the manner of arrival must be overlooked if the person is indeed a refugee. Attempts to introduce international sharing of asylum seekers got no further than the framework in Conclusion 15 agreed to by governments comprising the Executive Committee of the UN High Commissioner for Refugees program in the late '70s.

As Waldman says, the victims of the law as proposed in the tabled Bill C49 are refugees and their fundamental rights as human beings like freedom from arbitrary or mandatory detention or fair trial. We diminish ourselves as human beings and as a nation when we legislate such laws. Human beings deserve better. Let's hope that refugee rights protection can somehow emerge restored after the messy political processes yet to come.

FOUR MEDIA MYTHS ABOUT THE TAMIL BOAT PEOPLE

PAULA KLINE AND RICK GOLDMAN 3 SEPTEMBER 2010
(WRITTEN AS A LETTER TO EDITORS
OF THE MONTREAL GAZETTE, BUT NOT PUBLISHED)

The Montreal City Mission of the United Church of Canada and the Committee to Aid Refugees have wide experience in immigration issues in Canada. The Mission has been active in the field for a century and the Committee was formed to defend the rights of refugees.

ada given current travel restrictions. And even in terms of boat arrivals, Canada is by no means a prime destination. Although the arrival of nearly 500 refugees at one time on the MV Sea Sun may seem like a large number, Australia reported 2,900 refugee claimants arriving by boat last year.



Together, we have extensive and specialized knowledge of the facts. We have been disturbed by four myths that recur in reports about the arrival of Tamil refugee claimants on a ship that recently reached the west coast of Canada this Summer 2010.

Myth #1: "Canada is overflowing with refugees"

Wrong! While Canada can be proud of the number of refugees it accepts each year, we are not the most generous nation, even on a per capita basis, among wealthy countries. For one thing, few refugees can hope to make it to Can-

Canada is hardly sharing this responsibility generously with Australia. Many much poorer countries offer sanctuary to far more refugees than Canada, since they are located much closer to the refugee-producing countries.

In fact, the present Canadian government has been working to reduce dramatically the number of refugee claimants arriving. As a result of measures introduced last summer, Canada is likely to receive about 10,000 fewer refugee claimants in 2010 than in 2009 – a drop equivalent to 20 MV Sea Suns. By way of illustration, the Montreal City Mission has already had to close two of its three

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shelters for newly-arrive claimants.

Myth # 2: "The Tamil claimants are "queue jumpers"

Wrong! There is no "queue" for immigrating to Canada, except perhaps for very highly-skilled, university-educated candidates. Unless some of the ship's passengers are in that rarefied category, they had no prospect of ever immigrating to Canada -- no matter how long they waited

The expression infers that the Tamil claimants are lying when they say they are in danger in Sri Lanka. In other words, it pre-judges their refugee claims, despite continued problems of serious human rights abuse in Sri Lanka documented by Amnesty International and other credible sources. Labelling them as "disguised economic migrants" also flies in the face of the very high acceptance rate of Sri Lankan claimants by Canada's Immigration and Refugee Board (91% in 2009).

Trying to flee to a poor neighbouring country is no real alternative. This could mean waiting for years or decades in squalid refugee camps with the hope of eventual resettlement to Canada or another country -- more of a lottery than an "immigration queue". Who among us would choose that option for ourselves or our children?

Myth #3: "Once they're here, they have all the same rights as Canadians"

Wrong! To Canada's credit, refugee claimants do get certain rights due to them and are not left destitute as in some other (even wealthy) countries. They have the right to basic medical care -- and doesn't it make sense that we quickly identify and treat any communicable diseases? If they pass their medical exam, they can receive a work permit. Those of us who work with refugee claimants know that most find employment quickly, often accepting sub-standard conditions and pay to get that first job.

Until then, they can receive welfare. They do not, however, have access to a wide range of benefits available to Canadians, including child tax benefits

(even if they are working and paying taxes) subsidized daycare, provincial healthcare and subsidized post-secondary education. So, while Canada is not unfair to refugee claimants, neither do they benefit from the limousine service some commentators evoke.

Myth # 4: "The Tamil claimants are part of a human trafficking ring"

Wrong! Some commentators use the terms "human trafficking" and "human smuggling" interchangeably. However, trafficking involves the use of abduction, fraud or threats as a means of coercing persons to travel, generally for the purposes of sexual or other exploitation in the country of destination. Human trafficking is indeed a heinous crime but does not appear to be the motivation behind this ship's voyage. Labelling the Tamil claimants as part of a human trafficking ring can only serve to promote unjustified fears.

