

SPHERES OF JUSTICE

## Who Deserves Asylum?

DAVID STOLL

*Those who argue we have an immigration police state may well be right. But the alternative is an ever-larger pool of exploited labor at the bottom of U.S. society.*

A liberal democracy treasures the right to asylum. Many Americans like the idea that anybody in the world can show up at the U.S. border and ask for refuge. But who actually deserves this kind of protection, and what to do when large groups of people ask for it en masse, have never been easy questions. President Trump's open bigotry isn't making it any easier—nor are the new, more generous grounds for asylum being proposed by human rights advocates.

*The Death and Life of Aida Hernandez*

Aaron Bobrow-Strain  
Farrar, Straus and Giroux, 2019,  
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Gender violence is one such criterion for asylum—should the U.S. give refuge to women fleeing murderous husbands and other forms of gender discrimination? Both asylum advocates and skeptics can test their assumptions by reading *The Death and Life of Aida Hernandez*. The author, Aaron Bobrow-Strain, is a cultural geographer and activist who is careful to get the backstory. By delving into the life of a particular asylum seeker, he provides a wealth of detail far exceeding what is available to the immigration judges who decide these cases.

The pseudonymous Aida Hernandez begins life in Agua Prieta, Mexico, the twin city of Douglas, Arizona. When she is eight, in 1996, her mother Luz suddenly yanks her and four siblings across the border to join Saul, a U.S. citizen who turns out to have fathered two of the children. They are all able to settle in Douglas on the strength of a short-term border-crossing card, which gives Mexicans the right to visit the United States for 72 hours.

The stepfather proves to be more violent than Aida's own father, Raul. Now her mother is a mere second wife to Saul's first wife and family. After three years of being shoved around and humiliated, Luz and her children return to the Mexican side of the border. But Aida has a wild binational adolescence. Mentored by older girls, she is stealing cars and getting high by the age of 13. She is in rehab for three weeks by the age of 14, and pregnant by the age of 16.

The father of her child is the enchanting David, breakdance king of Douglas High School and also a good student, who reluctantly gives up college plans for married life in a mobile home. Soon he is shouting, "I should never have gotten mixed up with a fucking *mexicana* illegal," and threatening to call the Border Patrol on his undocumented wife.

When the marriage breaks up, Aida and her U.S. citizen-son continue to live on the U.S. side of the border, with the help of her mother and other supportive kin. Unfortunately, she finds herself being stalked by her new boyfriend's previous girlfriend, Irma. One bright morning, Aida rams Irma's car with her own car and punches Irma in the face. The Douglas cops arrive, Irma denounces Aida as an illegal, and the Border Patrol deports her to Mexico.

But not for long—soon Aida is back in Douglas with her son, living without legal status as she always has, until alcohol and border enforcement snare her again, producing a second and more legally consequential deportation. Desperate for income, Aida ignores her family's warnings and goes to work as a barmaid on the Agua Prieta side of the border. One night, after finishing her shift, she's picked up by a rapist who, when she punches him away, stabs her repeatedly in the belly. Her death is averted only by emergency evacuation to a U.S. hospital and Arizona Medicaid.

When the hospital releases Aida, on a humanitarian parole allowing her to stay in the U.S. for 30 days, she understandably fears returning to Mexico. And so she resumes life as an undocumented mother—but now subject to the panic attacks, convulsions, and rages of post-traumatic stress disorder (PTSD). A Douglas social worker tries to figure out how Aida could apply for asylum, only to despair when her latest makeover (black clothing, tatoos, and piercings) makes her look like a delinquent.

In 2012 Aida is caught shoplifting a \$6 Lego set for her son. As she is being deported for the third time, she states her fear of returning to Mexico. And so, instead, she is sent to the immigrant lockup in Eloy, Arizona, to await a hearing in the immigration system's overcrowded courts.

In jail, Aida meets an unauthorized border-crosser from Ecuador. The pseudonymous Ema Ponce is a soccer athlete, university-trained engineer and lesbian who hopes to join relatives in New York City. Ema now falls in love with the unsuspecting Aida. After they are both finally free—Ema on bail pending her hearing and Aida as a legal permanent resident—Ema persuades Aida to move to New York City and they get married at City Hall.

Neither New York nor the new relationship turns out very well. The newlyweds and Aida's son live in an eight-by-twelve-foot room in an apartment packed with other immigrants. Ema finds a job as night clerk at a remittance agency but falls deeper and deeper in debt. As for Aida, the only work she can find is cleaning hotel rooms for a subcontractor who pays a mere \$150 to \$300 per week.

