

8-1-2016

# United States-Cuba Normalized Relations and the MLB Influence: The Baseball Coalition Committee

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# United States-Cuba Normalized Relations and the MLB Influence: The Baseball Coalition Committee

Aaron Klein\*  
Jake Marcus\*\*

*This note explores the past, present, and future of the path for Cuban baseball players into MLB. Specifically, this note will explore the late-2014 agreement between the United States and Cuba to normalize relations and its anticipated impact on MLB. Part I provides an extensive historical context of the relationship between the two countries with a focus on the effect that baseball has had on the relationship. Part II draws attention to MLB's current policies and the resulting hardships faced by Cuban baseball players embark on the journey from Serie Nacional to MLB. Part III concentrates on the legal issues arising out of the circuitous emigration process for Cuban baseball players to make MLB. Part IV outlines the wealth of literature on Cuban baseball and details the proposed solutions offered by other scholars on the matter. Part V explains the development of*

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*the normalization agreement between the United States and Cuba and predicts its impact on MLB. Finally, Part V proposes framework to enhance the safety involved with the emigration process and efficiency of the troubling issue while utilizing the normalized relations platform to align incentives for Cuba and the United States.*

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On June 28, 2012, the Los Angeles Dodgers reached a seven-year-agreement worth \$42 million with Cuban-born-turned-Mexican-resident Yasiel Puig.<sup>1</sup> After a little less than a year, Puig made his Major League debut in the Dodger-blue on June 2, 2013.<sup>2</sup> Immediately, he took the league by storm. For the month of June, Puig earned both the National League Rookie of the Month and National League Player of the Month awards, marking the first time in Major League Baseball (“MLB”) history a player had done so in their debut month.<sup>3</sup> Puig continued to dazzle the world of baseball throughout the season, making highlight catches in the outfield, hitting mammoth home runs, and displaying one of the strongest throwing arms in the entire league. Despite playing in only 104 games, Puig finished second in the National League Rookie of the Year voting behind fellow Cuban José Fernández.<sup>4</sup>

Throughout the season, the Cuban outfielder was an enigma. Along with headlines about his play on the field came rumblings regarding the circumstances of his escape from Cuba. This led to a sea of rumors—that he was a spy for the Cuban government, that he continued to face death threats from those that helped him escape, and that he had betrayed his fellow countrymen in exchange for freedom.<sup>5</sup> On the eve of the 2014 MLB season, two reporters—Jesse

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<sup>1</sup> Jesse Sanchez, *Dodgers Sign Cuban Puig to Seven-Year Deal*, THE OFFICIAL SITE OF THE LOS ANGELES DODGERS (June 29, 2012), <http://m.dodgers.mlb.com/news/article/34081436/> [hereinafter Sanchez].

<sup>2</sup> Austin Laymance, *Pair of Homers Plus Puig's Defense Lift Dodgers*, THE OFFICIAL SITE OF THE LOS ANGELES DODGERS (June 4, 2013, 2:47 AM), [http://mlb.mlb.com/mlb/gameday/index.jsp?gid=2013\\_06\\_03\\_sdnmlb\\_lanmlb\\_1&mode=recap\\_home&c\\_id=la](http://mlb.mlb.com/mlb/gameday/index.jsp?gid=2013_06_03_sdnmlb_lanmlb_1&mode=recap_home&c_id=la).

<sup>3</sup> Andrew Simon, *Puig Naps NL Player, Rookie Awards for June*, THE OFFICIAL SITE OF THE LOS ANGELES DODGERS (July 3, 2013), <http://m.dodgers.mlb.com/news/article/52580416/dodgers-outfielder-yasiel-puig-nl-player-of-the-month-nl-rookie-of-the-month>.

<sup>4</sup> *Historic Win for Cuban Jose Fernandez*, BASEBALL WRITERS' ASSOCIATION OF AMERICA, <http://bbwaa.com/13-nl-roy/> (last visited Feb. 17, 2015).

<sup>5</sup> Jesse Katz, *Escape from Cuba: Yasiel Puig's Untold Journey to the Dodgers*, LOS ANGELES MAGAZINE (Apr. 14, 2014), <http://www.lamag.com/long-form/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers/2/>.

Katz of Los Angeles Magazine<sup>6</sup> and Scott Eden of ESPN The Magazine<sup>7</sup>—unearthed Puig's surreptitious journey.

The story began just before sunrise on a day in late April 2012.<sup>8</sup> After four foiled attempts, Puig, just twenty-one at the time, set out on his fifth attempt to escape Cuba.<sup>9</sup> Along with his close friend, his girlfriend, and a padrino (Puig's Santerian spirit guide), Puig scaled some of the most isolated stretches of land in the world along the Cuban coast, accessible only by foot.<sup>10</sup> Evading heavily armed Cuban police on numerous occasions over the course of thirty-hours, the group met their smugglers on a remote dock. The smugglers took the group to *Isla Mujeres*, an island east of Cancun, where the Puig crew was held in the equivalent of a low-security prison, waiting for an American contact to post their smuggling fee. One night, however, a rival crew arranged for the crew's kidnapping by bribing *El Comando de Cancun*, the Cancun police. The new Puig smugglers arranged for the group to establish residency in Cancun, only after bribing Cancun officials, of course. After a tryout in front of numerous MLB teams, Puig agreed to the seven-year pledge with the Dodgers.

While players from countries such as the Dominican Republic and Japan have made the transition to the MLB with relative ease, sadly, these near-death stories, tales of failed attempts to flee, run-ins with Cuban police, kidnappings, bribes, forgeries, and money laundering are common amongst those who have left Cuba to pursue professional baseball careers.<sup>11</sup> Dangerous journeys, similar to

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<sup>6</sup> *Id.*

<sup>7</sup> Scott Eden, *No One Walks Off The Island*, ESPN (Apr. 17, 2014), [http://espn.go.com/espn/feature/story/\\_/id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba#section-3](http://espn.go.com/espn/feature/story/_/id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba#section-3) [hereinafter Eden].

<sup>8</sup> *Id.*

<sup>9</sup> Steve Dilbeck, *Yasiel Puig's Incredible Journey From Cuba to U.S. Told by LA Magazine*, LOS ANGELES TIMES (Apr. 14, 2014, 7:03 AM), <http://www.latimes.com/sports/dodgers/dodgersnow/la-sp-dn-dodgers-yasiel-puig-journey-20140413-story.html#ixzz2z60I2kfv> [hereinafter Dilbeck].

<sup>10</sup> Eden, *supra* note 7.

<sup>11</sup> See Murray Chass, *What's \$32 Million More? Yanks Sign Contreras*, NEW YORK TIMES (Dec. 25, 2002), <http://www.nytimes.com/2002/12/25/sports/baseball-what-s-32-million-more-yanks-sign-contreras.html>; Jordan Ritter Conn, *From Cuba With Heat*, GRANTLAND (July 16, 2013), <http://grantland.com/features/marlins-rookie-pitcher-jose-fernandez-journey-cuban-defector-mlb-all-star/>; Susan Slusser and Demian Bulwa, *The Céspedes Saga*, SAN FRANCISCO

Puig's, have allowed numerous Cubans to sign large contracts with MLB teams, thereby incentivizing smugglers to "cash-in."<sup>12</sup> Smugglers often promise freedom in exchange for a stake in the contracts made by prospective Major Leaguers.<sup>13</sup> Take Puig, for example, who was forced to pay several of the financiers of his escape at least \$2 million.<sup>14</sup> You may be wondering: Why must Cuban baseball players risk their lives, their well being, and large portions of their eventual salary to make it to the MLB? The answer to this question is simple—current MLB rules fueled by the United States's Cuban embargo prevent MLB teams from negotiating directly with Cuban prospects.<sup>15</sup> Instead, a loophole in the league's collective bargaining agreement allows these players to negotiate with teams once they have established residency in a foreign country. Although Cubans may choose an alternative route—entering the Rule 4 Draft directly from Cuba—these players are significantly limited in terms of their choice of team as well as the amount of money in their eventual contract. However, given the dual announcement by President Barack Obama and Cuban leader Raúl Castro—that the two countries plan to restore diplomatic relations—the future of Cuban baseball players in Major League Baseball may pave the way for future change.<sup>16</sup>

This note explores the past, present, and future of the path for Cuban baseball players into MLB. Specifically, this note will explore the late-2014 agreement between the United States and Cuba to normalize relations and its anticipated impact on MLB. Part I will

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GATE (July 31, 2014, 10:15 AM), <http://www.sfgate.com/athletics/article/The-C-spedes-saga-4665271.php>.

<sup>12</sup> Katz, *supra* note 5.

<sup>13</sup> Jeff Passan, Charles Robinson & Rand Getlin, *Leonys Martin Lawsuit Details Allegations of Cuban Baseball Player Smuggling*, YAHOO! SPORTS (Dec. 6, 2013, 1:17 AM), <http://sports.yahoo.com/news/leonys-martin-lawsuit-details-allegations-of-cuban-baseball-player-smuggling-061730936.html> [hereinafter Passan, Robinson, & Getlin].

<sup>14</sup> Eden, *supra* note 7.

<sup>15</sup> Wendy Thurm, *Trafficking in Cuban Ballplayers: A Look at Florida's New Law*, FANGRAPHS (June 25, 2014), <http://www.fangraphs.com/blogs/trafficking-cuban-ballplayers-florida-legislature-governor/>.

<sup>16</sup> Linda Robertson, *What Will Become of Baseball's Decline in Cuba? The Field Might Open Further in U.S.*, MIAMI HERALD (Dec. 28, 2014, 2:56 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article5078058.html>.

explore the historical context of the relationship between the two countries with a focus on the effect baseball has had on the relationship. Part II will draw attention to MLB's current policies and the turmoil Cuban baseball players must go through to make it to the big leagues. Part III will concentrate on the issues that are occurring on a regular basis because of the circuitous emigration process for Cuban baseball players to make MLB. Part IV will explore the normalization of diplomatic relations agreement between the United States and Cuba. Finally, Part V will explore a possible framework to enhance the safety involved with the emigration process and efficiency of the troubling emigration issue while utilizing the normalized relations platform to align incentives.

## I. HISTORICAL CONTEXT: IMPACT OF THE CUBAN REVOLUTION AND TRADE EMBARGO

The current MLB system for attracting and signing players that hail from Cuba is deeply rooted in the social and political diplomatic relationship between the governments of Cuba and the United States.<sup>17</sup> Prior to the Cuban Revolution of 1959, baseball served as a common interest that bound the two countries socially. Following the Revolution, however, United States policy encouraged a system of isolation and restriction. This section reviews the historical context of the Cuba-United States relationship as it is reflected through the game of baseball.

### A. *The Cuba-United States Baseball Relationship Prior to 1959*

Notwithstanding the turbulent relationship between the United States and Cuba that exists today, baseball actually served as a common bond between the United and Cuba for almost a century preceding the Cuban Revolution of 1959.<sup>18</sup> The creation of the game of

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<sup>17</sup> Matthew Frankel, *Major League Problems: Baseball's Broken System of Cuban Defection*, 25 B.C. THIRD WORLD L.J. 383, 387 (2005) [hereinafter Frankel].