Human smuggling, on the other hand, is the simple transport of persons to Canada through non-legal channels. That is what the organizers of this voyage appear to be up to. Many Canadians would no doubt consider this as justified, if, after a proper examination, it is shown to have saved people from death or torture. Nonetheless, Canadian law does provide for very serious punishment of persons involved in human smuggling. Anyone accused of having illegally transported 10 or more persons to Canada faces a possible sentence of life imprisonment and a fine of up to \$1,000,000.

In the case of the MV Sun Sea, the exorbitant fees allegedly charged (\$50,000 per person) may well be viewed as an aggravating factor and could lead the government to seek the most severe penalties possible against the organizers. That should not, however, in any way discredit the refugee claims of the Tamil passengers.

Paula Kline is director of the Montreal City Mission and Rick Goldman is coordinator of the Montreal-based Committee to Aid Refugees.

CCR VISIT FINDS COLOMBIA NOT SAFE FOR SOME

SHAUNA LABMAN

I arrived in Bogotá on 9 November 2010. I was fingerprinted before I even left the airport as I needed to change my dollars into Colombian pesos. I would be fingerprinted two more times during my week in Bogotá. While the airport used ink, the other fingerprints would be fingerscans used to control my access to certain buildings. On these occasions I would also be photographed.

I was in Colombia for five days accompanying Francisco Rico-Martinez on a Canadian Council for Refugees fact-finding mission to assist in advocacy for Colombians fleeing persecution. The security that surrounded our meetings, that in

addition to fingerscans and photographs included door security requiring the provision of identification almost everywhere, dogs whenever we went underground, and once even the requirement to wear a sticker of our own photographs, serve to frame the findings of our investigation. There is a strong yet false sense of security in Bogotá. In its shadow is a lack of access and privacy issues. While I had entered Colombia as a tourist, my meetings with NGOs, international organizations, church groups and officials at the Canadian Embassy would be easy to track.

The purpose of our meetings was to investigate



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the security justifications behind the drop in acceptance of Colombian refugee claims at the Canadian Immigration and Refugee Board and in source country resettlement from Colombia to Canada.

The reasons we had heard in advance of our trip from Citizenship and Immigration Canada, the Canadian Embassy and through the decisions of the Immigration and Refugee Board break down into three key points: the FARC (Revolutionary Armed Forces of Colombia) is no longer able to communicate nationally, the paramilitary has been demobilized, and there is increased state protection. Essentially, counter to the realities of a decade ago, the position is that there is now less of a threat and a greater ability to hide inside the country. For refugee claimants this means their claims of persecution are not found to be credible or there is thought to be an internal flight alternative within Colombia and therefore no need for Canada's assistance.

Francisco and I commenced each meeting with this summary of justifications and, aside from our meeting at the Embassy, the response we received each time was either laughter or sad dismissal. We received shadow statistics and information that while Colombia was now indeed safer for some, for others the danger remained and Bogotá was no exception.

"There are many different Bogotá's" we were told. Moreover, the more people who come to Bogotá for safety, the less safe it is. While paramilitary and guerilla killings reduced under the presidency of Álvaro Uribe, they have not been eliminated and killings by state agents have increased. The Comisión Colombiana De Juristas indicated that combined, state agents, paramilitary and guerillas still kill approximately six people a day out of combat. While the Government under Uribe and now Santos continues to assert the success of their crack-downs they fail to acknowledge the continuing risks to Colombians. Many we spoke to refer-



enced the political propaganda campaign of the Colombian government to convince its own people and the international community that Colombia is now safe is actually one of the greatest threats facing Colombia. The country is becoming isolated and abandoned as international programs of aid and assistance shut down and there are few remaining effective means to flee the country safely.

Too many have bought into the rhetoric that the only danger in Colombia is that you will never want to leave. Colombia is indeed safer than it was a decade ago and for many Colombians it is safe.

But for Colombians of high profile who are being persecuted there is no safety in Colombia, not even in Bogotá.

At one meeting we were told that the only way you could survive would be if you could manage it without any help. Internally displaced persons are registered and Francisco and I experienced first-hand how regularly people are tracked through a system that risks corruption and infiltration.

The CCR will be publishing a full report of the Colombia fact-finding mission and affidavits from many of the individuals we spoke with.

