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**Civics 101**

**Episode 120: ICE**

**Hannah McCarthy:** [00:00:07] Nick, how much do you know about ice?

**Nick Capodice:** [00:00:09] My knowledge of ice is in the wake of the attacks of September 11 and felt like immigration laws and treatment of the undocumented changed drastically. But I don't know what their practices are and I don't know what their legal boundaries are.

**Hannah McCarthy:** [00:00:26] Right. I feel like I often hear about controversy around ice. I don't know what they're allowed to do it. They're not allowed to do why that institution was set up exactly as it is. And Jimmy Gutierrez you know him he's a producer on our show. He reached out to this reporter at Vox Dara Lind. And Dara has actually been reporting on immigration I think most of her career. So she is really the person to get in touch with if you want to understand what ICE is why it's doing what it's doing and what it is doing in this country.

**Dara Lind:** [00:01:08] So ICE as an agency dates back to about 2003 it was created as part of the Department of Homeland Security after 9/11 but the functions that ICE does were before 9/11 done by the Immigration and Naturalization Service that was under the Department of Justice. And it was the one immigration agency that the government really had. So it was responsible for you know getting legal immigrants into the country it was responsible for border patrol. And it also was responsible for in theory apprehending and deporting people who were either in the U.S. without papers or who had violated the terms of their visas. Most of the people who actually got deported at that point were people who had been legal immigrants who had committed crimes so they would get picked up from prisons if INS agents knew they were there in some cases it wasn't a constant thing. But like there were you know maybe several thousand deportations a year.

**Hannah McCarthy:** [00:02:05] And so why specifically was ice created with this mission in mind?

**Dara Lind:** [00:02:12] So when the Department of Homeland Security was created there it was both a response to 9/11 and kind of a thing that people had been thinking about for a while. So in the second category of things there. Because you only had the one immigration agency and it had all of these different duties sometimes you know prioritizing one thing could lead to letting another fall off like it's really very difficult to simultaneously make it as easy as possible for people who have legal status to like come into the U.S. and to process those applications. When you're the exact same people who are stopping people at the border if their papers are not in order. So there was an interest in kind of separating that out and having three single function agencies instead of one multi-function agency so that they could better focus on doing their job. The other part of this though is that this was a reaction to 9/11 and one of the big policy problems that had led to the 9/11 attacks was that several of the 9/11 hijackers were here on visas but had overstayed or were violating the terms of their visas. And in theory a more aggressive immigration enforcement system might have caught those violations.

**Hannah McCarthy:** [00:03:27] When did immigration policy and detainment really get its teeth in the United States?

**Dara Lind:** [00:03:33] So under President Clinton in 1996 a bunch of laws got passed that were you know kind of moved the needle to the right in policy domestically generally. You know one of those was the Welfare Reform Act. One of those was the EPA dealing with the death penalty. But the one that's kind of most relevant for immigration stuff was called the Illegal Immigration Reform and Immigrant Responsibility Act. Ira Ira and it was a really broad expansion of immigration enforcement that kind of doesn't get credited a lot today but that at the time was a very big you know we're going to be tough on these immigrants move from the Clinton administration and the Democratic Party to make it clear that they were tough on crime and you know weren't and tough on the rule of law. The IRA IRA act built a lot of the kind of legal infrastructure that gets use today for deportation. In particular it builtin in a couple of places the ability for local law enforcement departments to work with the federal government on immigration enforcement. The thing is that the Clinton administration didn't actually use those tools. The director of INS at the time got a bunch of applications from local law enforcement departments that like wanna to get deputized. But what she told me was that she required every community that wanted to start doing that to hold a community meeting and to see whether it really made sense you know to hear from members of the community and see whether it was really the best idea for their police officers to start thinking of themselves as immigration deputies. And she said that no one really got past that point. So it was kind of building the skeleton. When DHS and ICE got created in 03 Congress started giving them the funding that actually allowed them to do that. So they started putting the muscle on that skeleton.

**Hannah McCarthy:** [00:05:27] So this actual process of deporting somebody it starts with you know finding them and detaining them right. So who makes the decision of who to go after especially when you don't necessarily prioritize someone who's committed a crime?

