

Remote Control of Asylum Seekers: The U.S. Experience

David FitzGerald

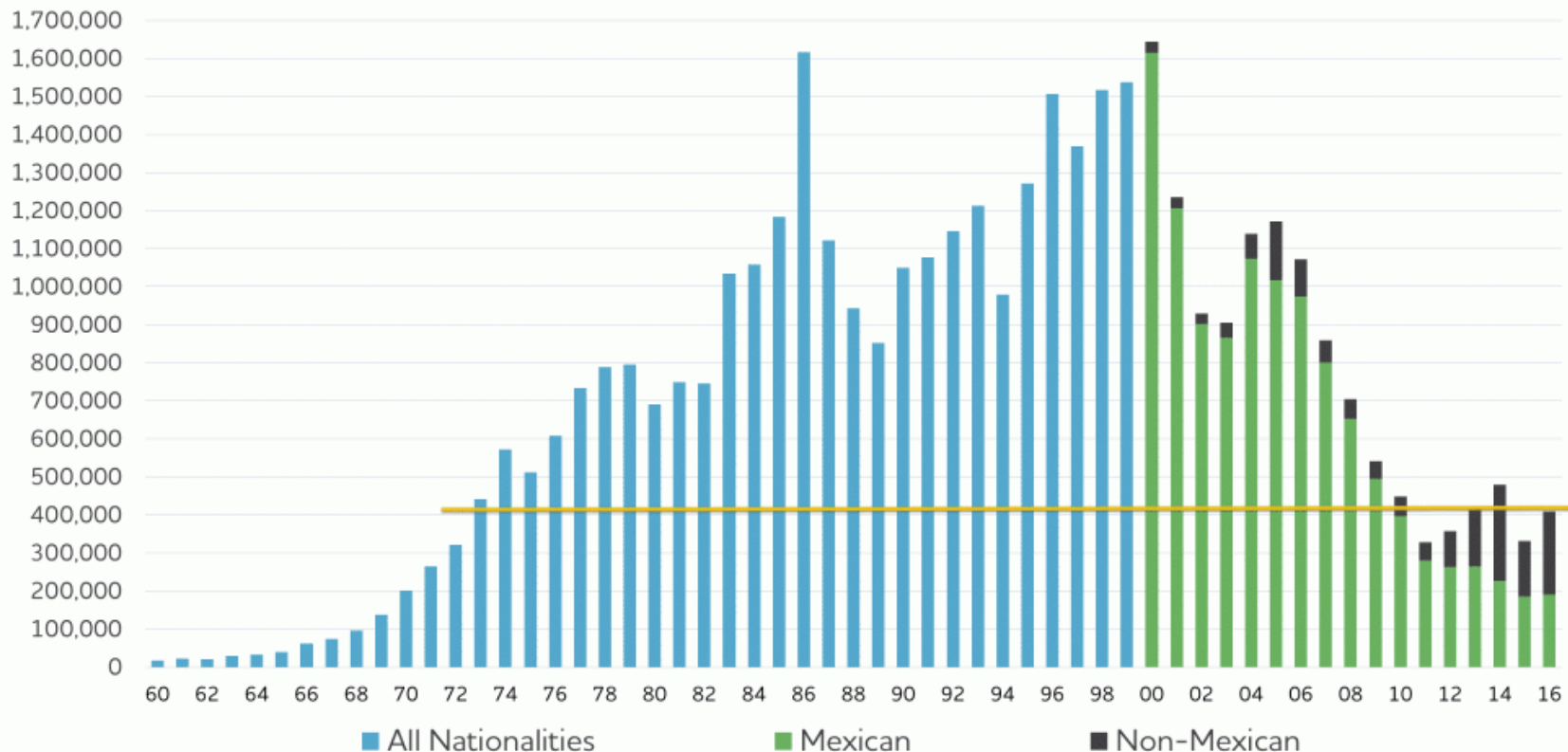
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Already barriers along 930 km of 3,200 km U.S.-Mexico border

Border Patrol apprehensions at early '70s levels; majority are of non-Mexicans



Sources: U.S. Border Patrol <http://1.usa.gov/1W4vtwR>, <http://1.usa.gov/1W4vuAR>, <http://bit.ly/2bhOlre>



The Dome

- Pre-clearance (since 1894 for ships, 1952 for air passengers)
- Carrier sanctions (since 1882 for ships, 1952 for aircraft)
- Visa policy (since 1917-1924)
- Coordination with neighbors