Shauna Labman is a Ph.D. Candidate in the Faculty of Law at the University of British Columbia. With support from the Trudeau Foundation, she represented the CCR on a fact-finding mission to Colombia in November 2010.

BECOMING NEIGHBOURS

FR. PETER MCKENNA

Janet's sobs were palpable. Her body seemed wrapped in excruciating pain. Sitting beside her, Sr. Barbara gently put her arm around Janet's shoulders. Separated from her children during the genocide in Rwanda, Janet had been forced to flee the country, leaving her five children behind. Now she was in Toronto, gathered with other in the Scarborough Mission Centre for a workshop on how to sponsor family members to Canada.

She heard the nitty gritty aspects of what it would take to be reunited with her children: \$550 per adult processing fee (\$150 for those under 22 years of age) to apply to be a permanent resident. Then the cost of DNA testing for each child to prove parenthood, the cost of each child's medical exam, and the cost of repayment of government sponsored travel to Canada. Her sobs became louder and louder.

Appalled by the plight of immigrants, refugees and non-status persons, and challenged by their suffering and situations of injustice, 19 religious congregations established Becoming Neighbours Joint Apostolic Ministry in April 2006. Each participating congregation already had a rich history of accompanying and responding to the needs of immigrants and refugees. Becoming Neighbours was a conscious choice to walk collectively and collaboratively in the footsteps of our forebears in response to the new and urgent needs of our times.

Consultation with agencies working with refugees and immigrants revealed that there was a tremendous need of assistance for newcomers like Janet. As a result, immigrants and refugees dealing with this first stage of "adjustment" were earmarked as the target population for the Becoming Neighbours ministry.

Direct information from staff at the United Way and other agencies, as well as two United Way and City of Toronto reports: "Poverty by Postal Code" and "A Call to Action...A Report of the Strong Neighbourhoods Task Force", made a strong case for locating this new ministry in Scarborough, the eastern part of the Greater To-

ronto Area. Hearing this, Scarborough Missions generously offered workspace in their Mission Centre. Fr. Peter McKenna, the director, receives referrals from settlement agencies who believe a client has need of further support which they cannot give. Fr. Peter meets with the client to assess their needs, and then calls upon his list of volunteers to match them up.

Presence, prayer, friendship and solidarity are the underpinnings of Becoming Neighbours. This is a companion program in which immigrants and refugees, during their initial adjustment to Canadian society, are matched with members of religious congregations, their associates and friends. Becoming Neighbours promotes two-way cultural enrichment and sharing while assisting immigrants and refugees to become active participating members of the community. This unique program also provides opportunities for formation through educational in-service and theological reflection.

Companions who befriend commit themselves to meeting with an immigrant or refugee to help develop the skills necessary for living in a new culture. Other companions include those who coordinate theological reflection sessions, those involved in administration, those who network with others to address immigration inequities, those involved in transportation, those who make a commitment to pray for immigrants and refugees, and those involved as members of the Becoming Neighbours Board of Directors.

At Becoming Neighbours, we believe each individual makes a difference. Today, 95 members from the 19 founding religious communities act as companions to newcomers. Each newcomer is also matched with one of nearly 215 Becoming Neighbours prayer partners who daily pray for them.

Fr. Peter McKenna is the Director of Becoming Neighbours Ministry.

Take Action! CCR Campaign Updates and Activities:



Join the Canadian Council for Refugees in raising public awareness of challenges to refugee rights and successful integration in Canada. Here are some areas where your actions can make a difference:

Take Action - [No to C-49 – the anti-smuggling bill that punishes refugees](#)



The Canadian Council for Refugees has expressed its grave concern that many of the measures in Bill C-49 fail to honour our obligations towards refugees and would result in refugees being treated unfairly. Despite the government's claims that it is targeting smugglers, the people who will suffer if this bill is passed are the people fleeing persecution, including children.

Among the measures that appear particularly unfair are the following:

- Expanded powers to detain some refugee claimants for long periods. The CCR notes that children are among those affected by already existing powers of detention. Refugee children should not be detained.
- Keeping some recognized refugees in long-term limbo, by denying them the right for five years to apply for permanent residence, and therefore for reunification with their children, in violation of the Convention on the Rights of the Child. Children left behind overseas are at risk while waiting to be reunited with their parents who are refugees in Canada.
- Denial of freedom of movement for some refugees, in violation of the Refugee Convention. This provision would prevent, for example, a person from visiting family members who have taken refuge in third countries.
- Denial of family reunification rights for some refugees. This provision would prevent, for example, a person from being able to sponsor a spouse they married after arrival in Canada.

