

## The Masthead Conversation with Franklin Foer on August 3, 2018

Caroline: You talk a lot about the dysfunction of ICE as a government agency and it seems like a lot of that dysfunction stems from the post-9/11 merging of these two government arms who really never wanted to work together in the first place: the immigration part of the agency, which you say is mostly deportation officers who came over from Immigration and Naturalization Service, and the customs part of the agency, which is mostly investigators who came from the Treasury Department. So, what I'm wondering is, were these agencies effective before they came together post-9/11? And how much of this can we blame on just sort of the awkward pain of coming together?

Frank: They were different. So before there was ICE, the immigration agency we're talking about largely resided in the Immigration and Naturalization Service, which was part of the Department of Justice, and it wasn't an amazingly functional organization, but there were virtues to the way that that structure had been set up. You just need to look at the title: Immigration and Naturalization. And so there was part of the agency that understood that some immigrants commit crimes and need to be deported, but there was this other part of the agency that was devoted to turning immigrants into citizens. And so the policy that came out of INS, I think, was much more holistic than the policy that's made at the Department of Homeland Security. If there was a case and there was some intersection between the citizenship part of the agency and the deportation part of the agency, it was just a matter of going across the hall and talking to a colleague.

And now that whole process has been disaggregated and separated into different agencies. And the primary focus of ICE is a national-security focus. And I would argue that it weighted the mission of the agency so heavily in this one direction, it creates all sorts of assumptions about the immigrants. There's this assumption of criminality that I think you see right now coming from the very top of the administration. But I think it's an assumption that gets transmitted all the way down to the people on the front lines, to the agency interacting with immigrants.

Caroline: Now, what is the equivalent of going across the hall to the colleague on the other side of the hall?

Frank: The immigration apparatus is now spread out across the Department of Homeland Security. There's ICE, which is largely devoted to deportation. It's called Enforcement and Removal Operations and is the part of the agency that deals with rounding up immigrants, detaining them, deporting them. Within Homeland Security, there's another agency called USCIS, which is the citizenship part of Homeland Security. Then over in the Department of Justice, you have the immigration court, where the judges make the decisions about who stays and who goes, whose asylum claim gets accepted and whose doesn't. So you have this very sprawling, disconnected apparatus. There's no real holistic sense of the way that it's supposed to work. Or actually, I'll put it differently, there wasn't a holistic sense of how it was supposed to work until Donald Trump came to power.

And the people who are now in charge of the apparatus are acutely aware of how these various agencies can actually work in concert to achieve a high-level policy goal.

Karen: So now ICE is basically two branches. There's the ERO, which is the part behind all of the deportation and arrest cases you hear in the news, and then there's HSI, which is sort of more high-level transnational crime it'd be, right?

Frank: Yep.

Karen: The issue is, they function pretty much separately, but the public views them often as one and the same. So would separating them from one another provide any solution? I realize that there was a group of agents, HSI agents who actually petitioned Kirstjen Nielsen about splitting from ERO. So what would that achieve?

Frank: I'm not sure it would achieve much of anything. So the agents you're talking about belonged to something called Homeland Security Investigations and as you mentioned, it deals with transactional crime, child pornography and terrorism investigations...and the guys who work for HSI don't like the fact that they've been lumped together as part of ICE, because they have nothing to do with family separations or some of the excesses that the ERO is supposed to be guilty of. And so they've asked for a divorce, but I don't think that a divorce would do anything more than make the HSI agents' life a little bit less painful. I don't think it would do anything to solve any of the dysfunction or abuses that come out of ERO.

Karen: Yeah. I think one of those sort of dysfunctions within ERO is the fact that a bunch of agents who are affiliated with ERO, and ICE as a whole, don't actually want to be part of it. Right? How does that affect the agency? Its culture?

Frank: Well, it creates a sense of resentment. So in the bureaucratic pecking order, HSI sits above ERO. They have a higher classification in federal law enforcement, they've had a more favorable pay structure for a long time. One thing that rankled ERO was that HSI agents were able to take their cars home. And so those little things mattered.

Caroline: That's so interesting.

Frank: It adds up in the way that an agent views their sense of place. And so arguably, I mean, if you took HSI out of ICE, then maybe ERO wouldn't feel a sense of resentment or inferiority, and maybe that would have some sort of impact on the culture of the organization. But I think at this stage, so much resentment is kind of caked into the way that ERO thinks of itself. It's hard to see that being quickly solved. The Obama administration tried to improve the culture of ERO and they pushed hard for pay raises for ERO in order to try to solve this problem.