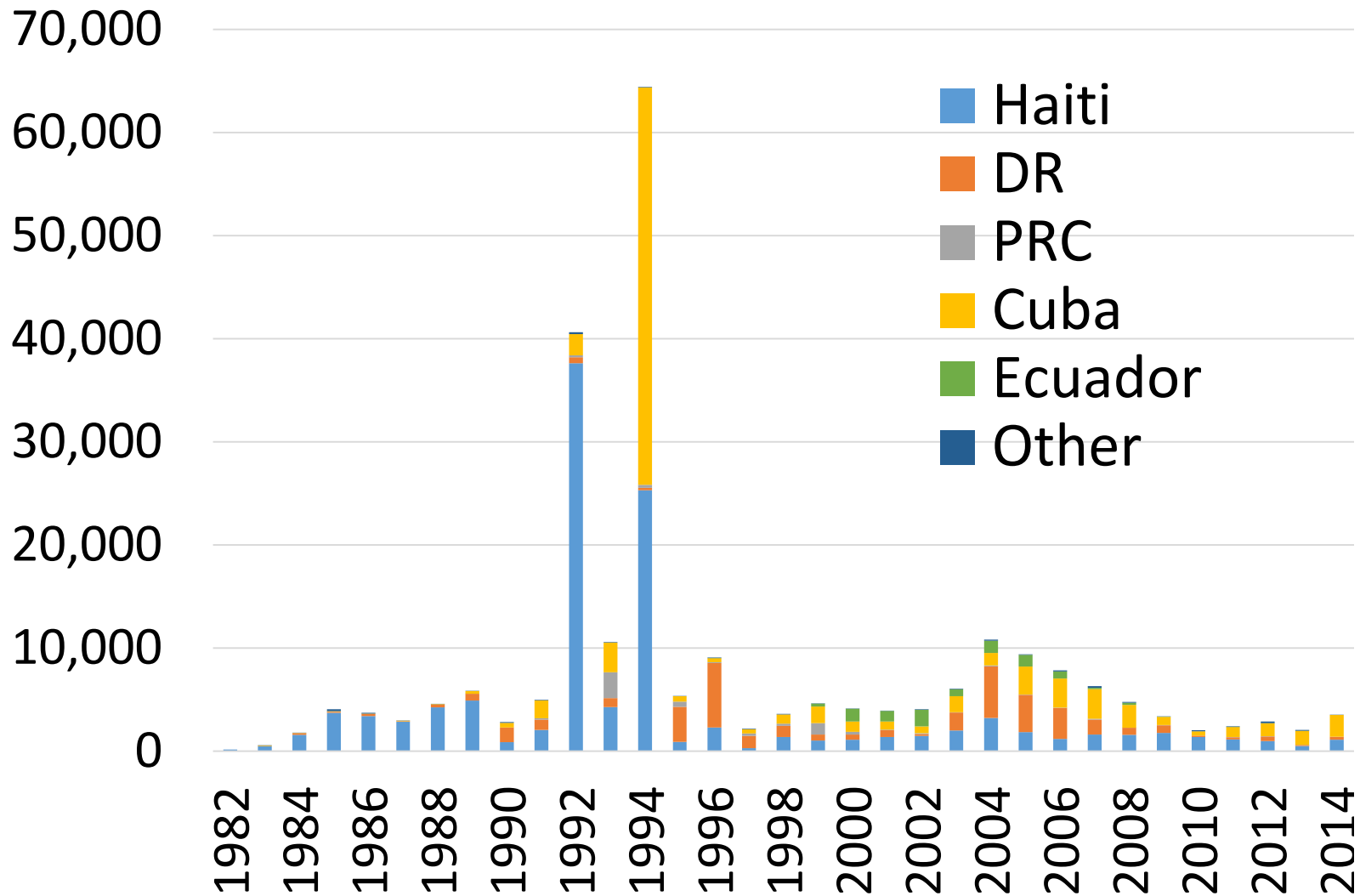
Few limitations on the dome

- Visa restrictions normalized
- Air travel securitized
- Anti-smuggling conflated with anti-trafficking



The Moat

Nationalities of Migrants Interdicted by U.S. Coast Guard, 1982-2015



Source: US Coast Guard 2016. Note: Does not include Mexico

Compliance with *non-refoulement* until 1992

U.S. Coast Guard will interdict migrants on high seas, but
“no person who is a refugee will be returned without his
consent.”

- Executive Order 12324 - September 29, 1981

- U.S. not obliged under domestic or int'l law to apply *non-refoulement* to “persons located outside the territory of the United States.” - Executive Order 12807 - May 24, 1992
- Upheld in *Sale v Haitian Centers Council* (1993)
- In practice, “shout test”
 - Exception for Chinese*
 - Exception for Cubans until 2017*



Wet foot/ dry foot

- WET FOOT: per 1994 bilateral agreement, U.S. repatriates Cubans interdicted in international or U.S. waters (unless pass shipboard credible fear interview)
- DRY FOOT: until Jan. 2017, per 1966 Cuban Adjustment Act, U.S. “paroles” Cubans who reach U.S. dry land



Coast Guard interdicts Cubans at the American Shoal lighthouse, 2016

Limitations on the moat

Even on the high seas:

- Self-restraint by the executive
- Domestic interest group pressure
- International norms rather than international law

The Buffer



“The Guatemalan border with Chiapas is now our southern border.”
– Alan Bersin, DHS Assistant Secretary for Policy, 2012



