

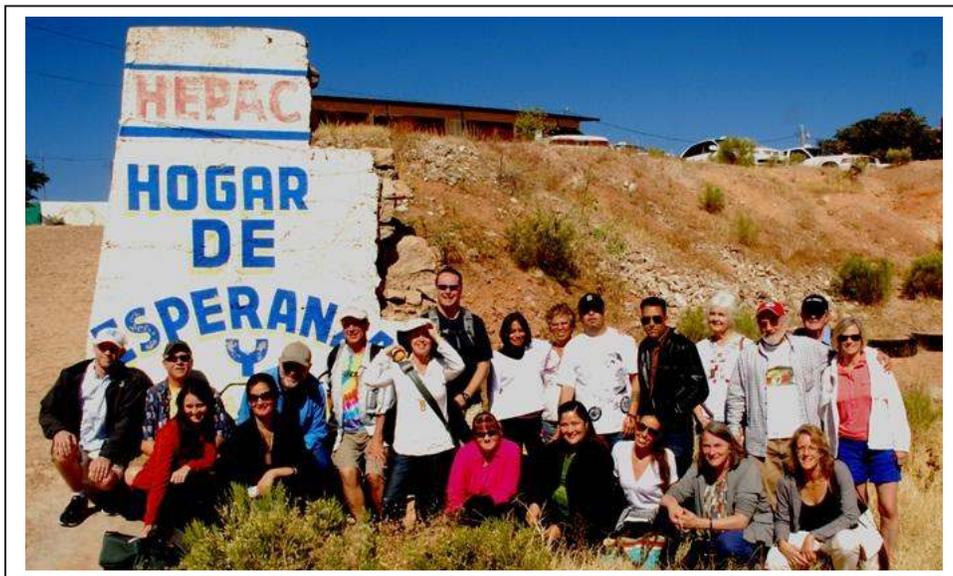


The Honorable Senator Patrick Leahy
437 Russell Senate Office Building
Washington, DC 20510

December 16, 2013

Dear Senator Leahy:

We are a group of employees of Ben & Jerry's and the Ben & Jerry's Foundation who visited Tucson, Arizona and Nogales, Mexico in late October, 2013 to observe firsthand the situation facing migrants and the impact of U.S. immigration policies and practices in the border region.



The Ben & Jerry's Foundation is employee-led and committed to social justice. In recent years as the dialogue about immigration has become harsh and punitive, we have become increasingly concerned about the human rights of migrants and undocumented workers. We have been funding grassroots groups working on these issues in the Mexican border region.

Because of this work, we arrived in Arizona with some awareness of the situation. We quickly found however, based on our conversations with public officials, lawyers, concerned citizens, and organizations working on both sides of the border, that there was much we did not know, much the American public does not know, about the persistent violations of human rights, the staggering cost and the too often cruel enforcement practices of U. S. government agencies.

In a 2012 report by Amnesty International, "In Hostile Terrain: *Human rights violations in immigration enforcement in the US Southwest*," Amnesty concluded: "While the development and implementation of immigration policies are a matter for individual governments, such policies must be compatible with international human rights law and standards. All immigrants, irrespective of their legal status, have human rights. This report shows that the USA is failing in its obligations under international law to ensure these rights".

Among the reports findings are:

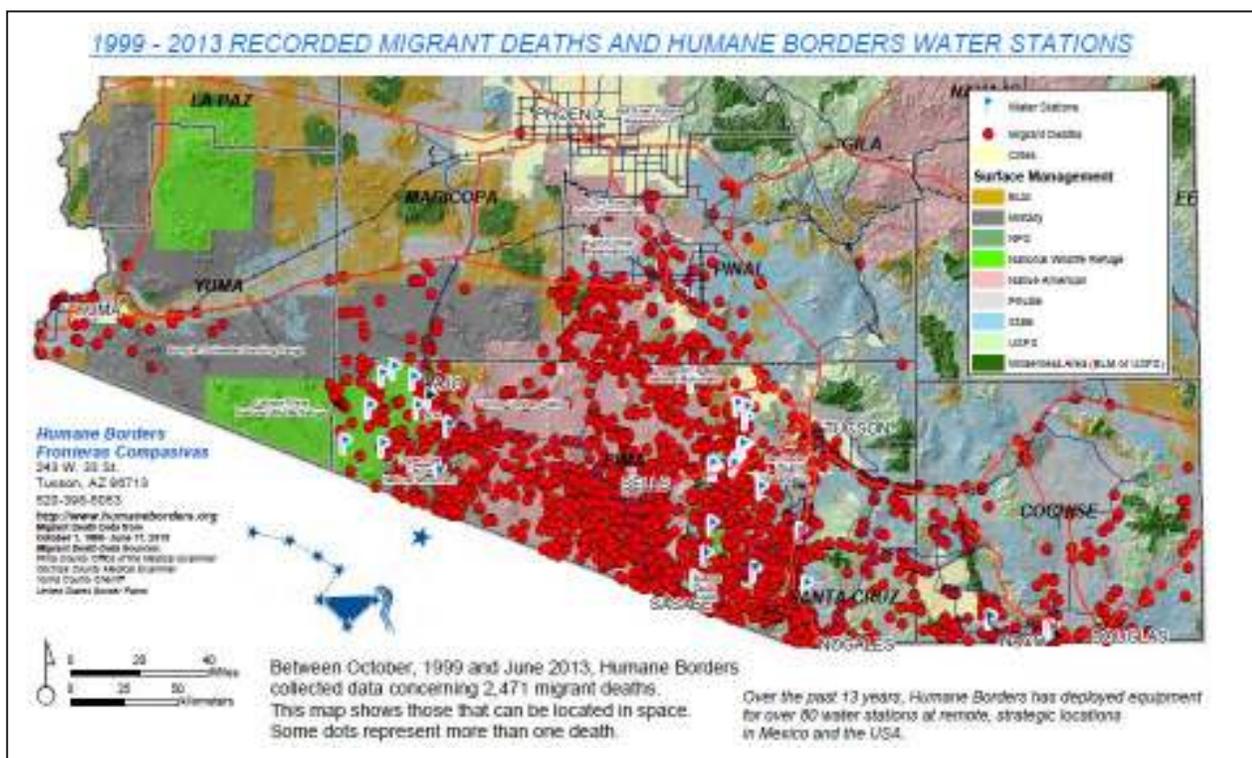
- Immigration policy in certain border areas has pushed undocumented immigrants into using dangerous routes through the US desert; as a result, hundreds of people die each year.
- Immigration enforcement in the USA is a federal responsibility. Federal immigration officials are increasingly working in collaboration with state and local law enforcement agencies but improper oversight of state and local law enforcement has led to increased racial profiling.
- Increasingly, state laws and local policies are creating barriers to immigrants accessing their basic human rights, including rights to education and essential health care services. While these laws are targeting non-citizens, these policies are also impacting US citizen children.
- Recent legislation enacted or proposed in several states targets immigrant communities and places them, Indigenous communities and other minority communities at risk of discrimination.
- Immigrant communities also face a range of barriers to justice when they are victims of crime such as human trafficking, domestic violence or bias crimes.

Throughout our visit the same concerns were consistently raised. Considering what steps we might take upon our return to address the urgency of the border situation, we quickly thought about your leadership position in the Senate, your chairmanship of the Senate Judiciary Committee, and your long history of championing human rights and humane and fair immigration reform. This report is intended to tell you what we saw, what we heard, and bring these matters to your attention with the hope that you will act on them.