<sup>18</sup> Rachel D. Solomon, *Cuban Baseball Players, the Unlucky Ones: United States-Cuban Professional Baseball Relations Should be an Integral Part of the United States-Cuba Relationship*, 10 J. INT'L BUS. & L. 143, 156 (2011) [hereinafter Solomon].

baseball dates back to the 1840s in a neighborhood just outside of New York City.<sup>19</sup> The game reached Cuba shortly thereafter.<sup>20</sup> In Cuba, sailors from the United States and Cubans returning from American universities popularized the game and sparked interest throughout the country.<sup>21</sup> Two Cuban port cities, Havana and Matanzas, quickly “became hotbeds for the new sport.”<sup>22</sup> The two cities faced off against one another in the first officially recorded Cuban baseball game in December of 1874.<sup>23</sup> The formation of Cuban professional and amateur leagues quickly followed.<sup>24</sup>

Following its popularization and rapid exposure, baseball served as a “cultural bridge between Cuba and the United States, with ballplayers constantly in transit from one country to the other.”<sup>25</sup> From the 1870s until the Cuban Revolution of 1959, Cuban and American baseball players traveled freely between the two nations.<sup>26</sup> Cuban stars moved to the United States to participate at “all levels of American professional baseball,” including MLB.<sup>27</sup> During the winters of MLB’s offseason, MLB teams sent their younger players to participate in Cuba’s professional leagues as an opportunity to improve their skills for the upcoming MLB season.<sup>28</sup> Some MLB teams established spring training facilities in Cuba.<sup>29</sup> Others traveled to Cuba to square off in exhibition games against some of the world’s top international talent. Cuba served as the “leading source of Latin-American baseball talent.”<sup>30</sup> From 1954 to 1960, Havana served as the home to a minor league baseball team, the Havana Sugar Kings,

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<sup>19</sup> *Id.*

<sup>20</sup> Frankel, *supra* note 17, at 387; ROBERTO GONZÁLEZ ECHEVARRÍA, *THE PRIDE OF HAVANA: A HISTORY OF CUBAN BASEBALL* 90 (1999) (explaining that a man named Nemesio Guilló brought the first bat and ball to Cuba in 1864 after going to school at a college in Mobile, Alabama) [hereinafter ECHEVARRÍA].

<sup>21</sup> Frankel, *supra* note 17, at 387–88; ECHEVARRÍA, *supra* note 20, at 83–90.

<sup>22</sup> Frankel, *supra* note 17, at 387–88; ECHEVARRÍA, *supra* note 20, at 82–83.

<sup>23</sup> Frankel, *supra* note 17, at 388; ECHEVARRÍA, *supra* note 20, at 86.

<sup>24</sup> Katherine E. Baird, *Cuban Baseball: Ideology, Politics, and Market Forces*, 29 J. SPORT & SOC. ISSUES 164, 166 (2005) [hereinafter Baird].

<sup>25</sup> Frankel, *supra* note 17, at 388; Solomon, *supra* note 18 at 156.

<sup>26</sup> Solomon, *supra* note 18, at 156.

<sup>27</sup> Frankel, *supra* note 17, at 388; MILTON H. JAMAIL, *FULL COUNT: INSIDE CUBAN BASEBALL* 77 (2000).

<sup>28</sup> Frankel, *supra* note 17, at 388–89.

<sup>29</sup> Baird, *supra* note 24, at 166; Frankel, *supra* note 17, at 389.

<sup>30</sup> Solomon, *supra* note 18, at 156.

which was affiliated with the Cincinnati Redlegs (known today as the Cincinnati Reds) and played in the Class AAA International League.<sup>31</sup> The baseball relationship between Cuba and the United States became so strong that several prominent Cubans held preliminary discussions for a MLB team to be based out of Cuba.<sup>32</sup>

### B. *Baseball as a Form of Cuban National Identity*

At the time, Cuba was under Spanish rule.<sup>33</sup> Throughout the 1850s and 1860s, Cuban planters and other wealthy natives demanded social and economic change.<sup>34</sup> In October of 1868, demands for independence culminated in a Cuban uprising.<sup>35</sup> This uprising sparked the *Guerra de los Diez Años* or the Ten Years' War, the first Cuban War of Independence.<sup>36</sup> In 1869, the War prompted Spanish authorities to ban the game of baseball in Cuba.<sup>37</sup> In response, Cuban baseball emerged as a rejection of Spanish hegemony.<sup>38</sup> Cuban baseball became symbolic of social change and independence.<sup>39</sup> Cubans used baseball to establish a national identity that was distinct from Spain and as a symbol of their national pride.<sup>40</sup> Thus, since its popularization in the late 1800s, "baseball has been considered "part of the *nacionalidad cubana* [Cuban national identity]."<sup>41</sup>

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<sup>31</sup> Michael S. Schmidt, *Opening of Relations Could Bring Cuban Stars to Major League Baseball*, NEW YORK TIMES (Dec. 17, 2014), <http://www.nytimes.com/2014/12/18/sports/baseball/for-baseball-cuba-is-front-and-center.html>.

<sup>32</sup> Solomon, *supra* note 18, at 156; *see also* Baird, *supra* note 24, at 166.

<sup>33</sup> LOUIS A. PEREZ, JR., *CUBA: BETWEEN REFORM AND REVOLUTION* 80-89 (Rafael Hernandez and John H. Coatsworth, eds., Oxford University Press, 3rd ed., 2005).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *See generally* ECHEVARRÍA, *supra* note 20.

<sup>38</sup> *Id.*

<sup>39</sup> Ibsen Martinez, *Latin Baseball: A Frontier Story*, LIBRARY OF ECONOMICS AND LIBERTY (Jan. 9, 2006), <http://www.econlib.org/library/Columns/y2006/Martinezbaseball.html>.

<sup>40</sup> *Id.*

<sup>41</sup> Frankel, *supra* note 17, at 388.

C. *The Cuban Revolution of 1959 and Banning of Professional Baseball in Cuba*

The start of the Cuban Revolution of 1959 ended the “symbiotic relationship” between Cuban and American baseball.<sup>42</sup> Guerilla leader Fidel Castro led the overthrow of Fulgencio Batista’s authoritarian government and established Cuba as a socialist state with a Communist government.<sup>43</sup> As leader, Castro employed wide-ranging changes to the nation’s baseball program to emphasize the government’s socialist values.<sup>44</sup> In 1961, Castro abolished professional baseball in favor of a strictly amateur baseball system.<sup>45</sup> The new system was “centered on a socialist paradigm of amateur sports motivated by national ideals rather than money.”<sup>46</sup> Officials of the Revolution believed that the profit motive under a capitalist system corrupted the sport. The Cuban government established success in baseball as a primary goal of the Communist government, as a means of legitimizing and drawing positive attention to the Cuban Revolution.<sup>47</sup> In line with communist ideals, players in the Cuban leagues received a salary from the government that was “comparable to the earnings of the majority of the labor force.”<sup>48</sup>

D. *The Response of the United States: The Cuban Embargo*

In the wake of the Cuban Revolution and Cuba’s establishment of a Communist government, the United States responded by enacting an embargo against Cuba and severing diplomatic ties with the nation. The United States government implemented the Cuban embargo in 1963 based in part upon the Trading With the Enemy Act (“TWEA”), originally passed in 1917 during World War I.<sup>49</sup> The

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<sup>42</sup> Solomon, *supra* note 18, at 156.

<sup>43</sup> Guy Raz and Jason Beaubien, *Cuba Marks 50 Years Since ‘Triumphant Revolution*, National Public Radio (Jan. 1, 2009, 4:00PM), <http://www.npr.org/templates/story/story.php?storyId=98937598>.

<sup>44</sup> ECHEVARRÍA, *supra* note 20, at 355; Frankel, *supra* note 17, at 390.

<sup>45</sup> Frankel, *supra* note 17, at 390.

<sup>46</sup> Solomon, *supra* note 18, at 156–57.

<sup>47</sup> Paula Pettavino & Philip Brenner, “The Role of Sports in Cuba’s Domestic and International Policy.” *Cuba Briefing Paper*, 21(4), 2.

<sup>48</sup> Solomon, *supra* note 18, at 157.

<sup>49</sup> Matthew Poehl, *Double Play: How Major League Baseball Can Fix the Amateur Draft and International Player Acquisition with One Swing*, 8 WILLAMETTE SPORTS L.J. 17 (Fall 2010).

TWEA bans “transfers of property between United States citizens and enemy nations, unless authorized by the President.”<sup>50</sup> The President may exercise the powers conferred by the TWEA in times of war as well as in peacetime to “enable the President to engage in extensive regulation of international economic transactions when a national emergency so required.”<sup>51</sup> Section 5(b) of the TWEA, in pertinent part, allows the President of the United States to:

investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transaction involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.<sup>52</sup>

In 1963, based on the President’s TWEA powers, the Kennedy Administration passed the Cuba Assets Control Regulations (“CACR”).<sup>53</sup> The regulations provide the “basic governing rules for of the Cuban embargo.”<sup>54</sup> The CACR prohibits “‘transactions incident to travel to, from, and within Cuba’ as well as any ‘payment or transfer’ to any Cuban national.”<sup>55</sup>

The Cuban Democracy Act of 1992 (“CDA”)<sup>56</sup> and the Cuban Liberty and Democratic Solidarity Act of 1996,<sup>57</sup> also known as the Helms-Burton Act, further expanded impact of the embargo and restrictions of the CACR. The CDA strengthened the embargo sanctions to include a “ban on conducting business in Cuba to U.S.-

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<sup>50</sup> Solomon, *supra* note 18, at 169.

<sup>51</sup> Solomon, *supra* note 18, at 168 (quoting *Cornet Stores v. Morton*, 632 F.2d 96, 97 (9th Cir. 1990)).

<sup>52</sup> 50 U.S.C.A. § 5(b)(1)(B) (2006).

<sup>53</sup> Cuban Assets Control Regulations, 31 C.F.R. §§ 515.101–901 (2009); *see also* Solomon, *supra* note 18, at 169.

<sup>54</sup> Frankel, *supra* note 17, at 393 (citing 22 U.S.C. § 6032(c)).

<sup>55</sup> Frankel, *supra* note 17, at 393 (citing 31 C.F.R. §§ 515.305, 515.309(a), 515.415(a)(1)).

<sup>56</sup> Cuban Democracy Act of 1992, 22 U.S.C. §§ 6001–6024 (2009).

<sup>57</sup> Cuban Liberty and Democratic Solidarity Act of 1996, 31 C.F.R. § 515 (1999) [hereinafter Helms-Burton Act].

owned or controlled business located overseas.”<sup>58</sup> The stated purpose of the CDA was to maintain the embargo and sanctions against Cuba “so long as the Cuban government refused to move toward democratization and greater respect for human rights.”<sup>59</sup> The Helms-Burton Act aims to “globalize the current U.S. trade embargo . . . by discouraging third-party countries and their nationals from dealing or investing in Cuba.”<sup>60</sup> Similar to the CDA, the Helms-Burton Act places sanctions on the nation in order to encourage Cuba to adopt a democratically elected government and to improve overall conditions in the country.<sup>61</sup>

#### E. *Cuban Escapees: Why Do They Leave?*

In Cuba, Castro’s Communist government “fashions national heroes out of its star ballplayers.”<sup>62</sup> Despite the glorified hero status in their homeland, some Cuban players have sought to take their talents to the United States.<sup>63</sup> However, some Cubans view the escapees as traitors, and their escape “implies a rejection of *patria*, or homeland.”<sup>64</sup> This decision to leave is often a difficult one, as Cuban players that choose to leave are “given the label *traidores al béisbol*, or ‘baseball traitors,’ by the [Cuban] government.”<sup>65</sup> Aspiring baseball players “must leave [their] homeland forever . . . relinquish[ing] their basic human right to return home.”<sup>66</sup> The government treats the players as if they “no longer exist, never mentioning them again in the state-controlled press.”<sup>67</sup> In the official record books, an asterisk is left next to the names of these players that reads *abandonó el país*, meaning “left the country.”<sup>68</sup> Some scholars attribute this desire to leave to the superior level of talent in the United States.<sup>69</sup> Others

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<sup>58</sup> Solomon, *supra* note 18, at 170; *see* CDA, *supra* note 56 at § 6005.

<sup>59</sup> Solomon, *supra* note 18, at 170.