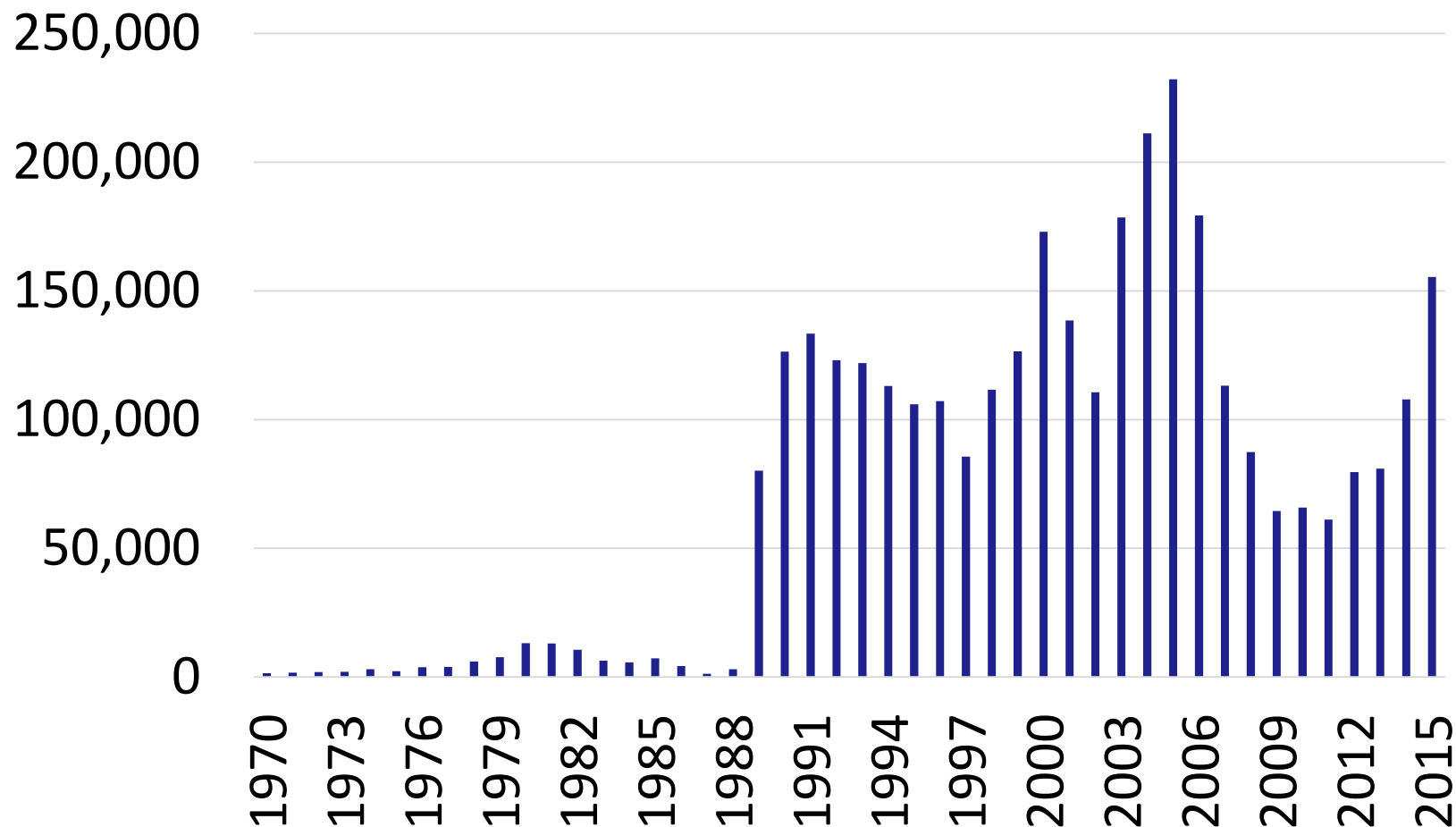
Manu Ureste

Rafts openly take unauthorized migrants across Suchiate river to Mexico

“The vertical frontier”