**Dara Lind:** [00:05:41] This is an extremely good question and because ice is a law enforcement agency that doesn't like discussing things about how they may quote unquote law enforcement decisions. You don't get a really clear answer about what kinds of processes they have. We do know that the ice has access to a lot of law enforcement and Homeland Security data bases kind of generally we don't know how often it uses that access. That's a very big question for you know people who are concerned about government surveillance as well as immigrant rights. But the question isn't just how they find people but also is there ever a point where someone is identified as an unauthorized immigrant and the ice agent or somebody above the ice agent in the ice office says no you shouldn't go after that person because we need to be doing other things with them with your time. We need to be doing other things with that money. We need to be doing other things with you know detention space that we have so that is really what the black boxes. And if you listen to the public side of this debate it sure sounds like there is nobody telling an ICE agent. No you can't deport that person that it's entirely up to the individual agent. But there have been some cases where after somebody gets detained and the government is preparing to deport them there's been a big media backlash and the government has said OK fine we won't deport you just yet we'll give you some kind of temporary stay. That's not as common as it used to be under the Obama administration. There definitely have been cases where there has been a big public push and like members of Congress have asked them not to deport someone and they've gone ahead and done it. But there have been some cases where they've stepped back which does indicate that some kind of decision up the chain is getting made.

**Hannah McCarthy:** [00:07:32] And when somebody is picked up by ICE what happens to them next are they sent to a detention facility?

**Dara Lind:** [00:07:39] That depends. A lot of this process looks a little bit like the typical process for somebody who gets arrested just like someone who gets arrested for a crime you know they might be put into jail or in this case detention or they might be released on bond. They might have an ankle bracelet. The travel administration has been trying to increase detention. But there are certain circumstances under which you know a judge can just say no this person should be released. The key moment between somebody getting arrested and them getting deported is that most immigrants who are caught in the U.S. have a right to hear appear before an immigration judge which is a separate kind of court. It's under the Department of Justice so it's not under ice. But the prosecution in those cases are ICE attorneys so ice kind of represents the federal government saying this person is deportable and is not eligible for some other form of legal status. And it's the immigration judges job to figure out whether or not that is the case. However immigration courts in general been keeping up with these deportations because they're under the Department of Justice. ICE has gotten a ton more resources from Congress over the last 15 years and the Department of Justice's immigration court office hasn't really as much. There have been efforts to give it resources that are a little bit too little too late. So they're currently super overworked. There's a super long backlog. It takes about 700 days for the average case right now to make it through the court. That's not as long for people who get who are being kept in detention the whole time they really do make an effort to kind of cycle those people through and it's harder for them to get lawyers so there it's probably a matter of weeks in most cases and at the end of that process you know either because you don't have papers and you don't have any way to get papers you're ordered deported anyway or you actually successfully make the case that I should get asylum. I should. You know I my country will torture me. There is like a provision in the Geneva Convention Against Torture that I should be able to access that kind of thing. And you can get the judge to give you some kind of really from deportation that's pretty rare. So usually what happens is that people are just waiting for you know a matter of weeks and then they're in court for 10 minutes and then ice picks them up. And you know schedules a flight and puts them on the plane.

**Hannah McCarthy:** [00:10:04] And is every single one of these immigrants granted a lawyer?

**Dara Lind:** [00:10:09] Now this is the other thing about immigration court not being like typical court. There is no right to representation in the immigration court at all. And I don't know the percentage of immigrants who end up quote unquote representing themselves. But it's extremely high especially again in cases where they're coming you know there's a courtroom in the detention center and so they're being marched from their detention cell to the court. Those cases go by very quickly and there's very little chance they'll even be able to talk to a lawyer. A lot of pro bono organizations do some work around immigration but they only have so many resources so they tend to pick the cases that they think are the easiest to win. There are some experiments going on at the local level with you know cities giving them money for lawyers to represent everybody who comes through a detention center in immigration court. And those who have been promising and successful but under the Department of Justice there's also a lot of pressure on immigration judges to go through cases more quickly.