<sup>60</sup> *Id.*

<sup>61</sup> Helms-Burton Act, *supra* note 57, at §301.

<sup>62</sup> Solomon, *supra* note 18, at 154 (quoting Frankel, *supra* note 17, at 391).

<sup>63</sup> *Id.*

<sup>64</sup> Frankel, *supra* note 17, at 401.

<sup>65</sup> Solomon, *supra* note 18, at 154 (citing Frankel, *supra* note 17, at 402).

<sup>66</sup> Frankel, *supra* note 17, at 402.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Michael Powell, *For Cuban Players, No Embargo on Dreams*, NEW YORK TIMES (Dec. 23, 2014), <http://www.nytimes.com/2014/12/24/sports/baseball/in->

stress that Cubans prefer to play in the MLB “mainly because of the large contracts.”<sup>70</sup> Whereas baseball players in Cuba are paid small stipends by the government, escaping to the United States could entitle the players to a big payday.<sup>71</sup> The average Cuban baseball player makes forty-dollars per month.<sup>72</sup> Although this is twice as much as the average Cuban, the average MLB salary in 2013 was almost \$3.4 million, which equates to approximately \$283,000 per month.<sup>73</sup> The disparity in potential salary, coupled with the poor conditions in Cuba, creates a large incentive to escape, even at the expense of being branded disloyal to Cuba and being put through dangerous and traumatic experiences.

#### F. *Cuba-United States Baseball Relationship Today*

The Cuban trade embargo and the resulting economic and political sanctions have had a significant impact on Cuban baseball players who seek to play professionally in the United States. The embargo effectively “prohibit[s] MLB organizations from conducting any business in Cuba, such as scouting or signing players.”<sup>74</sup> Because a Cuban national may not enter the MLB directly, players seeking to play in the MLB must escape from Cuba and renounce their Cuban citizenship.<sup>75</sup> This requirement leaves one of two routes to professional baseball in the United States: (1) attempt to enter the United States by seeking asylum or (2) escape to another country.<sup>76</sup>

Following the Cuban Revolution, it took nearly thirty-years for a player to challenge Cuba’s new, amateur-only system.<sup>77</sup> On July 10, 1991, while visiting the United States as a member of the Cuban National baseball team, a pitcher named Rene Arocha “found an exit

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cuba-no-embargo-on-hope-as-baseball-players-say-take-me-to-america.html?\_r=0 [hereinafter Powell].

<sup>70</sup> Solomon, *supra* note 18, at 154 (citing Frankel, *supra* note 17, at 402).

<sup>71</sup> Jonathan Watts, *Cuba’s Baseball Players Have Ceilings On Their Salaries Lifted and Can Play Abroad*, THE GUARDIAN (Dec. 18, 2013, 6:49 PM), <http://www.theguardian.com/world/2013/dec/18/cuba-baseball-players-pay-rise>.

<sup>72</sup> Powell, *supra* note 69.

<sup>73</sup> *MLBPA Info*, THE OFFICIAL SITE OF MAJOR LEAGUE BASEBALL, <http://mlb.mlb.com/pa/info/faq.jsp#average> (last visited Feb. 17, 2015).

<sup>74</sup> Frankel, *supra* note 17, at 394

<sup>75</sup> *Id.*

<sup>76</sup> *See infra* Part II on MLB rules and options for players.

<sup>77</sup> Frankel, *supra* note 17, at 383.

sign” at Miami International Airport and became the first Cuban to leave the country in order to play professionally in the United States.<sup>78</sup> By leaving, Arocha “single-handedly ended Castro’s monopoly on Cuban baseball talent and catalyzed a revolution on both sides of the Straits of Florida.”<sup>79</sup> Since his escape, nearly 160 players have followed Arocha’s lead.<sup>80</sup> As of the end of the 2014 season, there were twenty-four Cubans on MLB rosters.<sup>81</sup>

In 1999, in conjunction with then-President Bill Clinton’s efforts to ease the Cuban trade embargo and improve relations with the island nation, the Baltimore Orioles participated in a “home and home” series against the Cuban National Baseball team—the Orioles traveled to Cuba for several games in March, and the Cuban National Team returned the favor by playing the Orioles in Baltimore that May.<sup>82</sup> The organization of the series required the State Department to negotiate terms with the Castro government—profits from the game in Baltimore could not be sent to the Cuban government due to the embargo.<sup>83</sup> Despite accusations that the game was being used as an avenue to illegally scout Cuban players, the series was a significant step in the right direction toward improving the baseball relationship between Cuba and the United States.<sup>84</sup>

On the eve of the March 1999 game in Havana, Fidel Castro hosted several of Major League Baseball’s senior executives, including baseball’s commissioner Bud Selig, for dinner at his Presidential palace.<sup>85</sup> As the dinner crept into the early hours of the morning, Castro “regaled Selig with tales of Cuban baseball and fantasized about what would happen if the United States and Cuba normalized diplomatic and economic ties.”<sup>86</sup> Throughout the discus-

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *List of Cuban Defectors*, BASEBALL REFERENCE, [http://www.baseball-reference.com/bullpen/List\\_of\\_Cuban\\_Defectors](http://www.baseball-reference.com/bullpen/List_of_Cuban_Defectors) (last visited Feb. 17, 2014).

<sup>81</sup> *Id.*

<sup>82</sup> Andrea Kupfer Schneider, *Baseball Diplomacy*, 12 MARQ. SPORTS L. REV. 473, 474–75 (2001).

<sup>83</sup> *Id.* at 474.

<sup>84</sup> *Id.*

<sup>85</sup> Schmidt, *supra* note 31.

<sup>86</sup> *Id.*

sion, Castro announced that his nation was “open to the idea of major league teams having academies in Cuba.”<sup>87</sup> Despite progress in these talks of having an active baseball relationship with Cuba, the discussions served as nothing but a distant dream.<sup>88</sup>

In recent years, numerous Cubans, including Puig, have become stars in the MLB after signing lucrative contracts with MLB franchises.<sup>89</sup> Puig himself signed a seven-year, \$42 million deal and was an all-star in 2014.<sup>90</sup> In the summer of 2013, first baseman Jose Abreu left Cuba and signed a six-year deal worth \$68 million.<sup>91</sup> In his first season, Abreu was an all-star and won the American League Rookie of the Year and Silver Slugger awards.<sup>92</sup> Aroldis Chapman, who escaped in 2009, has represented the National League in three straight all-star games and is viewed as one of the best relief pitchers in the game today.<sup>93</sup>

Some commentators argue that the market for Cuban baseball players has gotten out-of-hand, based on the potential to strike gold like the Dodgers with Puig or the White Sox with Abreu.<sup>94</sup> In August 2014, the Boston Red Sox signed outfielder Rusney Castillo to a seven-year, \$72.5 million contract, the richest deal ever for a Cuban.<sup>95</sup> Castillo had not played competitively in over a year.<sup>96</sup> Despite his enormous potential, scouts questioned his defensive skills and whether his “long swing” would translate into success against

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Jonah Keri, *The Evolution of the Cuban Baseball Pipeline*, GRANTLAND (June 18, 2014), <http://grantland.com/the-triangle/the-evolution-of-the-cuban-baseball-pipeline/>.

<sup>90</sup> Sanchez, *supra* note 1.

<sup>91</sup> Jesse Sanchez, *Abreu Smashing in First Major League Season*, THE OFFICIAL SITE OF MAJOR LEAGUE BASEBALL (Dec. 30, 2014), <http://m.mlb.com/news/article/105121618/white-sox-slugger-jose-abreu-is-smashing-in-first-mlb-season>.

<sup>92</sup> *Id.*

<sup>93</sup> Jayson Stark, *The Mind-Blowing Stats of Aroldis Chapman*, ESPN (Sept. 9, 2014), [http://espn.go.com/blog/jayson-stark/post/\\_/id/890/the-mind-blowing-stats-of-aroldis-chapman](http://espn.go.com/blog/jayson-stark/post/_/id/890/the-mind-blowing-stats-of-aroldis-chapman).

<sup>94</sup> Powell, *supra* note 69.

<sup>95</sup> R.J. Anderson, *Transaction Analysis*, BASEBALL PROSPECTUS (Aug. 22, 2014), <http://www.baseballprospectus.com/article.php?articleid=24491&mode=print&nocache=1455720643>.

<sup>96</sup> *Id.*

harder-throwing major league pitchers.<sup>97</sup> Similarly, in November 2014, the Arizona Diamondbacks signed 24-year-old outfielder Yasmany Tomas to a six-year pledge worth \$68.5 million, despite concerns over his ability to stay in shape and remain in the outfield at the major league level.<sup>98</sup> Tomas was coming off of a down year in which he was injured.<sup>99</sup>

In addition to the success and large contracts, each of these players share another common storyline with Puig: their treacherous path to the United States. Hidden behind the million-dollar curtains and awards are their dangerous tales of human trafficking. Like Puig's story, other stories of smuggling, guns, bribes, and danger have been slowly unveiled. These dangers can be attributed to current MLB policies that bar teams from speaking to, negotiating with, and having any affiliation with Cuba and their nationals.

#### G. *Cuba's Loan System: the First Step Toward an Open Market?*

After years of public denouncement towards players who escape the country to pursue professional baseball opportunities overseas, the Cuba Serie Nacional instituted an overhauled domestic league system in September 2013.<sup>100</sup> Although Cubans, ranging from Castro to representatives of the Cuban Serie Nacional, maintained a harsh stance against Cuban players that leave the island, the league created a process that allows Cuban players to travel to a overseas professional leagues in Mexico and Japan.<sup>101</sup> Some baseball scholars predicted this new system would provide the first step towards

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<sup>97</sup> Kurt Mensching, *Rusney Castillo Questions Answered*, SB NATION (Aug. 18, 2014), <http://www.sbnation.com/mlb/2014/8/18/6031123/rusney-castillo-free-agent-faq-cuba-yankees-red-sox-tigers-phillies>.

<sup>98</sup> Jerry Crasnick, *The Word on Yasmany Tomas? Power!*, ESPN (Nov. 27, 2014), [http://espn.go.com/mlb/story/\\_/id/11937668/mlb-yasmany-tomas-next-line-cuban-stars-mlb](http://espn.go.com/mlb/story/_/id/11937668/mlb-yasmany-tomas-next-line-cuban-stars-mlb).

<sup>99</sup> Grant Brisbee, *MLB Free Agent Prediction: Yasmany Tomas*, SB NATION (Nov. 20, 2014), <http://www.sbnation.com/mlb/2014/11/20/7255123/yasmany-tomas-rumors-free-agent-prediction-unless-they-should-be-yasmani-tomas-rumors>.

<sup>100</sup> Peter C. Bjarkman, *U.S.-Cuba Thaw Is Not So Hot for MLB*, THE DAILY BEAST (Feb. 19, 2015), <http://www.thedailybeast.com/articles/2015/02/19/u-s-cuba-thaw-is-not-so-hot-for-mlb.html>.