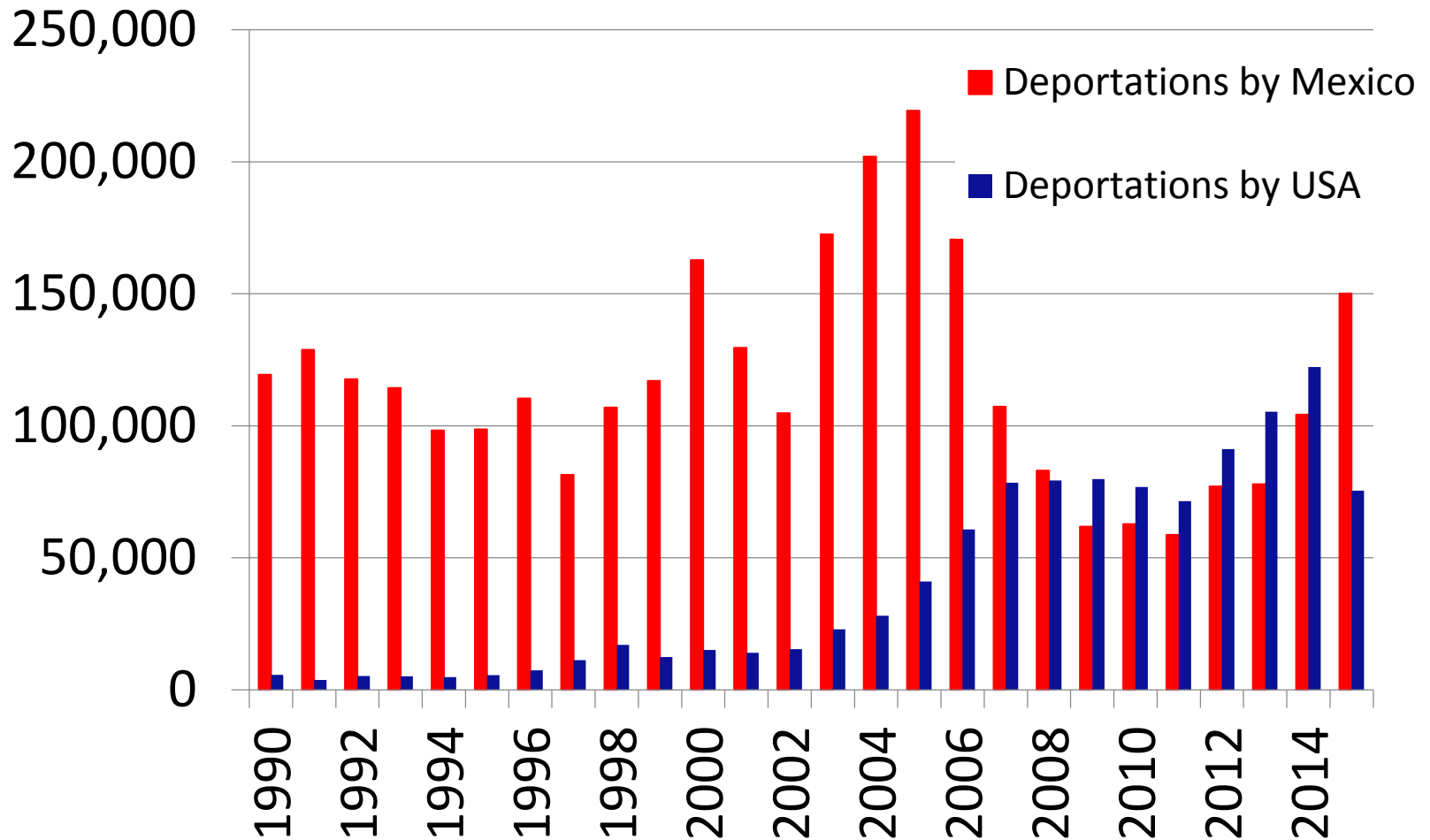


Deportations by Mexico, 1970-2015 (3.27 million since 1989)



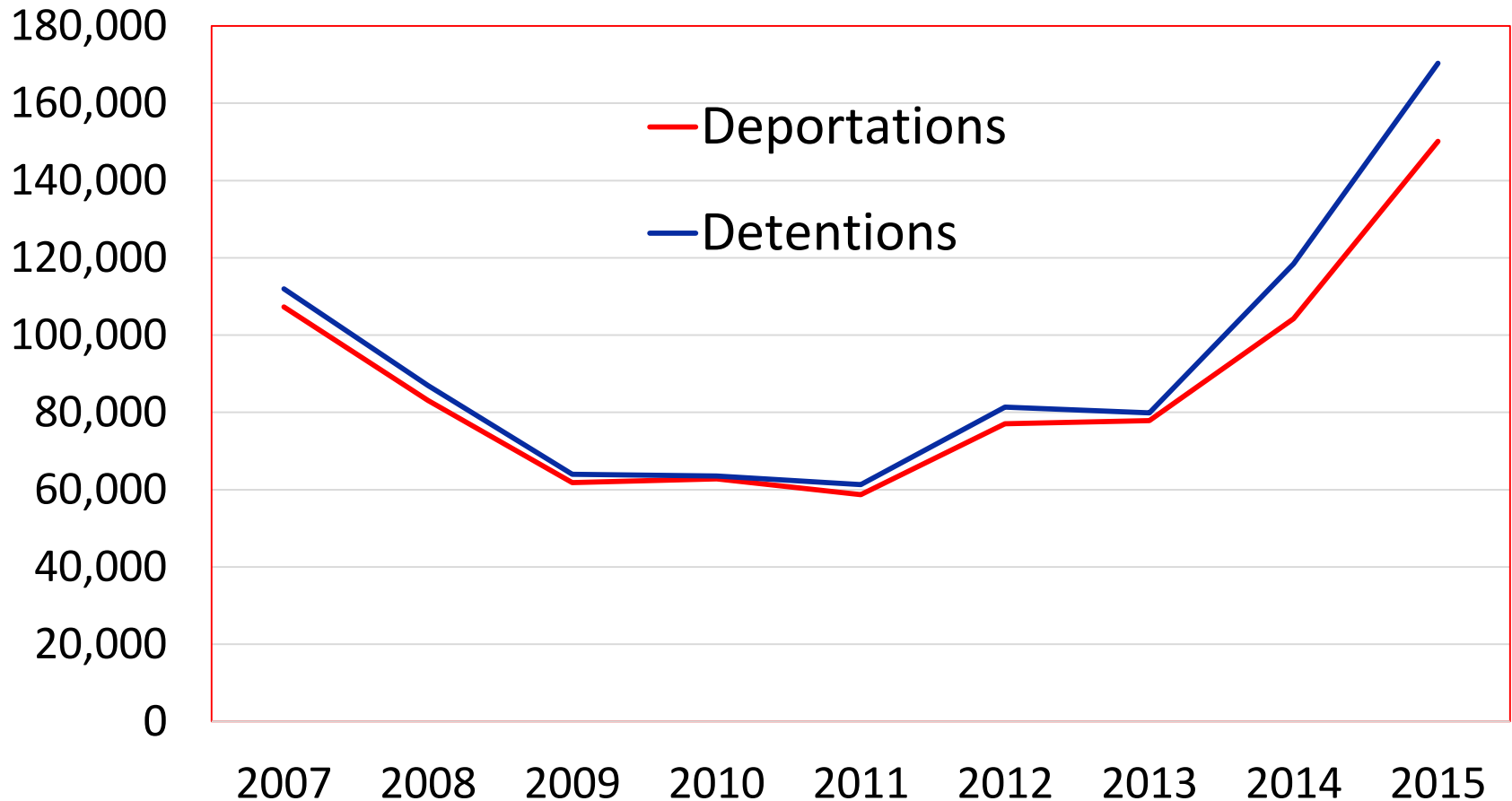
Sources: Boletines Estadísticos 2001-2015, SEGOB;
Casillas 2008: 159