Aida's panics and rages resume. She assaults Ema and the police haul her away; only a sympathetic prosecutor saves her from a domestic violence rap that could end her legal residency and deport her. On a subsequent occasion, it is Aida with the bruises and Ema who is hauled away, to what fate Bobrow-Strain does not say.

*How Border Enforcement Makes Aida's Life Worse*

**T**hat is the death and life of Aida Hernandez, which Bobrow-Strain refuses to shine up at the end. Contrary to the book's title, Aida never actually dies. For her chronicler, the takeaway is that U.S. border enforcement has made it easier to commit gender violence. When women resist being beaten or raped, not only do their abusers threaten to call the Border Patrol; U.S. law holds immigrants to much higher standards than U.S. citizens. Offenses that merely bounce citizens into the safety nets of due process—driving while intoxicated, possessing drugs, hitting a spouse—can turn into speedy deportations for non-citizens.

Bobrow-Strain's larger case against U.S. border enforcement is that, contrary to so many pundits, it is not "broken." Instead, it is working all too well for the following interest groups:

polarizing politicians, nativist social movements, private prison companies, ordinary people in search of decent jobs [which they find in border enforcement], local governments struggling to increase revenue [by welcoming border enforcement as a growth industry], employers seeking exploitable undocumented workers, massive federal law enforcement bureaucracies, and countless private security contractors.

With President Trump's immigrant-baiting in mind, Bobrow-Strain concludes that border enforcement is part of "a larger American story of race, economics, and policing" and so current policies are "racially motivated nativism."

But he notes many wrinkles in the actual history. For example, in the 1940s unionization and civil rights activism ended the disgrace of paying Latinos less than Anglos in Douglas's main industry, a copper smelter. Even the infamous pre-1965 admission quotas did not include immigrants from the Western Hemisphere. Thus it was the abolition of those quotas that led to the first numerical caps on legal migration from Latin American countries. Now border enforcement is staffed mainly by Mexican-Americans, whose feelings about their Mexican co-ethnics are very divided and not necessarily racial in origin.

#### *Mixed-Status Families and Their Travails*

**A**ida is not a typical applicant for asylum. She has gotten into more trouble than most. Nor do most asylum applicants marry someone of their own gender. Minus such particulars, several million Aidas have become trapped in what migration scholars call liminal legality or proto-citizenship. Many come from mixed-status families, which occur when parents jump the border or overstay a visa, bring along their children, then produce more children who are U.S. citizens by birth. Such families pile up in border towns because rigorously staffed enforcement checkpoints, farther north, prevent them from exiting safely.

The Rio Grande Valley of Texas hosts one of the largest concentrations of mixed-status families. When anthropologist Heide Castañeda sampled 100 mixed-status households in the Valley, many proved to have arrived with the same border-crossing cards which brought Aida and her mother. Judging from Castañeda's interviews (*Borders and Belonging*, Stanford University Press, 2019), the parents

had expected that U.S. schools would be their children's ticket to prosperity, and that another amnesty—like the 1986 Immigration Reform and Control Act—would eventually legalize them.

Amnesty has yet to materialize because political campaigns to rescue them from their predicament arouse powerful feelings, not just of sympathy and solidarity, but of anger. Many Americans view them as gate-crashers. Mixed-status families, Castañeda's analysis reveals, cannot assume solidarity even from their own co-ethnics. In the case of the mainly Mexican mixed-status families along the southern border, many have Mexican-American neighbors and relatives working for U.S. border enforcement. The complexities of kin networks and Mexican-American culture foster many conflicting identities including red-white-and-blue patriotism. This produces no end of paradoxes, such as the U.S.-citizen son of undocumented parents who aspires to work for the Border Patrol.

Judging from Castañeda's research, mixed-status families live in a competitive, unpredictable atmosphere in which envy or bad luck reliably leads to disaster. Their fortunes are determined, not just by the vagaries of border enforcement, but also by the terrible wages at the bottom of the U.S. labor market and the arrival of additional undocumented relatives, who expect to be taken in and who tax family resources to the breaking point. What scholars call "identity loan" within these families is commonplace, and that can lead to identity theft and extortion. "Marriage for papers" produces another raft of conflicts. And so, trapped between the Mexican border and immigration checkpoints a short distance north, the lives of mixed-status families are shaped by desperation, paranoia, and concealment. Now they are suffering even more thanks to Trump rollbacks of Obama policies.