<sup>101</sup> *Id.*

an open Cuban baseball market.<sup>102</sup> The reality of this new system, however, is that the change in policy reflects little more than a financial opportunity for the Cuban league and Cuban teams to revive their dilapidated stadiums and outdated equipment.<sup>103</sup> Further, a scandal during the system's first year further complicated the already controversial human trafficking concerns involved with leaving the island.<sup>104</sup>

Cuba's new system allowing for players to pursue overseas opportunities hinges on two distinct contingencies: players may perform overseas so long as (1) the player is to "remain property of the government-controlled baseball enterprise," and (2) the player may play only during the Cuban offseason in the summer months and must return to their respective Cuban team once the Cuban season begins in the winter.<sup>105</sup> Essentially, the Cuban league agrees to a loan agreement with the Mexican League and the Nippon Professional Baseball League in Japan.<sup>106</sup> Because the Cuban Government operates the Serie Nacional, anywhere from as low as 10% to as high as 75% of the player's overseas salary is paid directly to the Cuban sports arm of the Cuban government.<sup>107</sup> Players do not negotiate their own overseas deals—league officials do.<sup>108</sup> Additionally, players must be available at all times to participate in tournaments with the national team.<sup>109</sup> Although the new system does allow for players to travel, the heavy restrictions focus on keeping the players in Cuba for the long run.<sup>110</sup> For some, it is seen as a "perk for long-term loyalty," rather than a shift towards encouraging players to seek overseas contracts.<sup>111</sup> Due to the lack of freedom, players are

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Enrique Rojas, *OF in Mexico With False Passport*, ESPN DEPORTES (May 15, 2014, 8:23 AM), [http://espn.go.com/mlb/story/\\_/id/10927805/top-cuban-alfredo-despaigne-mexico-false-passport](http://espn.go.com/mlb/story/_/id/10927805/top-cuban-alfredo-despaigne-mexico-false-passport) [hereinafter Rojas].

<sup>105</sup> Bjarkman, *supra* note 100.

<sup>106</sup> *Id.*

<sup>107</sup> Compare *id.* with Jorge L. Ortiz, *Can Agreement with USA Fix Defects in Cuban Baseball?*, USA TODAY SPORTS (Feb. 4, 2015, 11:15 PM), <http://www.usatoday.com/story/sports/mlb/2015/02/04/cuba-mlb-defections-caribbean-series/22897737/> [hereinafter Ortiz].

<sup>108</sup> Ortiz, *supra* note 107.

<sup>109</sup> Bjarkman, *supra* note 100.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

simply political chess pieces in the government-controlled baseball enterprise. The players serve as little more than a way for the Cuban sports federation to increase its revenue. The new system signals little, if any, change in the Cuban stance towards players leaving the country.

Additionally, the new Cuban system has become riddled with problems and controversy in its short lifetime.<sup>112</sup> Alfredo Despaigne, a three-time MVP in *Serie Nacional* and one of the Cuban League's biggest stars, became the first player to "sign" with an overseas team when he was assigned to the Mexican League Campeche club.<sup>113</sup> Despaigne, along with several other Cubans, participated in the Mexican League during the 2013 season and returned to the island with relatively few problems.<sup>114</sup> However, before the start of the 2014 Mexican League season, Major League Baseball (with whom the Mexican League has a professional affiliation) advised Mexican League officials that the league must require a passport from a third country before employing Cuban players, due to concerns involving the United States's embargo against Cuba.<sup>115</sup> In May of 2014, after the Mexican League's season was underway, ESPN Deportes reporter Enrique Rojas revealed that Despaigne was playing in the Mexican League using a falsified passport from the Dominican Republic.<sup>116</sup> Despaigne had no family in the Dominican Republic.<sup>117</sup> He had never visited the island.<sup>118</sup> Shortly thereafter, the Mexican League served Despaigne a lifetime ban and he returned to Cuba.<sup>119</sup> After the controversy surrounding Despaigne, the Cuban League shifted its focus to loaning players to the Nippon Professional Baseball League in Japan.<sup>120</sup> Although the stints in Japan

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<sup>112</sup> See Rojas, *supra* note 104.

<sup>113</sup> Ben Badler, *Why is Cuban Outfielder Alfredo Despaigne Playing in Mexico Using a Dominican Passport?*, BASEBALL AMERICA (May 13, 2014), <http://www.baseballamerica.com/international/why-is-cuban-outfielder-alfredo-despaigne-playing-in-mexico-using-a-dominican-passport/>.

<sup>114</sup> Rojas, *supra* note 104.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Bjarkman, *supra* note 100.

<sup>120</sup> *Id.*

have been successful thus far, the Cuban sports federation has chosen a mere four players, veterans Despaigne, Freddie Cepeda, Yulieski Gourriel, and highly-touted prospect Héctor Mendoza, to play in Japan.<sup>121</sup> Despite the potential for additional transfers, given the rich talent on the island, the choice of players appears to be a strategic one that balances the likelihood of the player remaining in Cuba and the potential size of the contract the player will receive. Still, however, Cuba remains far from willing to open its doors completely, especially to the United States.

## II. CURRENT MLB POLICY: THE PATH TO THE SHOW

MLB subjects Cuban players to a unique system of rules when compared to players from other foreign countries.<sup>122</sup> Current rules force Cubans to escape the island to play professionally in the United States.<sup>123</sup> Thus, Cubans have three options: (1) regardless of age and accrued playing time, obtain political asylum by escaping to the United States, Canada, or Puerto Rico, subjecting the player to the Rule 4 amateur draft; (2) prior to the age of twenty three or before playing five professional seasons in Cuba, escape to another country, subjecting the player to international amateur free agency rules/limitations; or (3) after turning twenty three and accruing five years of professional baseball in Cuba, escape to another country, subjecting the player to regular free agency rules. The timing and destination of their escape have a significant impact on their free agency in terms of their total contract as well as their freedom to sign with a team of their choice.<sup>124</sup>

### A. *The Kuhn Directive*

In 1977, then-MLB Commissioner Bowie Kuhn inaugurated the “Kuhn Directive,” Major League Baseball’s rules concerning Cuban

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<sup>121</sup> *Id.*

<sup>122</sup> Frankel, *supra* note 17, at 395–96.

<sup>123</sup> Solomon, *supra* note 18, at 157.

<sup>124</sup> Solomon, *supra* note 18, at 157–59; Frankel, *supra* note 17, at 398; Craig Goldstein, *MLB International Signing Period Primer*, SB NATION (July 2, 2014), <http://www.sbnation.com/2014/7/2/5866243/international-signing-period-mlb-july-2> [hereinafter *MLB Int’l Signing Period Primer*].

players.<sup>125</sup> The rules prohibit the “discussion or negotiation with anyone in Cuba regarding the signing of any player in Cuba.”<sup>126</sup> Additionally, this forbids any MLB or team representative from scouting Cuban players, so long as the player remains on the island.<sup>127</sup> However, the directive does not expressly prohibit scouting players when they are not on the island.<sup>128</sup> Because MLB teams may not sign players that are residents of Cuba (a restriction that is unique amongst other nations), teams must wait for the players to leave the country.<sup>129</sup> Consequently, in the event that players seek to join a MLB team, they must escape and establish residency in either the United States or another foreign country.<sup>130</sup>

In time, however, players began to find creative ways to enter the MLB, which turned out to be a much more lucrative career, but also riskier. Cubans seeking to play in the MLB first established residency in a third country and then entered the United States on an “O” or “P” visa.<sup>131</sup>

By doing so, the players avoid the draft provisions of Rule 4 and are free to negotiate salaries with all MLB teams instead of having to wait a year to establish residency and enter the Draft.<sup>132</sup> In other words, the Cuban player must abide by the Cuban Adjustment Act (“wet foot, dry foot” American policy), which generally allows Cuban nationals to stay in America if they are caught on American soil

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<sup>125</sup> Solomon, *supra* note 18, at 159; Frankel, *supra* note 17, at 397.

<sup>126</sup> Solomon, *supra* note 18, at 159; Frankel, *supra* note 17, at 397.

<sup>127</sup> Solomon, *supra* note 18, at 159; Frankel, *supra* note 17, at 397.

<sup>128</sup> Solomon, *supra* note 18, at 159.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Matthew N. Greller, Note, *Give me your Tired, your Poor, your Fastball Pitchers Yearning for Strike Three: How Baseball Diplomacy can Revitalize Major League Baseball and United States-Cuba Relations*, 14 AM. U. INT’L L. REV. 1647, 1657-59 (1999) (describing the “O” visa category as a two-step process where a baseball team must first contract with a foreign player and file a petition with one of the four regional Immigration and Naturalization Service (“INS”) Centers that possess jurisdiction in the area where the foreign baseball player will compete. Second, approval of these “O” visa petitions requires consultation with a peer group in the player’s field. Thus, the “O” visa subcategories provide avenues for an extraordinary foreign baseball player, as well as his coach and immediate family members, to reach the United States.) [hereinafter Greller].

<sup>132</sup> Andrea Kupfer Schneider, Note, *Baseball Diplomacy*, 12 MARQ. SPORTS L. REV. 473, 480 (2001).

(dry foot) but face possible repatriation to Cuba if they are caught at sea (wet foot).<sup>133</sup> In many cases, players prefer to seek asylum in the United States in compliance with the “wet-foot, dry-foot” rule after moving to another country like Mexico or Haiti first, which are safer to get to from Cuba.<sup>134</sup>

### B. *Major League Baseball Eligibility Requirements*

Rule 3 of the Major League Baseball Rules describe the eligibility requirements for MLB teams to acquire players. Rule 3(a)(1)(A)–(B), in pertinent part, provides the following:

#### **(a) ELIGIBILITY TO SIGN MAJOR LEAGUE OR MINOR LEAGUE CONTRACTS**

**(1) General Rules . . .** A Major or Minor League Club may contract with a player under the conditions and restrictions set forth in this Rule 3. A player may be subject to one or more of the following Rules and may contract with a Major or Minor League Club only if the conditions and restrictions of all Rules applicable to the player are satisfied. It is the responsibility of the contracting Club to determine that a player is eligible to sign in accordance with this Rule 3. For purposes of this Rule 3, the term “United States” shall mean the 50 States of the United States of America, the District of Columbia, Puerto Rico, and any other Commonwealth, Territory or Possession of the United States of America.

**(A)** A player who has not previously contracted with a Major or Minor League Club, and who is a resident of the United States or Canada, may be signed to a contract only after having been eligible for selection in the First-Year Player draft. A player shall be considered a “resident of the

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<sup>133</sup> Frankel, *supra* note 17, at 394-95.

<sup>134</sup> Jeff Passan, *10 Degrees: Cuban Trafficking Grows into MLB’s Ugly Secret*, YAHOO! SPORTS (Apr. 20, 2014, 11:47 PM), <http://sports.yahoo.com/news/10-degrees--cuban-trafficking-grows-into-mlb-s-ugly-secret-034704407.html> [[hereinafter Passan](#)].

United States” if the player enrolls in a United States high school or college or establishes a legal residence in the United States on the date of the player’s contract or within one year prior to that date . . . .

**(B)** A player who has not previously contracted with a Major or Minor League Club, who is not a resident of the United States or Canada, and who is not subject to the High School, College or Junior College Rules, may be signed to a contract if the player:

**(i)** is at least 17 years old at the time of signing, or

**(ii)** is 16 at the time of signing, but will attain age 17 prior to either the end of the effective season for which the player has signed or September 1 of such effective season, whichever is later.<sup>135</sup>

Although seemingly a Cuban national qualifies as an international player under Rule 3(a)(1)(B) (a player from Cuba is “not a resident of the United States or Canada”), the Kuhn Directive prohibits such a determination.<sup>136</sup> Instead, to be eligible to play in the MLB, the Cuban player must escape Cuba to sign a contract with a Major League organization.<sup>137</sup> To fall under Category A, the Cuban player must immigrate to the United States, Puerto Rico, or Canada and establish legal residency.<sup>138</sup> Alternatively, to fall under Category B as an international player, the Cuban must establish residency in another country that is not Cuba.<sup>139</sup> The decision to seek

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<sup>135</sup> *Major League Baseball, The Official Professional Baseball Rules Book*, R. 3, OFFICE OF THE COMMISSIONER (NY 2014), available at <http://www.bizofbaseball.com/docs/MajorLeagueRules-2008.pdf> [hereinafter *Major League Baseball*].

<sup>136</sup> *Id.* at R. 3(a)(1)(B); see Solomon, *supra* note 18, at 159.

<sup>137</sup> See Solomon, *supra* note 18, at 159.

<sup>138</sup> *Major League Baseball*, *supra* note 135, at R. 3(a)(1)(A).