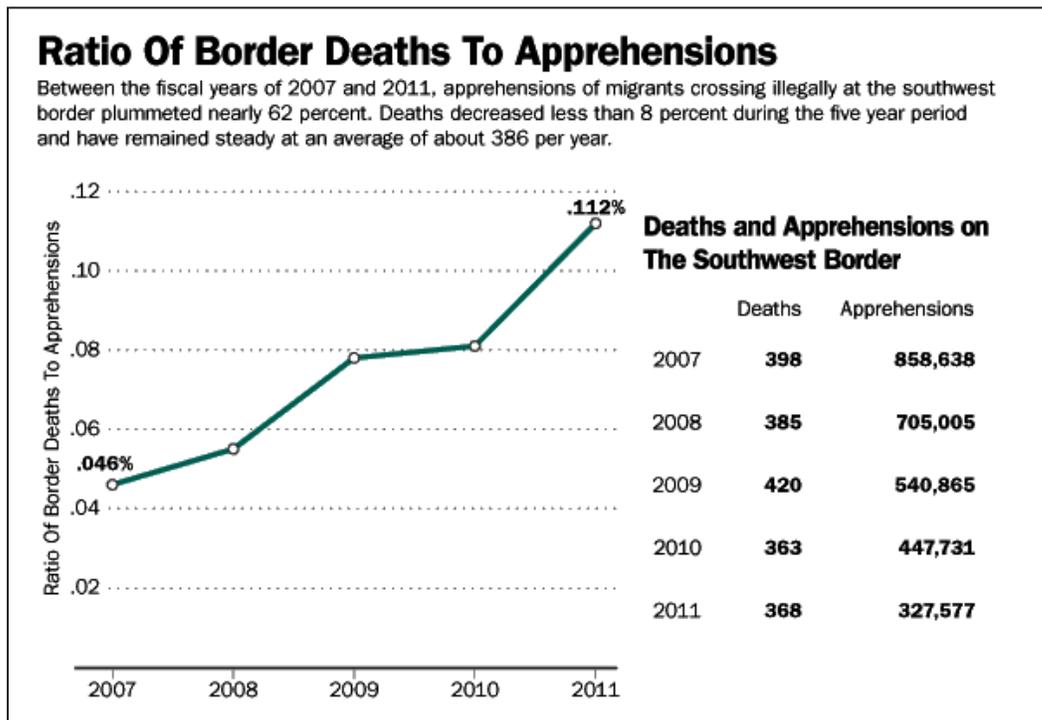
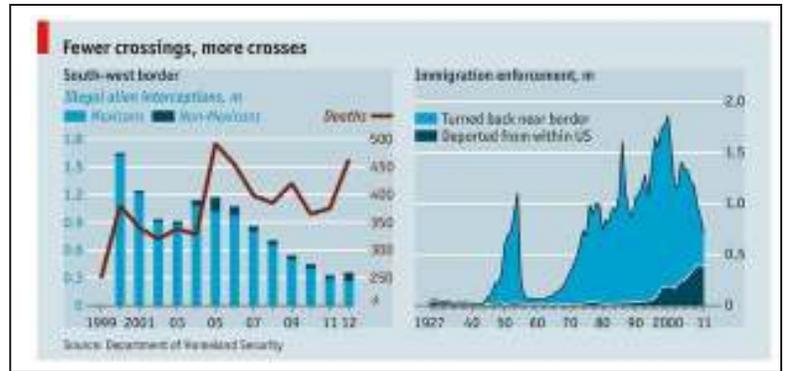
1) "Deterrence by Death"

We know you will find this description of US border policy as disturbing as we did.

It is broadly held and understood, referenced by many, not just by groups working on behalf of the migrants. As you will see from the map below, as a result of border patrol operations and the wall, migrants are now unable to cross in urban areas, and are forced into a "funnel" through the most perilous corridors of the Arizona desert.



Dr. Gregory Hess, the Chief Medical Examiner for Pima County, Arizona with whom we met, noted that as a result, his office now receives more migrant remains than any medical examiner in the country. *Every 36 hours a migrant making this passage perishes in these dangerous regions of the desert.* We are attaching an article from Newsweek, “Death in the Desert: Is Immigration Reform Killing the American Dream”, that tells a typical story of economic migration of 13 year old, Omar and 55 year old Dona Teresa who died in the desert and whose remains were eventually identified and returned to their families for burial only because of the extraordinary efforts of Dr. Hess and his staff. He told us that he is successful in making identifications in about 65% of the cases. The article notes that since 2010 more children than ever before, - 3,835 in 2012 are making the crossing by themselves. Dr. Hess provided the chart below that shows while the overall number of migrants apprehended has significantly declined, the number of deaths has increased.