Deportations of Guatemalans, Salvadorans, and Hondurans by Mexico and U.S, 1990-2015

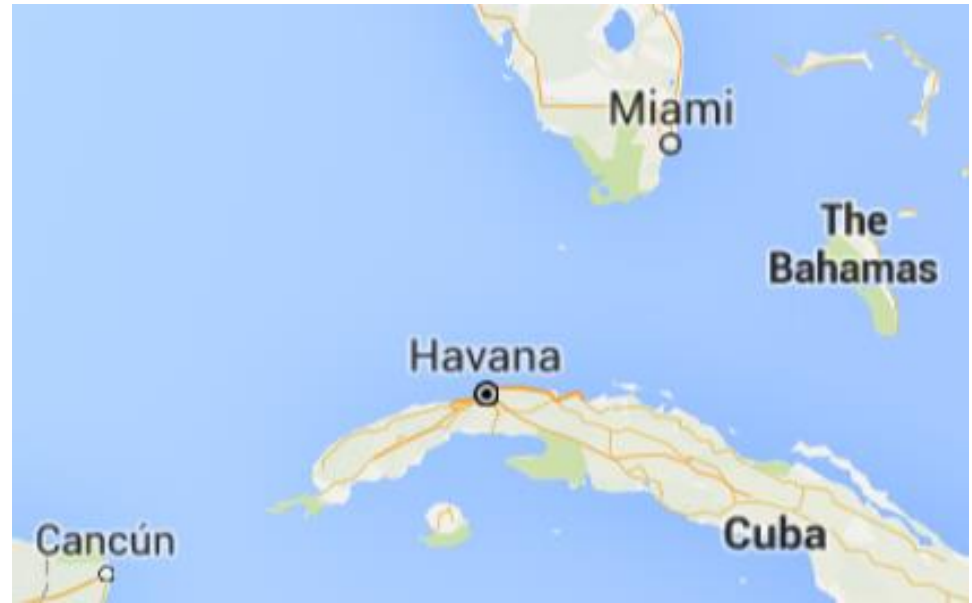


Sources: Boletines Estadísticos 2001-2015, SEGOB; Casillas 2008: 159; INS and DHS Yearbooks and Enforcement Reports, 1992-2016

Detentions and deportations of Guatemalans, Salvadorans, and Hondurans by Mexico, 2007-2015