<sup>139</sup> *Id.* at R. 3(a)(1)(B).

qualification under Category A or Category B has a significant impact on the player's future career, both in terms of money as well as choice of team.<sup>140</sup>

### C. *Routes to the MLB*

#### 1. Rule 4 First-Year Player Draft

Players who fall under Category A (meaning they are legal residents of the United States, a United States territory, or Canada and have completed either high school, two years of Junior College, or at least three years at a standard college) are required to enter the First-Year Player Draft ("Rule 4 Draft").<sup>141</sup> Rule 4 of the Major League Baseball Rules governs the First-Year Player Draft.<sup>142</sup> Rule 4(b) dictates that in June of each year, MLB shall a selection meeting for Category A players.<sup>143</sup> The Rule 4 draft consists of fifty selection rounds, where each team generally has the right to select one player per round.<sup>144</sup> The draft order is determined by the previous season's standings, with the first pick awarded to the team with the worst record.<sup>145</sup> Additionally, teams that lost free agents in the previous season may be awarded "compensatory" selections.<sup>146</sup>

Selection of a player essentially provides a team with exclusive contract negotiation rights with that individual player until July 15 of the draft year.<sup>147</sup> Rule 3(c), in conjunction with Article VI of the MLB Player's Association Collective Bargaining Agreement ("CBA"), dictates the base terms of first-year player contracts.<sup>148</sup> In other words, the MLB rules dictate the salaries for contracts signed by players that have been drafted.<sup>149</sup>

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<sup>140</sup> See Solomon, *supra* note 18, at 160.

<sup>141</sup> *Major League Baseball*, *supra* note 135, at R. 3(a)(1)(A).

<sup>142</sup> *Id.* at R. 4.

<sup>143</sup> *Id.* at R. 4(b).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at R. 4(c).

<sup>146</sup> *Id.* at R. 3(b).

<sup>147</sup> *Id.* at R. 4(d).

<sup>148</sup> *Id.* at R. 3; *Major League Baseball Collective Bargaining Agreement*, Art. VI, available at [http://www.ipmall.info/hosted\\_resources/SportsEntLaw\\_Institute/2012MLB\\_MLBPA\\_CBA.pdf](http://www.ipmall.info/hosted_resources/SportsEntLaw_Institute/2012MLB_MLBPA_CBA.pdf) [hereinafter CBA].

<sup>149</sup> *Major League Baseball*, *supra* note 135, at R. 3-4; CBA, *supra* note 148, at Art. VI.

However, MLB teams do have some discretion as to the signing bonus of the contract, terms that are separate from the salary itself.<sup>150</sup> The complicated signing bonus rules are laid out in the CBA.<sup>151</sup> Prior to the draft, the Commissioner's Office allocates a "bonus pool," the total amount of money from which a team may draw and offer to its drafted players for their initial contracts.<sup>152</sup> The bonus pool is based on the sum of the "slot-value" of a team's first ten picks, a recommended total for each draft pick's signing bonus according to their draft position.<sup>153</sup> Beyond the first ten rounds, any signing bonus amount that surpasses \$100,000 is subtracted from the team's bonus pool.<sup>154</sup> Although there is not a hard cap on the team's bonus pool, teams face harsh tax penalties for spending an amount greater than their bonus pool.<sup>155</sup> Accordingly, each team has the discretion to award signing bonuses that are greater than the individual slot value, as long as the team compensates for this amount with the signing bonuses of its other draft picks.<sup>156</sup>

For aspiring Cubans, taking the Rule 4 Draft route by entering the United States, a United States Territory, or Canada seems to be the least attractive option. First, because they are forced to enter the MLB draft, the Cuban player does not have the option of choosing which team they would prefer to play for. Because the draft has a specific selection order, each of the thirty MLB teams has the opportunity to draft the player. Second, because the MLB has such strict rules for signing bonuses, a Cuban player's total contract is severely limited. While the higher draft picks tend to receive higher bonuses, the amount of the signing bonus is still a fraction of what the player might otherwise earn on the open free agency market. Additionally, players do not know what number selection they will be in the draft, much less whether or not they will be drafted at all. If a Cuban player enters the annual draft and each team fails to draft

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<sup>150</sup> CBA, *supra* note 148 at Art. VI; Craig Goldstein, *2014 MLB Draft Rules and Regulations*, SB NATION (June 5, 2014, 8:02 AM), <http://www.sbnation.com/mlb/2014/6/5/5781090/2014-mlb-draft-rules-regulations-guide-basics> [hereinafter Goldstein].

<sup>151</sup> CBA, *supra* note 148, at Art. VI.

<sup>152</sup> *Id.*; Goldstein, *supra* note 150.

<sup>153</sup> Goldstein, *supra* note 150.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Goldstein, *supra* note 150.

the player, the player is unable to attain free agency.<sup>157</sup> With the least amount of freedom, entering the Rule 4 Draft is the least beneficial option for Cuban baseball players.

## 2. International Amateur Free Agency and Bonus Pools

International players that fall under Category B (meaning they are over the age of seventeen and are not residents of the United States, a United States territory, or Canada) are subject to International Amateur Free Agency rules dictated by the current CBA.<sup>158</sup> The international signing period extends from July 2 through June 15 of the following season.<sup>159</sup> Similar to the Rule 4 Draft, the MLB Commissioners' Office assigns a bonus pool to each team, the total amount a team may spend on its international free agents.<sup>160</sup> The team with the worst winning percentage from the previous season receives the largest pool.<sup>161</sup> The bonus pool applies to all international free agent bonuses that are distributed in excess of \$10,000.<sup>162</sup> Also similar to the Rule 4 draft, the penalties for teams exceeding their international bonus spending caps are extremely harsh.<sup>163</sup> There is no selection order for international free agency and teams are free to negotiate with individual players at their leisure.<sup>164</sup>

Leaving Cuba and immigrating to a country outside of the United States, a United States territory, or Canada, and then taking the International Amateur Free Agency route, is seemingly a more attractive option for aspiring Cuban players. The important difference between international free agency and the Rule 4 Draft for Cubans is the ability to negotiate and choose teams freely.<sup>165</sup> This allows Cuban players to create their own market (in terms of their

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<sup>157</sup> Solomon, *supra* note 18, at 160.

<sup>158</sup> CBA, *supra* note 148, at Attachment 46.

<sup>159</sup> *MLB Int'l Signing Period Primer*, *supra* note 124; Ben Badler, *2014-15 MLB International Bonus Pools and Slot Values*, BASEBALL AMERICA (Apr. 2, 2014), <http://www.baseballamerica.com/international/2014-15-mlb-international-bonus-pools-and-slot-values/> [hereinafter *Bonus Pools and Slot Values*].

<sup>160</sup> *MLB Int'l Signing Period Primer*, *supra* note 124; *Bonus Pools and Slot Values*, *supra* note 159.

<sup>161</sup> *MLB Int'l Signing Period Primer*, *supra* note 124.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *See id.*

<sup>165</sup> *See id.*

signing bonus total) as well as choose which organization will best suit their transition to the United States (in terms of the location of the team).<sup>166</sup> By placing teams in a bidding war for their services, Cubans are able to take a market-based approach that best suits their needs.<sup>167</sup> However, like the Rule 4 Draft, the bonus pool limits each player's signing bonus amount.<sup>168</sup> Even if teams were to allocate their entire bonus pool to a single player, a star Cuban player is likely to earn significantly more money in a completely open market.<sup>169</sup> Nevertheless, when left with the choice of international free agency or entering the Rule 4 Draft, it is virtually a no-brainer for Cuban players to choose free agency, given the freedom to choose one's MLB organization.<sup>170</sup>

### 3. Exception to International Free Agency

Although most Cubans who leave to a country outside of the United States, a United States territory, and Canada are subject to the bonus pool limitations, an important exemption from the rule exists for certain players.<sup>171</sup> The bonus pools do not limit contracts signed by Cubans that are (1) at least 23 years old, (2) have played in a Cuban professional league for a least five seasons, and (3) have left the island.<sup>172</sup> Instead, Cubans seeking to play in the MLB that meet this exception have unlimited negotiating power when it comes to their total contracts and signing bonuses.<sup>173</sup> These players are treated equally with other free agents that have earned service time playing in the MLB—they are free to choose any of the 30 MLB organizations and the only limits on the contract totals for these players are their respective owner's pockets.<sup>174</sup> The large contracts that have made recent headlines, like those of Puig, Abreu, and Chapman, each fit under this exception.<sup>175</sup> With neither a restriction

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<sup>166</sup> *See id.*

<sup>167</sup> *See id.*

<sup>168</sup> *See id.*

<sup>169</sup> *See id.*

<sup>170</sup> *See id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *See id.*

<sup>175</sup> *See id.*

on team nor on salary, this is the most lucrative and popular option for Cuban players.<sup>176</sup>

D. *An Additional Hurdle: United States Treasury Office of Foreign Assets Control*

United States regulations require that Cubans seeking employment in the United States obtain authorization from the United States Treasury's Office of Foreign Assets Control.<sup>177</sup> Thus, Cuban baseball players must obtain an "unblocked national" designation from OFAC in order to sign with MLB teams.<sup>178</sup> To designate an individual as an unblocked national, the OFAC authorizes two types of licenses—specific and general.<sup>179</sup> A specific license is a formal written document issued by OFAC.<sup>180</sup> It requires that the applicant submit a formal application including the documents indicating permanent residency described above.<sup>181</sup> A general license, however, is less formal—it is not a written document and does not require the player to submit documents to OFAC.<sup>182</sup> Instead, a player may submit such documents directly to his prospective employer.<sup>183</sup>

To receive the unblocked national designation from the OFAC, a Cuban national has two options.<sup>184</sup> For players that escape to the United States, the Cuban player must take up residence in the United

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<sup>176</sup> *See id.*

<sup>177</sup> 31 CFR 515.505; see also Ben Badler, *MLB Slows Down Process for Cuban Signings*, BASEBALL AMERICA (Aug. 28, 2013), <http://www.baseballamerica.com/majors/mlb-slows-down-process-for-cuban-signings/> [hereinafter *MLB Slows Down Process for Cuban Signings*].

<sup>178</sup> 31 CFR 515.505; *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>179</sup> 31 CFR 515.505; *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>180</sup> 31 CFR 515.505; *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>181</sup> 31 CFR 515.505; *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>182</sup> 31 CFR 515.505; *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>183</sup> 31 CFR 515.505; *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>184</sup> 31 CFR 515.505(a)–(b); *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

States and, at a minimum, submit an application to become a permanent resident.<sup>185</sup> For Cuban players that escape to another foreign country, the player must present at least two documents indicating permanent residency from the foreign government to their prospective employer or to the Office through a formal application.<sup>186</sup> Such documents may include a “passport, voter registration card, permanent resident card, or national identity card.”<sup>187</sup>

Prior to 2012, MLB allowed teams to sign players from Cuba as long as the player received either a general or specific license.<sup>188</sup> Thus, players like Yasiel Puig were able to obtain the unblocked national designation simply by presenting the required foreign government documents to the team seeking their services.<sup>189</sup> This did not require a formal, specific license, and players did not have to submit documents directly to the OFAC.<sup>190</sup> However, towards the end of 2012, MLB sent a memo to all thirty teams detailing new, stiffer requirements regarding the unblocked national designation.<sup>191</sup> Today, teams may not sign a Cuban national until the OFAC has issued a specific license to the player.<sup>192</sup> This does not appear to coincide with any change in US policy regarding the Cuban trade embargo or immigration laws.<sup>193</sup> Additionally, MLB has refused to comment regarding these stiffer requirements on numerous occasions.<sup>194</sup>

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<sup>185</sup> 31 CFR 515.505(a); *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>186</sup> 31 CFR 515.505(a)–(b); *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>187</sup> 31 CFR 515.505(b)

<sup>188</sup> *MLB Slows Down Process for Cuban Signings*, *supra* note 177.