All with whom we met, including Dr. Hess, noted that the “border surge” security provisions in the current immigration reform legislation, which calls for \$ 39 billion spent in fiscal 2014, to almost double the border patrol and to construct 300 more miles of wall, - despite a lack of proof that this is necessary or cost effective, results in increased militarization of the border with the attendant disturbing effect of creating conditions that result in more migrant deaths.

We hope you will reconsider the necessity of the surge and also adding provisions to the bill that require the humane treatment of migrants consistent with international human rights standards. One suggestion from the presentation by the Medical Examiner is to create a centralized database to record deaths and help identify all human remains found along the entire border with Mexico. Although there are existing databases, to our understanding there is not a central database covering the entire border region. To be trusted, in our view, such a database would need to exist apart from Border Patrol.

2) “A Culture of Cruelty”

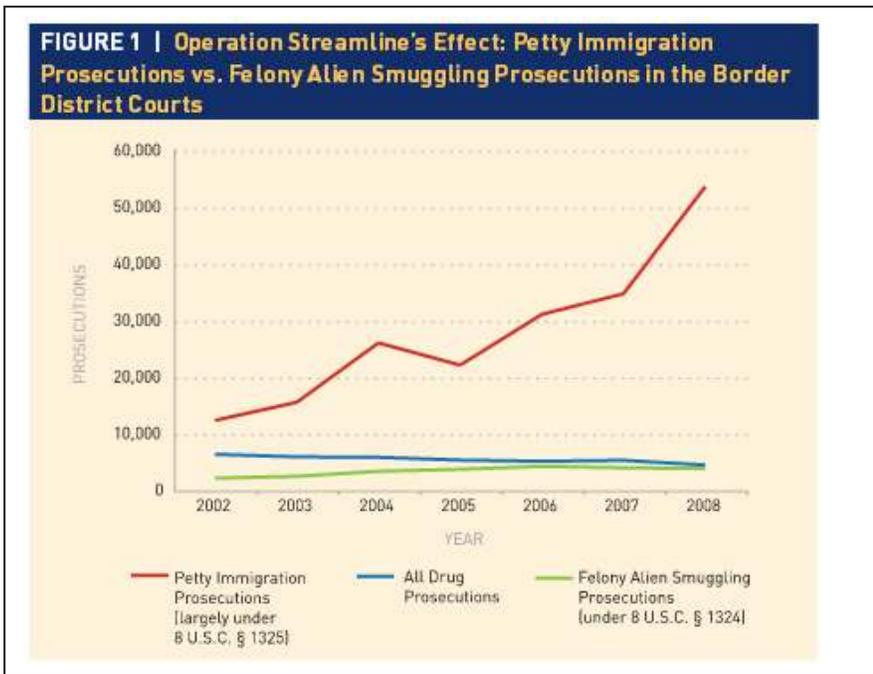
Our very first meeting in Tucson was with members of “No Mas Muertes”/ “No More Deaths”, a growing movement of individuals and faith-based groups working on both sides of the border. In Tucson volunteers have been carrying water and medical supplies into the desert despite arrests and intimidation. In 2011, the organization issued a report, “A Culture of Cruelty” which describes a staggering number of abuses against migrants. These include deprivation of water; denial of emergency medical treatment, separation of family members, confiscation of belongings, and mistreatment while in custody. In a 2012 PBS *Need To Know* documentary, “Crossing the Line”, border agents are seen destroying these precious water stations in the desert and engaging in other abuses.