An outline of the CCR's main concerns with Bill C-49 is available at <http://ccrweb.ca/en/c49-key-concerns>.

Join the CCR's call to elected officials to vote against Bill C-49 at second reading. Contact your Member of Parliament (MP) by telephone or email as soon as possible. For suggestions of what to say, see: <http://ccrweb.ca/en/c-49-contact-your-mp>

Please pass on this call to action to others!

For additional information on Bill C-49 and how it would impact refugees, see the web page on the bill: <http://ccrweb.ca/en/c49>

Take Action! CCR Campaign Updates and Activities: ***Campaign Update – Canada’s Stateless Children***

Snug in the womb of her mother in April 2009, Chloé couldn’t know that a change in Canadian law was about to make her stateless.

Chloé was born in July 2009 in Belgium, to an Algerian mother and a Canadian father. She is denied Canadian citizenship because her father was born outside Canada to a Canadian father. Nor is Chloé eligible for citizenship under Algerian or Belgian law, leaving her stateless. Without a citizenship, she cannot travel outside Belgium.

The 2009 change to Canadian law is described by the government as protecting “the value of citizenship by limiting citizenship by descent to one generation outside Canada.”

How does this protect the value of citizenship, especially for people like Chloe Goldring?

For the rest of Chloe’s story and how it exemplifies a problem in the law that creates statelessness, read the CCR blog entry at: <http://www.ccrweb.ca/en/canadas-stateless-children>

For more information on the April 2009 changes to the Citizenship Act, see CCR, *Canadian Citizenship: Impact of Changes* online at: <http://www.ccrweb.ca/documents/citizenship09.htm>

You can hear Mr Goldring discussing his family’s difficult situation on a recent documentary on CBC Radio’s *The Current* called *Citizens of Nowhere* at <http://www.cbc.ca/thecurrent/2010/10/oct-710---pt-3-citizens-of-nowhere.html>

For more information on statelessness and Canada’s role, see *Statelessness and Canada: An introduction* available at: <http://www.ccrweb.ca/stateless.htm>

For additional stories about Canada’s citizenship laws causing statelessness, check out the CCR’s media archives at: <http://ccrweb.ca/en/taxonomy/term/216>

Update - Reforming the Refugee Determination System – Bill C-11

If you read *Refugee Update* regularly you’ll know that the Canadian Council for Refugees is an outspoken critic of changes made to Canada’s refugee determination system in Bill C-11, adopted by Parliament in summer 2010.

To explain many of the new measures, the CCR has produced *Changes to the Refugee System – What C-11 Means*, a summary of key changes in Bill C-11, including changes to laws and regulations governing refugee protection in Canada, and principal issues still to be decided. The document is intended to explain the changes already adopted and to provide suggestions of points to advocate for over the coming months.

Changes to the Refugee System – What C-11 Means is available on the CCR website at: http://ccrweb.ca/files/c11_summary.pdf

For additional information from the CCR regarding Bill C-11, see: <http://ccrweb.ca/en/refugee-reform>

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Sign up to follow the CCR on Twitter at: www.twitter.com/ccrweb



Find videos on the CCR’s YouTube channel: <http://www.youtube.com/ccrwebvideos>

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CIC CUTS FUNDING TO SETTLEMENT AGENCIES IN ONTARIO

The Ontario Council of Agencies serving immigrants, OCASI, describe as a “very serious situation”, the funding cuts made by Citizenship and Immigration Canada during the holidays at the end of 2010.

Around 10 agencies received a notification from CIC saying that their funding will be cut by \$43 million from Ontario's budget. This announcement leads to closing of programs and the termination of contracts of many settlement workers just days before Christmas.

In fact this decision is affecting settlement programs across Canada that serve ethnic communities, excluding Quebec. OCASI is concerned about the decisions and the immediate impact on the agencies affected, which have a unique role in their largely place-based approach to service delivery in Ontario.

Debbie Douglas, executive Director of OCASI, said the Council is aware that the letters received fell into three basic categories:

- a) A positive response for negotiations (to begin in January),
- b) A negative response (wind down of programming by March 31)
- c) A “still under review” response which is unclear and organizations are seeking clarification.