<sup>189</sup> *See id.*

<sup>190</sup> *See id.*

<sup>191</sup> *See id.*

<sup>192</sup> *See id.*

<sup>193</sup> *See id.*

<sup>194</sup> *See id.*

### III: LITIGATION INVOLVED BASEBALL PLAYERS', AGENTS', SMUGGLERS' IN TROUBLE

On the other end of the spectrum, the people who aid in the movement of Cuban baseball players are also causing lawsuits. Often, sports agents are known for an aggressive style of seeking out talent and clients by any means necessary. So when a gold mine like Cuba produces some of the top MLB talent in recent years, it is no wonder that these sports agents are flocking to this market with goals of cashing out on a few solid deals. Since the negotiations are made more difficult due to Cuba's embargo, this begs the question of whether these sports agents are truly looking out for their client's safety, or whether they are just trying to be the first agent to make contact with the players and earn a cut of these players' huge contracts. Also, with regards to the human trafficking ring, sports agents may have been unethical when they were scouting the Mexican baseball academy, which was full of corrupt ordeals.

The most notorious example of this occurrence came in 2007 when Gus Dominguez, a sports agent, was found guilty of illegally assisting five baseball players across the border of the United States and was sentenced to five years in prison.<sup>195</sup> South Florida attorney Ben Daniel has handled dozens of smuggling cases which involve extorting Cubans.<sup>196</sup> Dominguez was charged with paying four aides to transport the athletes and other Cubans to the United States from Cuba.<sup>197</sup> Attorney Daniel won the case in 2007 against Dominguez, which led to a five-year jail sentence for Dominguez and a ban from sports agency.<sup>198</sup> With the normalized relations and the potential for agents to travel on licensed terms to Cuba, many sports agents are likely to flock into the country.

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<sup>195</sup> Darren Heitner, *Gus Dominguez Out of Jail, Working with MLB Players*, SPORTS AGENT BLOG (June 13, 2014), <http://sportsagentblog.com/2011/06/13/gus-dominguez-out-of-jail-working-with-mlb-players/>.

<sup>196</sup> Linda Robertson, Jay Weaver & David Ovalle, *From Cuba to the Majors: Yasiel Puig's Harrowing Story*, MIAMI HERALD (Apr. 19, 2014, 4:53 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article1963115.html>.

<sup>197</sup> Associated Press, *Feds: Agent Illegally Smuggled Cubans*, MLB.COM (Oct. 31, 2006), <http://m.mlb.com/news/article/1728761/>.

<sup>198</sup> U.S. v. Dominguez, 661 F.3d 1051 (2011).

On May 4, 2011, Cuban outfielder Leonys Martin signed a five-year major league contract with the Texas Rangers worth \$15.5 million dollars, including a \$5 million signing bonus.<sup>199</sup> In reality, however, Martin would never see a large percent of his signing bonus and salary.<sup>200</sup> Whereas a typical MLB player can expect to lose out on anywhere from three to five percent of their total earnings (fees typically provided to their agents), Martin was to lose thirty-five percent of his contract.<sup>201</sup> However, the benefactor of this thirty-five percent was not Martin's agent—it was Eliezer Lazo, the man who helped smuggle Martin out of Cuba.<sup>202</sup>

Details of Martin's escape came to light in the form of a civil lawsuit filed against him by the Estrellas del Beisbol baseball academy.<sup>203</sup> The suit was a breach of contract claim, alleging that Martin had agreed and failed to pay thirty-five percent of his MLB salary to the academy's operators, one of which was Lazo.<sup>204</sup> In a countersuit, Martin alleged that the Estrellas academy was a "non-existent . . . entity that serves as a front for illegal activity, such as human smuggling and trafficking, kidnapping and extortion."<sup>205</sup>

According to the countersuit, Martin decided to leave with several family members around August 2010 through a connection in Miami.<sup>206</sup> When Martin was unable to find the boat scheduled to pick up the group, Lazo's cousin, Jesus Toledo, approached him.<sup>207</sup> Toledo promised he could sneak Martin and his group into Mexico.<sup>208</sup> Upon boarding a 45-foot yacht headed to Cancun, Lazo was waiting to introduce himself.<sup>209</sup> Lazo demanded \$2.5 million from

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<sup>199</sup> Richard Durrett, *Rangers Sign Leonys Martin*, ESPN DALLAS (May 4, 2011, 3:44 PM), <http://sports.espn.go.com/dallas/mlb/news/story?id=6478110>.

<sup>200</sup> Passan, Robinson, & Getlin, *supra* note 13.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Jay Weaver, *Feds Charge Trio With Kidnapping, Extorting Cuban Ballplayer with Texas Rangers*, MIAMI HERALD (Dec. 4, 2014, 5:33 PM), <http://www.miamiherald.com/news/nation-world/world/americas/article1958203.html> [hereinafter Weaver].

<sup>204</sup> *Id.*

<sup>205</sup> Passan, Robinson & Getlin, *supra* note 13.

<sup>206</sup> Weaver, *supra* note 203.

<sup>207</sup> Passan, Robinson & Getlin, *supra* note 13.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

Martin's Miami connection.<sup>210</sup> Soon thereafter, Martin and three other baseball players were sent to a training facility in Monterrey.<sup>211</sup> It was at the facility that Martin allegedly signed an agreement with Martin, where the academy agreed to provide "training, housing and sports clothing . . . [i]n exchange . . . [for] 35 percent of any future professional baseball contract."<sup>212</sup> Although they were apparently there to "train," the facility had neither baseball equipment nor a baseball field.<sup>213</sup> Martin was consistently under armed watch. At times, the group was forced to leave the facility due to fear of kidnapping by other smugglers.<sup>214</sup> Another associate, Bart Hernandez, took Martin to Guatemala to acquire a passport for Martin.<sup>215</sup> It was only after the passport was acquired that Martin's captors allowed him to leave Mexico.<sup>216</sup> Once his contract was signed, Lazo assisted Martin in moving across the border and flew him from Laredo, Texas to Miami.<sup>217</sup> Shortly after their arrival, Martin was taken to a Merrill Lynch advisor, where Martin alleged he was coerced into signing a document written in English (a language he could not read or understand) authorizing a transfer of \$1.35 million. The countersuit sought to retrieve the allegedly unauthorized transfer.<sup>218</sup>

Joe Kehoskie, an ex-agent who now works as a consultant for Cuban players, explains that human trafficking for baseball players has developed into a standard business procedure.<sup>219</sup> He explains:

You would think it's something [smugglers would] be embarrassed to say or be clandestine about it. But they say they control or own this guy – they use a bunch of different euphemisms – and they want a ransom. They came up with an asking price. It was almost like going on eBay or Amazon.com. It was a

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<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> Weaver, *supra* note 203.

<sup>213</sup> Passan, Robinson & Getlin, *supra* note 13.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> Weaver, *supra* note 203.

<sup>219</sup> Passan, Robinson, and Getlin, *supra* note 13.

buy-it-now price, and you're buying human beings.<sup>220</sup>

The details of the civil suit provided the federal government with enough evidence to indict Lazo in December 2013.<sup>221</sup> Lazo was charged with conspiring to smuggle, kidnap, and extort Cuban baseball players.<sup>222</sup> Prosecutors say that Lazo was the mastermind of a human-trafficking ring that smuggled Cubans into Mexico, where they were held captive until the Cubans or their family members made ransom payments.<sup>223</sup> Lazo pled guilty to heading the smuggling venture and was sentenced to over fourteen years in federal prison.<sup>224</sup>

In 2012, Gilberto Suarez, a South Florida businessman visiting Mexico City, entered a taxi and instructed the driver to take him from Mexico City to the Texas border.<sup>225</sup> The steep \$1,500 fare was miniscule in comparison to the value of the "cargo" that joined Suarez—Yasiel Puig<sup>226</sup> and three other Cuban baseball players.<sup>227</sup> Suarez explained that threats from a dangerous cartel and possibly by corrupt Mexican police threatened the players' safety.<sup>228</sup> While details after the drop off are unclear, court documents show that Puig and the other men were allowed to enter the United States under the "wet foot, dry foot" policy.<sup>229</sup> From there, Puig was able to sign to

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<sup>220</sup> *Id.*

<sup>221</sup> Aaron Gleeman, *U.S. Attorney's Office Charges Three People With Conspiring to Kidnap and Extort Leonys Martin*, NBC SPORTS (Dec. 5, 2013), <http://hardballtalk.nbcsports.com/2013/12/05/u-s-attorneys-office-charges-three-people-with-conspiring-to-kidnap-and-extort-leonys-martin/>.

<sup>222</sup> Weaver, *supra* note 203.

<sup>223</sup> *Id.*

<sup>224</sup> Associated Press, *Smuggler Sentenced to Over 14 Years*, ESPN (Nov. 10, 2014), [http://espn.go.com/mlb/story/\\_/id/11854562/eliezer-lazo-sentenced-more-14-years-smuggling-cubans-united-states](http://espn.go.com/mlb/story/_/id/11854562/eliezer-lazo-sentenced-more-14-years-smuggling-cubans-united-states).

<sup>225</sup> Associated Press, *Puig Smuggler Gets Prison Sentence*, ESPN (Mar. 6, 2015), [http://espn.go.com/los-angeles/mlb/story/\\_/id/12431727/gilberto-suarez-sentenced-prison-house-arrest-smuggling-los-angeles-dodgers-yasiel-puig](http://espn.go.com/los-angeles/mlb/story/_/id/12431727/gilberto-suarez-sentenced-prison-house-arrest-smuggling-los-angeles-dodgers-yasiel-puig) [hereinafter *Puig Smuggler Gets Prison*].

<sup>226</sup> See *supra*, notes 1-10 and accompanying text.

<sup>227</sup> Robert Lohse, *Gilberto Suarez sentenced for smuggling Yasiel Puig out of Cuba*, LOCAL 10 (Mar. 6, 2015) <http://www.local10.com/news/gilberto-suarez-sentencing-dodgers-yasiel-puig/31648002> [hereinafter Lohse].

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

sign his seven-year, \$42 million pledge to the Los Angeles Dodgers.<sup>230</sup> In exchange for his services, Suarez received \$2.5 million.

By 2014, Puig was in the midst of his second highly successful seasons with the Dodgers when the federal government indicted Gilberto Suarez.<sup>231</sup> Suarez was charged with inducing a person to enter the United States without proper identification.<sup>232</sup> By December 2014, Suarez agreed to a plea deal.<sup>233</sup> He was officially sentenced on March 6, 2015 in the United States District Court for the Southern District of Florida.<sup>234</sup> The Honorable Robert Scola sentenced him to less than the one-year maximum penalty, sentencing Suarez to thirty days in prison and five months of house arrest.<sup>235</sup>

At the sentencing hearing, Suarez explained that his intentions were only to assist Puig in signing a contract with the Los Angeles Dodgers, though the threats that he faced forced him to take the criminal action.<sup>236</sup> He also argued that he had nothing to do with Puig's smuggling out of Cuba.<sup>237</sup> Nonetheless, Suarez pled guilty to inducement. Given the leniency of his sentence, Judge Scola explained, "I think the safety of the player and the other [players] was also paramount in his mind," referring to the threats that faced Puig and the other players.<sup>238</sup>

These two recent cases have revealed what appears to be a rampant culture of the illegal smuggling of Cuban baseball players. What was once kept hidden from the public eye has now come to light, given the public disclosure of such facts with these lawsuits. At this point, it is clear that Major League Baseball is turning a blind eye to these illegal trafficking rings. It is time that the owners, league executives, and the MLB Player's Association take steps towards discouraging and dissuading smugglers from continuing to their lucrative operations. The United States courts can only do so much. Given the improvement of diplomatic relations with the island, the government has taken the correct step towards ending the U.S.-Cuba

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<sup>230</sup> *Puig Smuggler Gets Prison, supra* note 225.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> Lohse, *supra* note 227.