Here’s what the report says about its provocative title: “We have entitled our report ‘A Culture of Cruelty’ because we believe our findings demonstrate that the abuse, neglect and dehumanization of migrants is part of the institutional culture of the Border Patrol reinforced by an absence of meaningful accountability mechanisms”. Over a very short period of time the Border Patrol has become the nation’s largest police force.

There are many reports of excess use of force, at least nineteen people have been killed, and it appears no one has been held accountable for those deaths. It is broadly perceived that this agency acts with impunity and without accountability. The need for significant oversight of this organization is apparent. We urge you to initiate such a review.

3) Operation Streamline

As part of our learning on this trip we spent an afternoon in a courtroom in the Evo A. DeConcini U.S. Federal Courthouse in Tucson to witness, “Operation Streamline”, the “en masse” federal criminal immigration proceeding to deport migrants. This unprecedented judicial process was launched in 2005 to express zero tolerance for border crossing violations. As you know, prior to that, such cases were handled within the civil immigration system. *Illegal re-entry is now the most commonly filed federal criminal charge in Arizona!* In 2010, ninety percent of federal charges in Arizona were immigration related. We were deeply moved by being present at this proceeding. Seventy (70) migrants, shackled at their hands and feet, all charged with a federal criminal offense, stood before the judge in rows of 7 and were each processed within a matter of minutes in what appeared to be generic, pre-determined plea agreements. It was hard to believe that the pleas were knowing and voluntary.



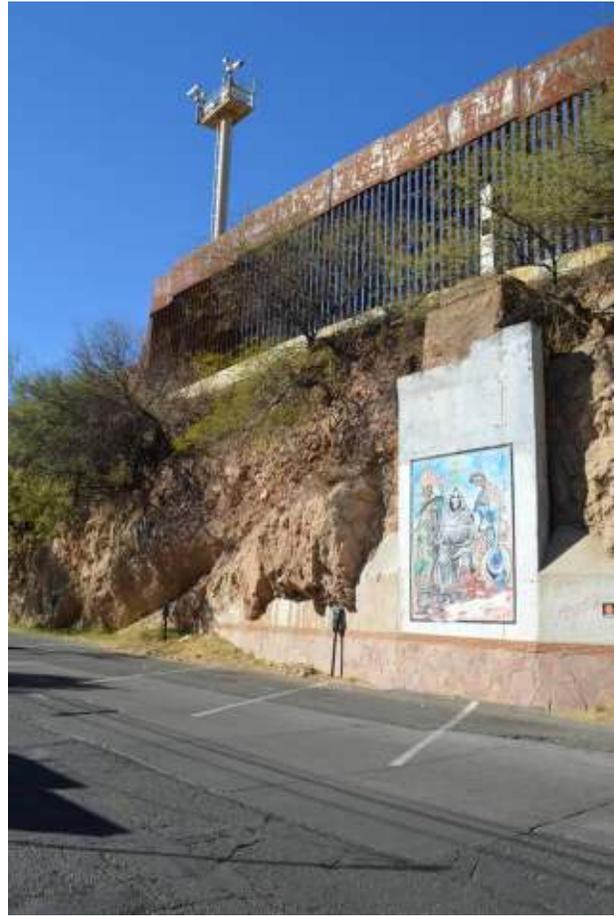
Since these are criminal charges, they result in a criminal record, a felony if a second attempt at migration. Such a criminal record virtually assures that the migrant is excluded from a future legal pathway to immigration and citizenship. Operation Streamline annually costs taxpayers hundreds of millions in court proceedings, and in FY 2011, \$640 million was paid to private contractors, Corrections Corporation of America (CCA) and GEO, for incarceration of migrants. Thus, Operation Streamline has not only forced migrants into unaccountable private prisons but has helped reinforce an industry with a direct financial stake in the criminalization and incarceration of immigrants.

We urge you to undertake a comprehensive review of Operation Streamline and speak with the public defenders, contract lawyers, and organizations calling for a reinstatement of true due process and an end to this “wholesale” application of justice.