#### *Why Have Borders at All?*

If the U.S. attracts so many immigrants and if the Mexican border causes so many problems, why have a border at all? Judging from Aida's story, one argument for this particular border is that it offers protection from bad people on the other side. This is the cruel paradox of Aida's binational life: The same U.S. institutions that exclude her also offer safety. Thus, while working as a barmaid in Mexico nearly gets her killed, working as a barmaid in the United States seems a lot safer.

Another argument for the Mexican border is that it cuts down on the oversupply of labor. Flooded labor markets are glaringly obvious in the economies of Mexico and Central America, and they are also apparent in those parts of the U.S. economy where large numbers of Mexican and Central American migrants compete for jobs.

Wouldn't the ill effects be alleviated by giving everyone legal status? Not if this attracts even more migrants. In the case of Ema, something about the U.S. job market, even in the low-enforcement immigrant mecca of New York City, fails to meet her financial needs. Her lawyer's failure to request a work authorization is part of the problem, but her partner Aida has the legal right to work, as well as near-native English, and her wages are also shockingly low.

Bobrow-Strain concedes that a world organized into nation-states requires borders, and that borders require decisions about whom to include and whom to exclude. However, nowhere else does his book convey the idea that U.S. border enforcement is legitimate. The stateside institutions that educated Aida, that saved her life, and that eventually gave her legal residency get positive reviews, but not any attempt by U.S. authorities to distinguish between who has the right to receive these benefits and who does not.

*How Aida Received Legal Residency (Not Through Asylum)*

**G**ender violence is a fact of life for untold numbers of women, and there is quite a bit of it in Bobrow-Strain's cast of characters. Most boyfriends and husbands in Aida's social network seem to be in the habit, when they get angry, of hitting their women. Even when Aida finds a sympathetic partner in Ema, they too hit each other. They all seem to need considerable amounts of policing, judging, social work, and therapy. Do some of them deserve asylum in the United States?

Asylum law protects persons who are afraid to return to their country of origin because they have a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. Only a minority of asylum applicants come very near this definition, so immigrant-rights groups are campaigning to extend asylum to applicants who say they are fleeing criminal gangs or domestic violence.

The near-fatal attack on Aida, and the danger of returning to a country that failed to find and punish her attacker, might sound like a strong case for asylum. But criminal violence usually does not fall under the legal definition of persecution, and Aida failed to file for asylum within a year of the assault.

Saving her from a third deportation are her U.S.-citizen child—to whom she is clearly devoted—and past violence by her U.S.-citizen husband. Her lawyer persuades a government prosecutor and an immigration judge that she deserves legal residency under the Violence Against Women Act. VAWA protects undocumented women who have been attacked by U.S. citizens or legal residents.

Most women asking for asylum on grounds of gender say they have been harmed in their own country. Ema is an example. Bobrow-Strain never details her case but, judging from her story, she is probably asking for protection from being harassed as a lesbian. She used to play on a lesbian soccer team, which went to court to win acceptance and was sometimes mobbed by hostile fans.

Other women asking for gender-based asylum want protection from their husbands. In 2014 the Board of Immigration Appeals ruled in favor of a Guatemalan applicant named Aminta Cifuentes. "Married women in Guatemala who are unable to leave their relationship," the BIA decided, meet the legal definition of "membership in a particular social group," therefore Aminta qualified for asylum. This meant that Guatemalan married women became a protected class who could apply for asylum—if they could prove that their husband had used violence to prevent them from leaving the marriage.

Four years later, as part of the Trump offensive against the growing number of asylum claims, U.S. Attorney General Jeff Sessions barred domestic violence as grounds for asylum. How many asylum cases actually have been filed on these grounds is an elusive datum. But I do know that, in the Guatemalan town where I interview migrant households, a number of women have paid smugglers to take them north so that they can apply for asylum from domestic abuse. If the allegations occur far from U.S. jurisdiction, U.S. courts have very little capacity to verify them.

Bobrow-Strain wants U.S. authorities to interpret asylum law more leniently, to give applicants like Aida and Ema a better chance. If the Democrats take back the presidency and the Congress in the 2020 election, he may get his wish. What will happen if the Democrats make it easier to ask for asylum?