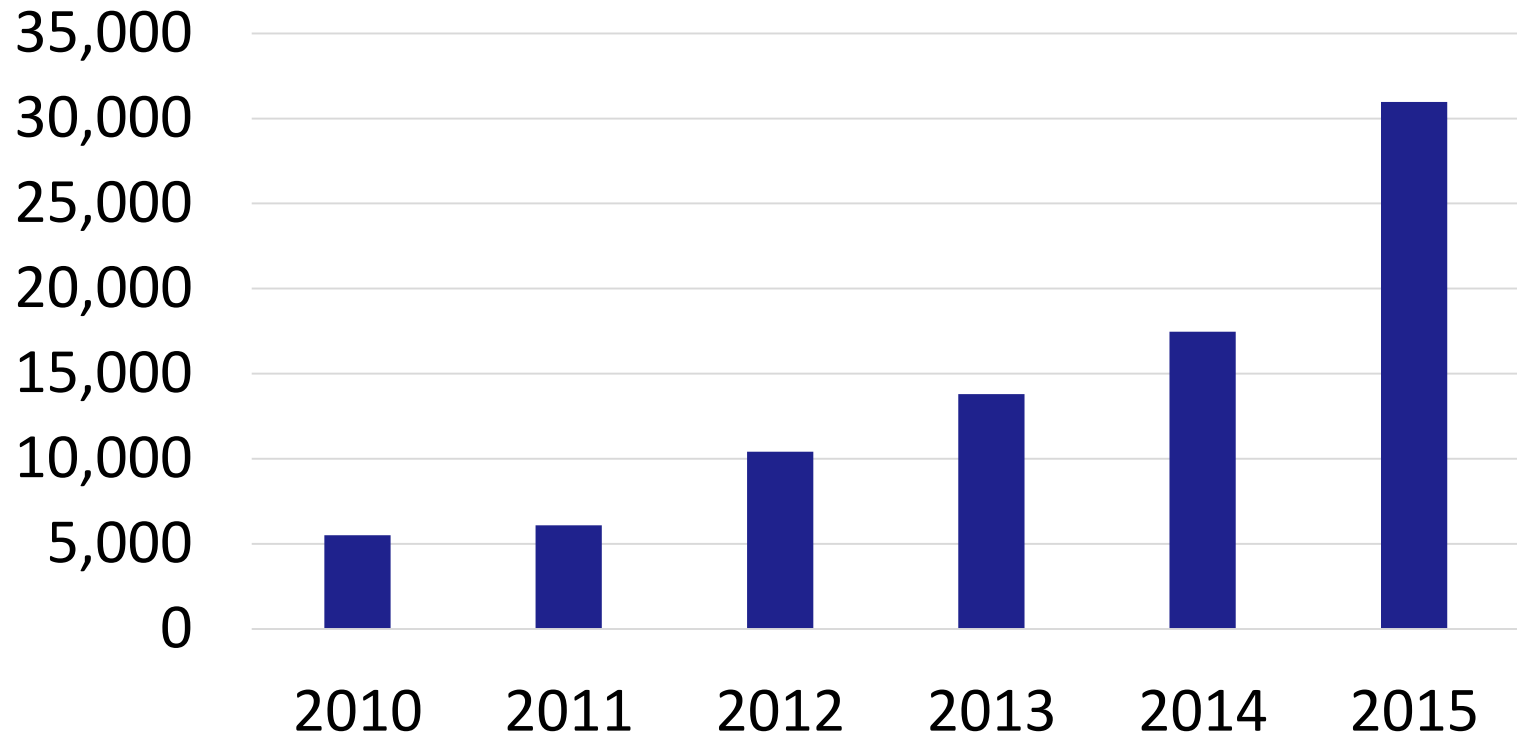


A “bridge to the U.S.”