4) The Shooting and Death of Jose Antonio Elena Rodriquez:

In October 2012 sixteen year old Jose Antonio Elena Rodriquez was walking from his grandmother’s house to meet his brother who worked at a convenience store just below the border wall in Nogales. He was shot multiple times by one or more Border Patrol agents firing through the wall. According to an October, 2013 Arizona Republic newspaper report which is attached, he was the sixth Mexican citizen to be killed since 2010 by Border Patrol officers firing from US soil into Mexico.

A local artist’s portrait of Jose Antonio Elena Rodriquez is ubiquitous around Nogales as is the sorrow about his death and the demand for justice. We stood for a few moments of silence and reflection at the shrine created on the spot where he was shot and where he died. We saw the bullet holes in the building. We looked up at the wall, which stands on a very steep incline just across the street. It was hard to imagine that even if a rock was thrown from where we were standing, it could surmount that wall. It is even harder to imagine how a rock thrown could have been perceived as a serious threat. Here is a photograph of the poster, the place where Jose was shot and the wall. You will note a camera directly in the line of sight of this location.



Apparently there is an investigation underway within the Justice Department or ICE but little is known about it. Jose's mother has repeatedly asked for information and for the film from the security camera. She does have a lawyer but even with counsel, she has been unable to get answers about the investigation or why the film is not being released to her.

We know it would make a difference if you ask the Justice Department about the status of this investigation and why the film has not been released to Jose's mother. It would signal that the eyes of the entire country, not just the citizens of Nogales, are on this tragedy. It would mean a great deal to us if you could symbolically stand with us at the site where Jose died and ask for justice beginning with a status report on the investigation of his senseless death.

We have also learned from the ACLU's Vermont affiliate that the National ACLU formally requested that Border Patrol revise its use of force policies to forbid agents from using deadly force on rock throwers. Border Patrol refused to do so, even though its agents have responded to rock throwing with gunfire an astonishing one in ten times during 2012. We've attached a recent editorial from The New York Times making this same point.

We ask that you seek further review of the Border Patrol's use of force policy.

5) "Fight all borders. They are not the way of our people."

There are some eighteen indigenous communities in the border region. Some of these tribes are represented by Indigenous Alianza Sin Fronteras/Alliance Without Borders, an organization with whom we met. Here is a map showing the various tribal lands. Long before there were borders of any type, these tribes lived on these lands.



The concerns of these indigenous communities are freedom of movement, protection of sacred sites, civil and sovereign rights and environmental protection of native lands. As you will note from the map, the US border bifurcated some tribal lands. Now the difficulty with passage across the border threatens indigenous culture and ceremonial practices. In some places sacred sites are in jeopardy.

Given Vermont's long experience with special, seasonal visas for Jamaican apple pickers who help with the harvest, we wonder why it is so challenging to work out passage across the border for tribal members to assure their freedom of movement. Also it would seem that provision could be made to register sacred objects so they are protected from confiscation. The confiscation of sacred and ancestral objects is especially painful for families and disrespectful of religious traditions.