The Council confirms that ten organizations have lost 100% of their CIC funding, all of which are in Toronto. Many of the organizations affected are Ethno-specific agencies that serve a broad range of communities but have historically focused on and provided culturally appropriate programs and services to particular communities.

OCASI is gathering information from across Ontario with the aim to develop an accurate picture of the changes and their impact across the province and to craft responses.

According to the communiqué, the Council requested and has received information from CIC on a

number of issues that are of concern for defunded agencies and will be helpful to the sector as a whole.

Specifically, the Council has been informed:

-Agencies who have had their funding completely withdrawn should contact their local CIC office or the regional office, to get additional information about their files. The Department will respond to all inquiries.

-There is not going to be an appeal process for defunded agencies. Decisions were made on a number of factors and criteria, including, but not restricted to, funding capacity given CIC's current budget allocation, strength of the application as well as past performance in delivering services. Decisions have been carefully weighed. CIC will contact organizations if any changes in decisions occur.

-Wind-down costs will be covered as per CIC policy. For those organizations whom CIC has informed that they will not be negotiating agreements for the next fiscal year, the December 10th letter advised that the organization should treat the months between now and March 2011 as the wind-down period. CIC will work with individual organizations to address their unique circumstances. As CIC is not the employer, severance will not be an eligible cost, nor cancellation costs associated with third-party service contracts or lease agreements.

-OCASI also requested information regarding the number of organizations defunded and CIC findings of service mapping across the region. CIC has stated that it is unable to share such information at this time and advises individual organizations to directly contact the department for more information.

Finally the Board of the Council through its Executive is continuing to monitor the situation and to craft responses to address this situation.

(Modified from OCASI communiqué dated on December 21st, 2011.)

WHERE HAVE ALL THE GIRLS GONE?

ANA RICO

Musina lies in the north of South Africa, hugging the Limpopo River and just shy of touching Zimbabwe. When entering Musina, it is curious to find it devoid all of girls. So where are all the girls? People report seeing girls and boys crossing the Limpopo River to reach Musina and yet, once arriving in Musina the girls seem to disappear. All that one sees is a litter of boys, men and elderly ladies on the streets. Boys are typically found begging or

occupied with who was going to make it to the finals. The many foreigners that were residing there, along with the South African government, were overly concerned with foreigners being robbed of their high tech video cameras. So much so, that under pressure from the international community, South Africa created the World Cup courts, costing an already overly burdened country \$6 million USD. While girls go missing crossing the border daily, the South African government



attempting to get jobs in neighbouring farms. But the girls are only ever seen in Musina pregnant and infected with sexually transmitted diseases. So how is it that they end in Musina? Where have they been all this time?

In the midst of the World Cup this summer, no one going into South Africa was made aware of this phenomenon. It seemed everyone in Johannesburg, where I was staying, was pre-

has failed to establish a permanent standing court in Musina. Yet it can afford \$6 million USD to expedite the prosecution of crimes against foreigners for the duration of the World Cup. What message does this send? Well, quite simply, that theft of foreign media equipment is more important than the disappearance of life that occurs on a daily basis in South Africa. Why is that? Could the reason be related to the fact that these girls are black Africans?

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So what does happen to these girls that disappear? Many report stories of young girls being intercepted by the malaishas or magumagas, border gangs along the Limpopo River, and taken to a place 20 kilometres north of Musina in Zimbabwe. They are held in a room, guarded, their freedom restricted to that room and forced to provide sexual services to men that are escorted into this room. These girls are forcibly imprisoned the minute their freedom of movement is denied to them and are subjected to sexual slavery, against the U.N Declaration of Human Rights, signed and ratified by the South African Government. And what is being done about it? The simple and short answer is nothing. Both countries claim that it is outside their jurisdiction to clean their hands of the blood that is spilt daily, to claim that they are not responsible.

What does happen to the girls who are dropped off in Musina by these border gangs after they become pregnant or manage to escape? Given that these girls are undocumented migrants, illegal according to the South African Immigration Act, when caught they are automatically deported back to Zimbabwe. In short, they are criminalized for being victims of situations that the South African government itself recognizes as a form of human trafficking for the purposes of sexual exploitation. I ask myself, where is the outrage, and response from the international community? The silence is as profound as the sight of the streets devoid of girls.

Ana Rico is a 2nd year law student at the University of Ottawa.

Agree or disagree?

We welcome letters to the editor with your comments.
Send to Carolina at: carolinateves@hotmail.com

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REFUGEE UPDATE

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