<sup>234</sup> *Puig Smuggler Gets Prison, supra* note 225.

<sup>235</sup> Lohse, *supra* note 227.

<sup>236</sup> *Id.*

<sup>237</sup> *Puig Smuggler Gets Prison, supra* note 225.

<sup>238</sup> Lohse, *supra* note 227.

Trade Embargo. While the end is currently a long ways away, it is hopeful that MLB will respond in such a way as to prepare themselves for when this day finally comes.

The Cuban government has also made the process of entering the MLB a very difficult one. In fact, the penalty is usually either imprisonment in Cuba or suspension from the Cuban national baseball team.<sup>239</sup> In recent years, the story of Aroldis Chapman has been a prominent one. Chapman is a fast-throwing Cuban pitcher who successfully moved to the United States and is currently in the Major Leagues.<sup>240</sup> Chapman allegedly became a government informant, which led to the false imprisonment of a fellow Cuban citizen.<sup>241</sup> In a lawsuit filed by the falsely imprisoned citizen, Danilo Curbelo Garcia contends that Chapman made a deal with Cuban officials in 2008 after a failed escape attempt, for which he was suspended from the national team.<sup>242</sup> By becoming a productive government informant, Chapman could prove his loyalty, earn his way back into the good graces of the regime, and eventually return to the squad's A-list travel roster.<sup>243</sup> With the government thus off his back, he could then plan his escape, which he did.<sup>244</sup> Roberto Hernandez Del Llano explains that "most members of the national baseball team that travel abroad are informants for the government".<sup>245</sup>

There is also pending litigation with Puig in the case of Miguel Angel Corbacho Daudinot vs. Yasiel Puig Valdes and Maritza Valdes Gonzalez.<sup>246</sup> Attorney, Avelino Gonzalez represents the plaintiff in this case where popular sports agent Jaime Torres, who is known

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<sup>239</sup> See Michael E. Ruane & Scott Wilson, *Cubans Meet The Orioles In Historic*

*Matchup: Game Seen as Tool To Ease Hostility*, WASH. POST, May 4, 1999, at A4 (reporting that Cuba left talented shortstop German Mesa off their roster for the May 3rd game in Baltimore because of suspicions that he planned to escape); see also Tom Maloney, *Cuban Could Prove AL Answer To Nomo*, SAN DIEGO UNION-TRIB., July 1, 1995, note 121, at D2 (remarking that the Cuban National Team suspended pitcher Ariel Prieto because of his desire to flee).

<sup>240</sup> Passan, *supra* note 134.

<sup>241</sup> *Id.*

<sup>242</sup> Eden, *supra* note 7, at 6.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> Miguel Angel Corbacho Daudinot v. Yasiel Puig and Maritza Valdes Gonzalez, 2013 WL 11085737 (S.D.Fla.)

as the Scott Boras of Cuban baseball players, represented Puig.<sup>247</sup> The lawsuit is a \$12 million suit under the Torture Victims Protection Act of 1991<sup>248</sup> for prolonged arbitrary detention and torture. Daudinot claims that Puig had concocted a tale that he was involved in human trafficking, resulting in his arrest, torture, and seven-year prison sentence.<sup>249</sup> Similar to Chapman's story, Puig had already attempted to leave and was in trouble with the Cuban authorities. Daudinot claims that Puig then began making up false tales about others in order to make his way back on the national team.<sup>250</sup> According to a Department of Homeland Security's Immigration and Customs Enforcement agency investigation, the Cuban government has pending litigation against anyone they catch seeking to leave the island or help other people leave, so Cuban players do not talk about leaving the island because they do not want to get themselves or their family and friends in trouble.<sup>251</sup> However, Puig, similar to Chapman, was also still trying to secretly escape the country for the MLB.<sup>252</sup> Yunion Despaigne is a key witness in the case because he is the link between Puig and Raul Pacheco (the man who arranged the escape by offering \$250,000 to Puig in exchange for 20% of the contract).<sup>253</sup> The dangers of the escape are evident in the fact that Despaigne and Puig both face threats from the men involved in the smuggling and Yandrys Leon, who was allegedly the ringleader of the escape, has been found dead in Mexico after being killed by a gunman.<sup>254</sup> On December 16, 2014, Gilberto Suarez was found guilty for arranging and financing Puig's escape, where he then

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<sup>247</sup> *Id.*

<sup>248</sup> Diane Marie Amann, *Benchbook On International Law* §III.E, AM. SOC'Y INT'L L., "Human Rights" (2014).

<sup>249</sup> Linda Robertston, *From Cuba to the Majors: Yasiel Puig's Harrowing Story*, MIAMI HERALD (April 20, 2014, 8:25AM), <http://www.miamiherald.com/news/local/community/miami-dade/article1963115.html>.

<sup>250</sup> *Id.*

<sup>251</sup> Eden, *supra* note 7, at 6.

<sup>252</sup> *Id.*

<sup>253</sup> Eden, *supra* note 7, at 3 (explaining that Despaigne is a rare and singular witness).

<sup>254</sup> Eden, *supra* note 7, at 5 (stating Despaigne and Puig have faced ongoing death threats from members affiliated with the Los Zetas, Mexican smugglers).

hoped to capitalize on the large salary Puig negotiated with the Los Angeles Dodgers in the MLB.<sup>255</sup>

#### IV. PROPOSED SOLUTIONS

##### A. *Federal and State Legislation*

Even before President Obama's announcement regarding the normalization of diplomatic relations with Cuba, several pieces of federal and state legislation have attempted to shape MLB policy in regards to Cuban players. The "Baseball Diplomacy Act" ("BDA"), a bill that has yet to find its way off of the House floor, and HB 7095, a bill approved in the state of Florida, are two examples.

##### 1. The Baseball Diplomacy Act

In September of 1995, prior to the enactment of the Helms-Burton Act, United States Representative José Serrano first introduced House Bill 2311, "A Bill to Waive Certain Prohibitions With Respect to Nationals of Cuba Coming to the United States to Play Organized Baseball."<sup>256</sup> The purpose of the proposed bill is to provide special exceptions for Cuban nationals seeking to play baseball in the United States.<sup>257</sup> Specifically, in its most current proposed form for the 113th Congress, the bill proposes "to waive certain foreign assistance and trade and travel prohibitions under federal law regarding Cuban nationals who: (1) enter the United States on a visa to play organized professional baseball, and (2) return to Cuba with their baseball earnings."<sup>258</sup> The bill also seeks to provide travel visas for players that span the duration of the baseball season and need not be renewed (as long as the player's contract does not change).<sup>259</sup> Representative Serrano has attempted to propose the bill to each of

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<sup>255</sup> Linda Robertson, *Miami Man Guilty of Smuggling Dodgers Star Yasiel Puig*, MIAMI HERALD, (Dec. 16, 2014, 7:16PM), <http://www.miamiherald.com/news/local/community/miami-dade/article4524369.html>.

<sup>256</sup> See Solomon, *supra* note 18, at 178–79.

<sup>257</sup> *Id.*

<sup>258</sup> H.R. 215, 113th Congress (2013).

<sup>259</sup> *Id.*

the past ten Congresses.<sup>260</sup> However, the proposed bill has yet to move past the subcommittee stage.<sup>261</sup>

Although the repetitive efforts of Representative Serrano, the United State's current growing relationship with Cuba may allow portions of the Baseball Diplomacy Act to come to fruition.<sup>262</sup> First, the travel restrictions that were barred by the embargo will soon be lifted by the Obama administration, proved the trip is "intended to serve religious, educational or other approved purposes."<sup>263</sup> Additionally, it appears that the restrictions on the amount of money Cuban relatives may send back to their home nation may soon be lifted as well.<sup>264</sup> These new regulations will allow for several of the provisions of the Baseball Diplomacy Act to become a reality.<sup>265</sup>

## 2. HB 7095

Florida state bill HB 7095 provides local governments with access to as much as \$13 million annually in funding for the construction or renovation of professional sports facilities.<sup>266</sup> Local governments own the vast majority of stadiums throughout the state of Florida, including both Marlins Park and Tropicana Field (homes of the Miami Marlins and Tampa Rays).<sup>267</sup> In addition, this law applies

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<sup>260</sup> H.R. 215, 113th Congress (2013); H.R. 256, 112th Congress (2011); H.R. 187, 111th Congress (2009); H.R. 216, 110th Congress (2007); H.R. 209, 109th Congress (2005); H.R. 189, 108th Congress (2003); H.R. 26, 107th Congress (2001); H.R. 262, 106th Congress (1999); H.R. 9, 105th Congress; H.R. 2311, 104th Congress (1995).

<sup>261</sup> *Id.*

<sup>262</sup> Karen DeYoung, *U.S. Eases Cuban Trade and Travel Rules as it Moves Toward Restoring Full Ties*, WASHINGTON POST (Jan. 15, 2015), [http://www.washingtonpost.com/world/national-security/us-eases-cuban-trade-and-travel-rules-in-step-toward-restoring-full-ties/2015/01/15/752f10aa-9cc3-11e4-96cc-e858eba91ced\\_story.html](http://www.washingtonpost.com/world/national-security/us-eases-cuban-trade-and-travel-rules-in-step-toward-restoring-full-ties/2015/01/15/752f10aa-9cc3-11e4-96cc-e858eba91ced_story.html) [hereinafter DeYoung].

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> 2014 Florida CS/HB 7095, available at <https://www.flsenate.gov/Session/Bill/2014/7095>.

<sup>267</sup> Kavitha A. Davidson, *Florida Asks Baseball to Fight Human Trafficking*, BLOOMBERG VIEW (June 23, 2014, 1:56 PM), <http://www.bloombergvew.com/articles/2014-06-23/florida-uses-stadium-subsidies-for-good> [hereinafter Davidson].

to major league baseball teams with spring training facilities in Florida (including the Tigers, Blue Jays, Rays, Pirates, Mets, Orioles, Astros, Phillies and Twins) as well as fourteen minor league teams in Florida that play in parks owned by or on land owned by local governments.<sup>268</sup> However, there is a significant “catch”—the money is not available unless MLB and MLB franchises violate Major League Baseball rules.<sup>269</sup> To access the funds, teams must ignore Major League Baseball’s “third-country requirement” and instead negotiate with Cuban baseball players as they would with players from any other foreign country.<sup>270</sup> Thus, to receive the funding promised by the bill, teams must either knowingly violate MLB’s Kuhn Directive or MLB must change its policy.<sup>271</sup> Teams must also report any evidence of human trafficking.<sup>272</sup>

Sponsors of the bill, State Representatives Jose Felix Diaz and Matt Gaetz, note that the purpose of the bill is to challenge current MLB policy regarding Cuban players.<sup>273</sup> The law, sparked by the unveiling of Yasiel Puig’s dangerous escape from Cuba, is a “clear and strong call for MLB to repeal an outmoded policy.”<sup>274</sup> Representative Diaz argues that MLB policy “benefits human traffickers more than it does baseball . . . . Because they have limited avenues of escape, it’s Cuban ballplayers seeking the American Dream who are being thrown into the arms of human smugglers and drug traffickers.”<sup>275</sup> In response, MLB released the following statement:

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<sup>268</sup> Kathleen McGrory, *House Stadium Funding Bill Now Includes Language About Cuban Baseball Players*, MIAMI HERALD (Apr. 24, 2014, 7:36 PM), <http://miamiherald.typepad.com/nakedpolitics/2014/04/house-stadium-funding-bill-now-includes-language-about-cuban-baseball-players.html>.