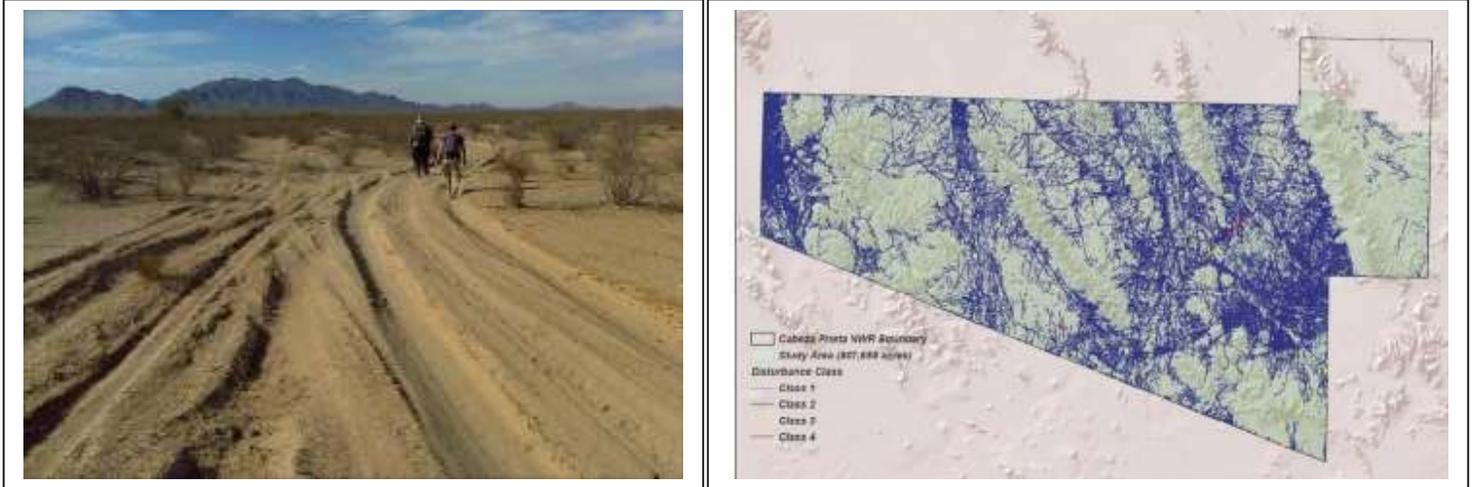
It does not appear to us that the voices and concerns of indigenous people are being heard in the debate about immigration reform. We ask you to seek out their opinions and invite organizations such as Indigenous Alliance Without Borders, to testify about immigration reform.

6) Environmental Impacts and Costs of Walls along the border

In addition to seeing the wall, we met with a representative of the Sierra Club to learn about "The Borderlands Campaign". We were told that the Secretary of Homeland Security often waives federal laws along the border that exist to protect the fragile and important desert ecosystem. Pristine wild lands, including wildlife refuges, wilderness areas, and national forests have been harmed. Several species of wildlife have been observed stranded at the border wall. Flooding has occurred along the walls built in the southwest region, wreaking havoc for homeowners, businesses, and natural landscapes.

We also heard from representatives of indigenous communities that border agents sometimes travel through their lands at high speeds seemingly without cause, causing damage to the desert and a threat to

public safety. The Sierra Club notes there are now 8,000 miles of unauthorized roads and tracks caused by various US government vehicles.



We hope you will look into this situation and call for greater interagency cooperation between the Border Patrol and the US Fish and Wildlife Service. Most importantly we hope you will look into whether the waiver authority of the Secretary of Homeland Security around environmental regulations, needs to be curtailed or held to greater accountability.

Thank you for your attention to this report. We hope it provides some new insights for your efforts to protect and advance human rights and immigration reform. We appreciate any consideration you can offer around our specific requests for action.

We intend to do all that we can to publicize our findings and to urge others to learn about these issues. ***We extend to you an invitation to visit Ben & Jerry's Foundation at your convenience, to meet with us to discuss our trip and this report. Please contact Rebecca Golden, Director of Programs, becca.golden@benjerry.com. We look forward to hearing from you.***

Sincerely,
(see attached signature pages)

cc:
Senator Bernie Sanders
Congressman Peter Welch

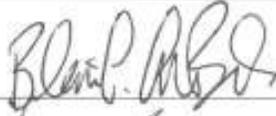
Newsweek Article link: <http://mag.newsweek.com/2013/07/10/death-in-the-desert-is-immigration-reform-killing-the-american-dream.html>

The Arizona Republic link: <http://www.azcentral.com/opinions/articles/20131015border-shooting-answers-long-overdue.html>

NY Times article: <http://nyti.ms/1QWenW>

ben & Jerry's foundation

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The Mission of the Ben & Jerry's Foundation is to make the world a better place by empowering Ben & Jerry's employees to use available resources to support & encourage organizations that are working towards eliminating the underlying causes of environmental and social problems.



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