And it had a little bit of a positive effect, in that morale in ERO ticked up a bit when that happened, and by the time that the Obama administration was done, it was able to get the leadership of ERO much more on board

with its efforts to create priorities within the organization. So that it wasn't just deporting whatever undocumented immigrants they happened to come across. They tried to prioritize the deportation of serious criminals, and by the end of the Obama administration, they'd kind of gotten close to figuring out how to align themselves with ERO and how to transmit their policies through the organization. But it took them forever to get there.

Caroline: I'm really interested in why ERO is perceived as this lower-status operation. You say in the piece that deportation is a frustrating job because the courts are overburdened. So you had that line, "It's not done until the alien wins." So it's hard for them to sort of see the fruit of their work, but there are so many people in the country who really believe and support very strongly what ERO is doing. And so I'm interested in where this perception as the lower status organization came from and why it stuck around.

Frank: The job is extremely hard. There's not a whole lot of glamour to it. The powers that ERO officers are constrained just because of the way essentially the job descriptions are written into federal regulations, and so they don't have the power to execute a search warrant when it comes to something as basic as collecting evidence; that's not something that they're trained to do. And so it is caked into the actual bureaucratic structure of the organization. And then, as you said, it's really, it's just if you want to get into federal law enforcement, odds are you wanted to become an FBI agent...and that's a very hard job to get. If you don't get that job, then there are all these other organizations like DEA and ATF that I think have more panache and cultural prestige, and if it comes to a lot of the bureaucratic perks of the job, they just offer more than ERO does.

Also, if you're applying to those other jobs, most of them require you to have a college degree. And ICE happens to be one of the few organizations, ERO happens to be one of the few organizations, that only requires a high school education. And so it's perceived as being an entry point into federal law enforcement, but it's not seen as the place you would seek out a career.

Caroline: Why does ERO only require high school? What do they require of people who come in?

Frank: Well, you know, I think a lot of it has to do with supply and demand. I mean, there's two things. One is just the actual requirements of the job, because the immigration system is civil; it's not part of the criminal system. I think that in a lot of ways, the demand in general on the immigration system is not as complicated or not perceived to be as complicated as the criminal-justice system. You're not building complicated cases that require years of preparation. An immigration case is usually much more straightforward: Is this person in the country illegally or not? It's not like you need to be able to track bank records, it's not like you need to show the existence of a criminal apparatus. And so the tasks that are demanded of the ERO are relatively straightforward. I think that's probably the best answer to your question.

Caroline: That makes sense. Okay. Before we wrap up, I want to turn to potential solutions here. You say at the end of your piece that the solution doesn't lie in abolishing ICE or smashing the system, but in returning it to the not-so-distant past, and we've already talked a little bit about this, about INS and things that kind of worked before these two agencies came together. So after all of your months of research for this piece, what do you think a truly effective immigration policing policy might look like?

Frank: Well, first of all, there needs to be immigration reform. There needs to be; you have 11 million undocumented immigrants in this country, two-thirds of whom have been here for a decade or longer. And so they are Americans, and the system needs to take them out of the sights of ICE. And I think once you strip the system of 11 million targets, you're going to end up curbing, I think almost inherently, a lot of the worst abuses. So that to me, should be the highest priority. I understand why people rhetorically focus on the abolition of ICE, but that seems to me a misguided priority.

And then secondly, I think that the organization does need to be reformed. I think that the detention system is terrible. As I documented in the piece, I think we need higher standards. I think we need some alternative to this Rube Goldberg contraption that they've got set up, which is a combination of private facilities and county jail beds that they rent out on an ad hoc basis. Neither of those are adequate. They're not adequate because detention for immigration is not meant to be punitive. Immigration, as I said, it's civil. It's a civil system. And so detention is not meant to exact retribution on individuals and there needs to be a much more humane system that reflects the intentions of the law.

You'd ideally want to enshrine something like Obama administration priorities, where we're deporting people who commit serious crimes, not people who veer into the wrong lane or don't use a turning signal or go to 60 [miles per hour] in a 55 zone. I think it's totally fair for the country to demand that its immigrants who don't have citizenship uphold the laws of the country and that there'd be some penalty for breaking them. But I think we have to be clear about what the threshold is.