**Hannah McCarthy:** [00:11:10] You'll hear from some politicians that deportation of undocumented immigrants is equated with lowered crime rates. So. So are communities safer because of ICE's aggressive tactics?

**Dara Lind:** [00:11:25] Aggressive tactics, absolutely not. As a matter of fact even the ice even the current leadership of ice will tell you that they only that they would rather go into jails and do all their arrests. That that's the safest option for them and for immigrants whereas going into the community is riskier because you know there are other people around. But there's absolutely no evidence linking no immigration to crime generally the evidence about unauthorized immigration and crime is slightly less unambiguous is kind of the that's the most generous way I can put it. It still does for the most part indicate that you're not. There isn't evidence that unauthorized immigrants are at least not reliable evidence that unauthorized immigrants are substantially more criminal in nature than anybody else. And deportation is kind of an independent question of that anyway because yeah you're taking some people out of the community but ICE has never been at a point where it could deport even. You know even a noticeable fraction of the immigrant community if you think about it there are 11 million unauthorized immigrants in the U.S. That number basically hasn't budged since the beginning of the Great Recession. And so any you know even during the time when there were 400000 people a year getting deported. That's at best kind of a cup in the ocean. So it's really hard to argue that going in and arresting and deporting people has an effect on crime rates. Unless you're trying to say that somebody would be tempted to commit a crime but if they see that other people are getting deported they won't do it. And even if that were the case the Trump administration isn't targeting people who have committed crimes there. You know kind of undoing that targeting. So it's it's very hard to understand the current administration's policy as an anticrime effort. What kind of gets tied up in that though is that for people who care a lot about the rule of law quote unquote even though being in the U.S. without papers is not a criminal offense. It's a civil offense. Those people still think of it as well you violated U.S. law by being here. So we are making U.S. law means something by deporting you and so by that measure you can say that immigration enforcement protects the rule of law but it's one of those things where protecting the rule of law and protecting people from crime are actually independent.

**Hannah McCarthy:** [00:13:54] On the flip side of that these activists going as far as calling ICE a modern Gestapo and you know some immigration advocates have championed this motto abolish ice. How do you expect this debate to move forward from here?

**Dara Lind:** [00:14:10] I think the abolish ice conversation has you know benefited from being a conversation from the party out of power. It's very easy to point to the most obvious manifestations of ice and go we need to abolish this agency but as even Democratic politicians even progressive Democrats like Kamala Harris who have been asked this question have said ICE also does a lot of things that are not politically controversial. V. You know when we've been talking about ice through this whole thing we've really just been talking about the enforcement and removal operations division which is the most visible and is one of the most prominent. But a lot of ice agents are under homeland security investigations. They do longer investigations of like human trafficking drug trafficking that kind of thing. And don't just go after immigrants so you can definitely expect at least for the near future to see Democrats defending the existence of ice as an agency even if they say some of the things that ICE agents are currently doing are beyond the pale what's going to be interesting though is to see where Democrats end up coming down on the question of whether people should be deported because there isn't the low hanging fruit that I was talking about earlier the kind of people who are already coming into contact or who already have criminal records. There's not a ton of that. And the more of it you pick the less of it there is. So you can't have another round of. Well we're going after hundreds of thousands of immigrants a year but all of them have criminal records. Not that that was ever what Obama was actually doing. But he managed to get away with messaging it for a few years. Now that Trump has kind of pulled the curtain back on that you can't really go back to well we're being very aggressive. Everyone we're being aggressive with deserves it. And so I'm not at all sure whether Democrats unless they manage to you know get both Houses of Congress and the presidency and do something that would actually legalize unauthorized immigrants who have been in the U.S. for years. I don't know where the party ends up on saying well the law says that if you don't have papers you can be deported. Most people who don't have papers have been here for over a decade are integrated into their communities. I don't know how those two things get squared in a post Trump Democratic Party and I think that that conversation is going to be one to watch.

**Hannah McCarthy:** [00:16:33] Dara Lind is a senior reporter at Vox covering immigration.