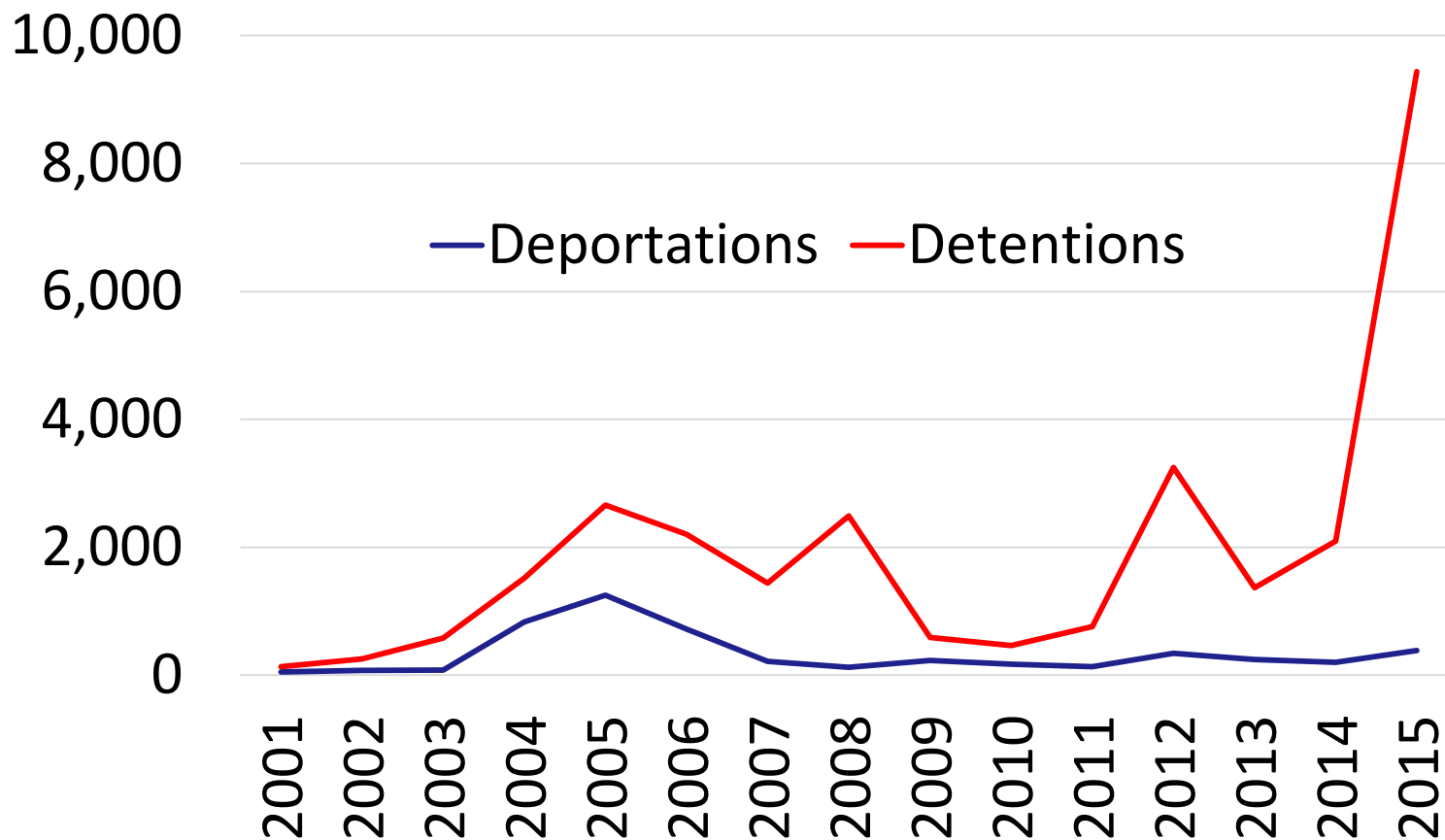
Boat with Cubans arrives in Yucatán

Cubans at U.S./Mexico border seeking U.S. residency, 2010-2015

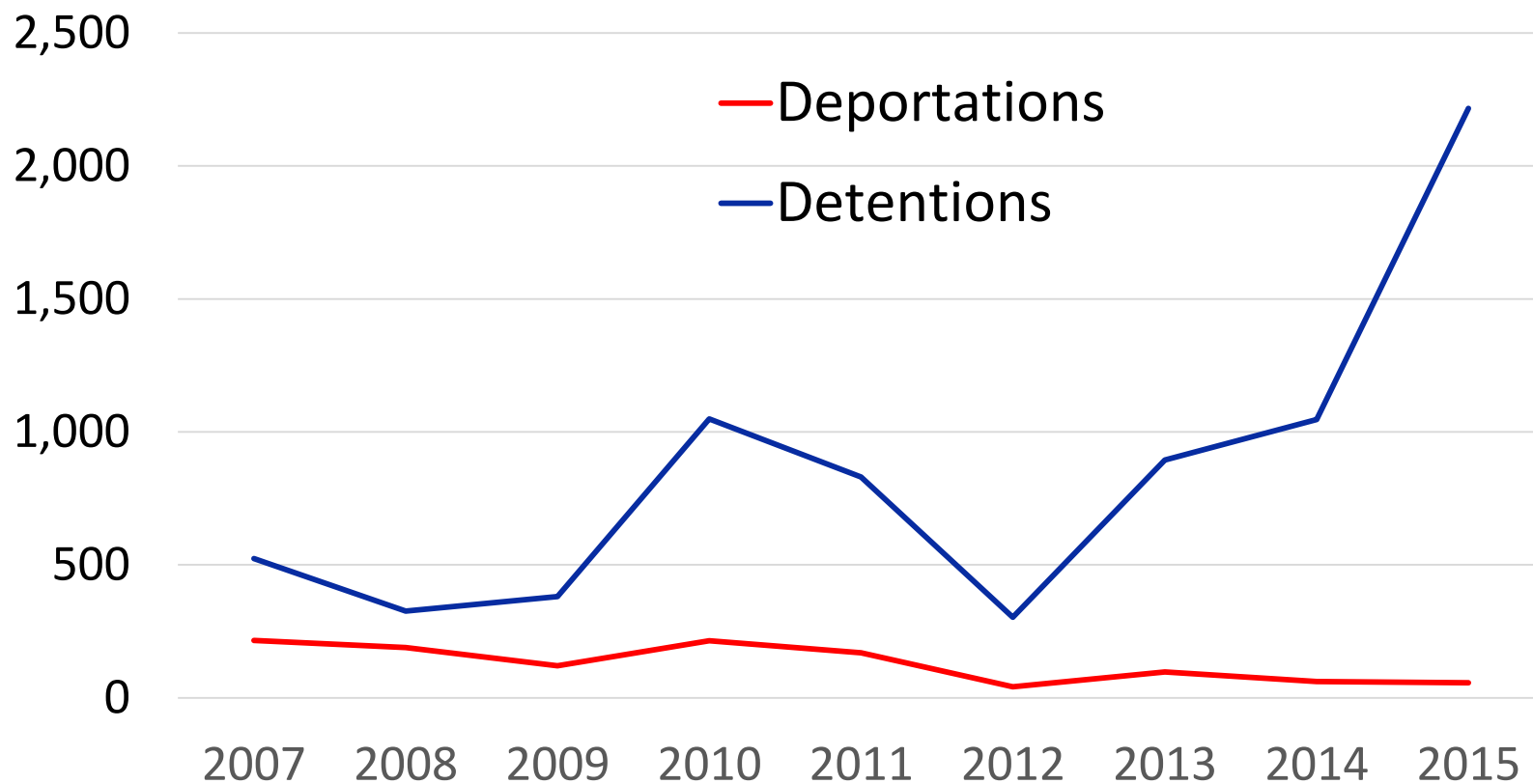


Source: Pew Hispanic Center

Detentions and deportations of Cubans by Mexico, 2001-2015

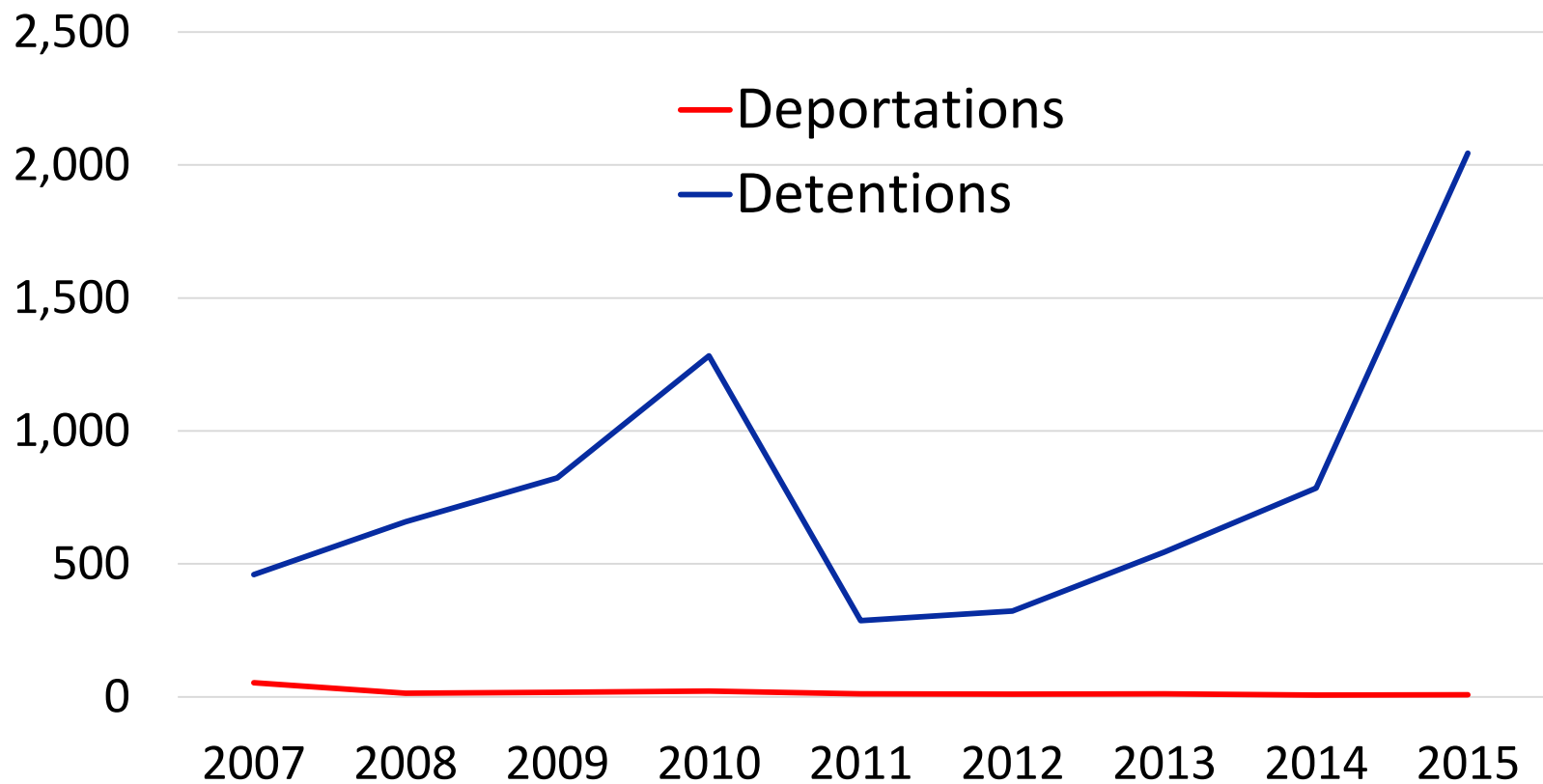


Detentions and deportations of Asians by Mexico, 2007-2015



Source: Boletines Estadísticos, SEGOB

Detentions and deportations of Africans by Mexico, 2007-2015



Source: Boletines Estadísticos, SEGOB

Limitations on the buffer

- Need to create at least the chimera of compliance with rights norms
- Growing civil society watchdog presence
- Linkage between transit migration and emigration from the buffer country

The Cage



U.S. Naval Station
Guantanamo Bay, Cuba, 1995

Limitations on the cage:

- Political price of openly cooperating with persecutors
- Leverage by government of hostile country of origin
- Political imperative of at least token alternatives

US-Australia Version 1.0

“Atlantic Solution”

- April 2007, reciprocal exchange of up to 200 refugees a year held at Guantanamo and Nauru
- Rationale dissolves when Ruud ends Pacific Solution

US-Australia Version 2.0

“It’s not a swap” swap

- Sep. 2016, Australia will resettle undefined number of Central Americans in Costa Rica
- Nov. 2016, U.S. will resettle up to 1250 refugees on Manus and Nauru

U.S.-Australia Version 2.X

“this dumb deal” - DJT

- Jan. 2017, Trump/ Turnbull phone call
- March 2017, US DHS begin screening on Manus and Nauru

Legal challenges

- Trump EO of March 6 suspends refugee resettlement 120 days; bans admission of 6 nationalities 90 days
- Reduces annual refugee cap from 85k to 50k
- Sec of State and DHS joint discretion to admit individuals
- Federal judge in Hawaii blocks EO (inc. refugee provisions) March 15

Comments welcomed

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