We already have a preliminary answer in the growing number of asylum applicants from Central America. If the Democrats make application easier, the number could grow even faster. According to advocates, the Central Americans are fleeing ever-worsening conditions at home. According to skeptics, they are being recruited by human smugglers, who are taking advantage of humanitarian reforms in U.S. border enforcement to craft a cheaper and less risky path into the U.S. job market.

Judging from media reports, the new procedure is to be accompanied by a child under the age of 18, surrender to a border agent, and tell the agent you are afraid to return home. The reason for the son or daughter is that it's much harder, logistically and legally, for the U.S. government to lock up parent-child combinations than solo border-crossers.

One hindrance is that, if U.S. officials suspect that you have borrowed or rented the child, you can be separated, locked up for longer, and deported. Another hindrance is that, per calculations by the *New York Times*, the Trump Administration is currently forcing 58,000 asylum seekers to wait in Mexico, where at least a few have been killed by criminals. But U.S. immigration courts have become so packed that new cases are being scheduled out as far as 2023. In the meantime, if all goes well, asylum applicants have provisional legal status, can find work even if they lack legal permission to do so, and may even be able to start a mixed-status family.

#### *The Political and Economic Limits of Asylum Advocacy*

Both Bobrow-Strain and I go back far enough in Latin American studies to remember when progressive politics meant helping Latin America become independent from U.S. power. Those days are gone—now progressive politics revolves around what anthropologist James Ferguson calls “declarations of dependence.”

In Aida's case, her future hinges on whatever sympathies can be wrung from U.S. border agents, prison guards, immigration attorneys, and judges. Her subordination is all the more striking because her father Raul exemplifies the bygone era of collective resistance. Before Aida was born, he spent his youth in Marxist guerrilla organizations seeking to overthrow Mexico's one-party

dictatorship. Bobrow-Strain gives Raul considerable attention, to show how unmovable Mexican power structures used to be. But he never gets around to telling us about the Mexican women's movement, Mexican women's shelters, or—with the exception of Raul's heroic youth—opposition politics.

What if, instead of being seduced by American culture and snared by U.S. border enforcement, Aida had followed her father into opposition politics? Could the ease of border-crossing, which has drained away millions of Mexico's most energetic citizens, be one of the reasons that Mexico has been slow to meet the demands of its citizens? In the case of Ema, wouldn't she and Ecuador be better off if she had stayed at home, built on her experiences as a feminist, and kept fighting for equal rights? These are just rhetorical questions, but we do know what happened instead. Both Aida and Ema became supplicants in the U.S. legal system, both became trapped at the bottom of the U.S. labor market, and both got arrested for domestic violence.

From their sad example I worry that, the more lenient U.S. asylum policy becomes, the more soon-to-be-exploited workers and future domestic-abusers it will wave through. Will the U.S. labor market give them a better life than what they would have faced back home? In many cases, the answer is no. Aida's story poses an additional question: Does anyone who reaches the U.S. border with a life-threatening problem—social or medical—have a human right to U.S. services and lenient terms of stay? Do they also have the right to produce a U.S.-citizen child and raise their child in the United States?

There are limits to what voters are willing to pay for, and such limits are becoming obvious, not just in the U.S. and Europe, but in Mexico. According to a July 2019 poll, Mexican public opinion has shifted dramatically against migrants. Why? Hosting large numbers of asylum seekers has social and fiscal costs, which are heightened by the Trump Administration's success in bottling up some applicants on the Mexican side of the border.

Aida Hernandez's life turns out the way it does because of the mutual dependence of sister cities and binational investment zones and the easy border-crossings these arrangements require. Her life has been shaped by a staggering array of U.S. policies, some of them lenient and others harsh. Ema Ponce's situation is very different. She began her life in Ecuador's middle class, only to be deceived by the media optics of American culture and how wonderful it must be in comparison with her own. I conclude that U.S. society owes a lot more to Aida than it does to Ema. Unfortunately, distinguishing between these two cases, as well as the cases of so many others who aspire to a better life in the U.S., will require an ever larger bureaucracy of border cops, jailers, lawyers, and judges. According to critics, we already have an immigration police state, and they may be right. The alternative, tragically, is an ever-larger pool of exploited labor at the bottom of U.S. society.

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**David Stoll** is the author of *El Norte or Bust! How Migration Fever and Microcredit Produced a Financial Crash in a Latin American Town*. He teaches anthropology at Middlebury College.