<sup>269</sup> Davidson, *supra* note 267.

<sup>270</sup> *Id.*

<sup>271</sup> Jim Turner, *FL House Backs Stadium Process, Seeks Help for Cuban Baseball Players*, CBS MIAMI (Apr. 25, 2014, 5:03 PM), <http://miami.cbslocal.com/2014/04/25/fl-house-backs-stadium-process-seeks-help-for-cuban-baseball-players/> [hereinafter Turner].

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Florida Gov. Signs Bill to Help Pro Sports Teams*, CBS MIAMI (June 20, 2014, 10:32 AM), <http://miami.cbslocal.com/2014/06/20/florida-gov-signs-bill-to-help-pro-sports-teams/>.

<sup>275</sup> *Id.*

While the sponsors of the bill in Florida blame MLB policies for the role of human smugglers, they do not provide any support for their premise that Cuban players must rely on traffickers to [escape] to countries other than the U.S. such as Mexico or the Dominican Republic, but would not need the assistance of traffickers to reach U.S. soil . . . . However, [the MLB Commissioner's Office] will meet with the [Major League Baseball Player's Association] to determine whether changes can be made to [MLB's] international signing rules to reduce or eliminate the reliance of Cuban players on criminal organizations when leaving Cuba . . . . We also intend to speak to the U.S. State Department about actions that the U.S. government can take to reduce or eliminate the trafficking of Cuban baseball players. We hope that the legislators in Florida will do the same.<sup>276</sup>

Although the bill may be a step in the right direction, it is unlikely that such state legislation will provoke widespread change in MLB policy. Major League Baseball's current policies are rooted in the United States trade embargo with Cuba. The embargo stems from multiple pieces of federal legislation. Therefore, it is unlikely that MLB will be inclined to change its policies towards Cubans unless there is change involving the trade embargo itself. While the normalization of relations with Cuba is a good starting point for such action, Congress will need to repeal the embargo, and the President may not act alone.

More importantly, however, is that Major League Baseball's response is alarming. Calling to the legislators to provide evidence that "Cuban players must rely on human traffickers to" escape demonstrates that MLB has continued to turn a blind eye to the horrific circumstances in which player's endure in order to leave the island. Two high profile cases, of which MLB is certainly aware, involving Cuban MLB players and human trafficking provide evidence of what appears to be a sophisticated, dangerous, and illegal human-trafficking culture involving baseball players from Cuba.

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<sup>276</sup> Turner, *supra* note 271.

## B. *Scholarly Publications*

Prior to the announcement to normalize relations between the United States and Cuba, there have been a number of ways suggested to potentially fix the current turmoil involving Cuban players, some which are still viable and could be sought further due to the normalized relations. One publication states that even though the relations are being normalized, as long as the embargo is in effect, it will remain illegal for Major League teams to scout and sign players in Cuba.<sup>277</sup> Moreover, just because the governments are seeking to normalize relations, there still must be a lot of things done by the respective governments, the MLB, and Cuban baseball.<sup>278</sup>

### 1. Eliminating Foreign-Residency Rule

An MLB official raised the possibility of eliminating the foreign-residency rule, which theoretically would eradicate organizations such as the Zetas from involving themselves in ballplayer smuggling.<sup>279</sup> This presumes that the U.S.-based criminals who partake in the human trafficking will be any less dangerous or harmful than those from other countries.<sup>280</sup> Also, because leaving Cuba for countries like Mexico or Haiti is easier than moving directly to the United States, immigration to these countries may be preferred rather than being caught by the U.S. Coast Guard.<sup>281</sup>

### 2. Lower Monetary Incentive

Another possible solution is to simply lower the money offered to Cuban baseball players, which could disincentive the larger scale enterprises from continued involvement in ballplayer smuggling.<sup>282</sup> This approach could also directly target the sports agents and scouts who work out the details of the contracts with the smugglers presumably with no regard for the morality of the dangerous procedures

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<sup>277</sup> Travis Waldron, *The MLB's Cuba Problem*, THINK PROGRESS (Dec. 18, 2014, 10:31 AM), <http://thinkprogress.org/sports/2014/12/18/3604720/cuba-embargo-obama-normalized-relations-major-league-baseball/>.

<sup>278</sup> *Id.*

<sup>279</sup> Passan, *supra* note 134.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

involved in escaping the island.<sup>283</sup> Since the Cuban talent has really exploded since 2009, the free agents are a hot commodity and sports agents will do anything in their power to contract with ball players, but if the bar is lowered then there is less potential for corruption by the agents. For example, agents and scouts are attending the Cuban player showcases in countries such as Mexico even though they know very well that the nature with which the baseball players made it to Mexico and living conditions are corrupt and inhumane. If the MLB attacks the agents directly, they essentially have nothing to lose.

### 3. Four Part Method

One author, Matthew Greller, suggests a four-part method toward improving U.S.-Cuba relations through baseball diplomacy, which includes incorporating Cubans into the amateur draft.<sup>284</sup> Greller requires: 1) the MLB, the United States, and Cuba to abolish their exclusionary procedures; 2) then the MLB must change Rule 4(a) and Rule 3(a)(1) to enable Cubans to participate in the amateur draft; 3) next the MLB should impose a reasonable tax on teams that sign Cuban players in order to support Cuban scouting and infrastructure; and 4) finally, the U.S. needs to amend existing immigration laws to permit Cubans to play professional baseball in America without being forced to flee the country.<sup>285</sup>

### 4. Worldwide Draft

Another writer, Scott Cwiertny, proposed that the MLB should adopt a worldwide draft consisting of players of foreign residency.<sup>286</sup> This would have considerable effects on Cuban players by abolishing free agency status for the Cubans.<sup>287</sup> A worldwide draft would lower the monetary incentives for agents and scouts to aggressively and unlawfully pursue players in Cuba.<sup>288</sup> Also, the end

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<sup>283</sup> *Id.*

<sup>284</sup> Greller, *supra* note 131, at 1702-05.

<sup>285</sup> *Id.* at 1701-05.

<sup>286</sup> Scott M. Cwiertny, Note, *The Need for a Worldwide Draft: Major League Baseball and its Relationship with the Cuban Embargo and United States Foreign Policy*, 20 LOY. L.A. ENT. L. REV. 391, 426 (2000).

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

of free agency would remove bidding wars for Cuban free agents who live outside the United States and diminish agents' motivation for inflating players' abilities in order to tempt them to escape the country. Lastly, this would lower the temptation for MLB scouts to breach the Kuhn Directive and the current embargo.<sup>289</sup> However, two major issues stem from this possible solution. For one, it is unclear whether the Cuban government would be completely open to handing its players over to the MLB.<sup>290</sup> The Cuban baseball commissioner explains, "The Cuban people have invested in their baseball players and no one has the right to take them away."<sup>291</sup> Additionally, the sports agents would have little incentive to assist in the escape of Cuba ball players because they would earn a lower salary than they would have as free agents, and any agent breaching the Cuban embargo would face severe penalties.<sup>292</sup>

### 5. Worldwide Draft – Excluding Cuba

Another alternative proposed by Rick Lopez would be to have a worldwide draft but exclude Cuba entirely.<sup>293</sup> Lopez believes the action to exclude Cuba from a worldwide draft would drive Congress to take action and adopt the Baseball Diplomacy Act.<sup>294</sup>

Allowing the MLB agents and scouts to seek the Cuban talent in third countries is more or less passive acceptance of a horrible situation. The problem is exacerbated due to the ability with which these smugglers have obtained at a grasp on beating the system with relative ease. The smugglers have mastered the marine navigation, boat handling, bribery, forgery, money laundering, immigration policies, and MLB's Collective Bargaining Agreement to figure out the best

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<sup>289</sup> *Id.*

<sup>290</sup> *Solomon, supra* note 18, at 181.

<sup>291</sup> Wright Thompson, *Some Baseball Scouts in Cuba, but the Risks are High*, THE HAVANA JOURNAL (April 2, 2003). [http://havanajournal.com/culture/entry/some\\_baseball\\_scouts\\_in\\_cuba\\_but\\_the\\_risks\\_are\\_high/](http://havanajournal.com/culture/entry/some_baseball_scouts_in_cuba_but_the_risks_are_high/).

<sup>292</sup> *Solomon, supra* note 18, at 181 (explaining that "any agent violating the Cuban embargo would be dismissed as a player's agent under the MLBPA regulations and criminally prosecuted under the CACR. If caught interfering in the political asylum process, agents would be reprimanded as well.").

<sup>293</sup> *Id.* at n.26; Rick J. Lopez, Comment, *Signing Bonus Skimming and a Premature Call for a Global Draft in Major League Baseball*, 41 ARIZ. ST. L.J. 349, note 20, at 361 (2009) [hereinafter Lopez]; *see also* 31 C.F.R. § 515.309(a).

<sup>294</sup> Lopez, *supra* note 293.

way to approach and recruit players with enticing cash payments and promise of MLB fame.<sup>295</sup> Unfortunately, many of the “potential prospects” may not become MLB stars. After all this, the smugglers earn roughly 20-30% off the top line salary.<sup>296</sup>

#### 6. Cardozo Scholarly Article

Anna Kaminsky wrote the most recent proposal, which follows the normalized relationship announcement, in late 2015.<sup>297</sup> Kaminsky points out that a solution may not be possible in the imminent future.<sup>298</sup> However, she suggests three possible solutions that the MLB could implement to mitigate any further problems related to the Cuban ball players.<sup>299</sup> The first option would entail that the MLB allow Cuban players to enter a worldwide draft.<sup>300</sup> The second option proposes that the MLB strategically support legislation.<sup>301</sup> Specifically, Kaminsky makes reference to a 2014 Florida state law that gives tax benefits to players who travel directly from Cuba to the United States and enter the free agency draft, but unfortunately the law violates the federal embargo.<sup>302</sup> The final option for the MLB that Kaminsky offers is for the MLB to initiate immediate discussions with Cuba’s baseball leaders.<sup>303</sup>

#### VI. THE NORMALIZATION OF DIPLOMATIC RELATIONS WITH CUBA

Clearly, there are a myriad of issues involved with the Cuban players fleeing for the MLB, other Cuban escapees, the people responsible for smuggling, the agents involved in recruiting, and the MLB itself. However, the decision of the United States and Cuba to normalize relations comes on the heels of issues unrelated to baseball. The decision to normalize relations came when U.S. contractor

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<sup>295</sup> *Eden, supra* note 7 at 3.

<sup>296</sup> *Id.*

<sup>297</sup> Anna Kaminsky, Note, *A Major Smuggle Struggle: It’s Time for Major League Baseball to Step up to the Plate and Alleviate its Cuban Smuggling Problem*, 24 CARDOZO J. INT’L & COMP. L. 193 (2015).

<sup>298</sup> *Id.* at 227.

<sup>299</sup> *Id.* at 222.

<sup>300</sup> *Id.* at 222-224.

<sup>301</sup> *Id.* at 224.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.* at 225-227

and “humanitarian, Alan Gross,<sup>304</sup> and another U.S. intelligence source<sup>305</sup> were released from a Cuban prison after being held since 2009. Also, eased restrictions began last month when Cuba agreed to release 53 incarcerated people it deemed political prisoners that had been released after an agreement with Obama and Castro.<sup>306</sup> The normalized relations include a deal that three Cuban prisoners be released whom were imprisoned since 2001 for espionage.<sup>307</sup> Unfortunately, some doubters exist. Senator Marco Rubio, believes that Obama is playing into the hands of the Castro brothers by relaxing sanctions without any meaningful commitment to change on their part.<sup>308</sup>

#### A. December 17, 2014 Announcement

On December 17, 2014, President Obama and Raul Castro made a startling joint announcement regarding the diplomatic relationship between the United States and Cuba.<sup>309</sup> In an effort to “promote more effective change in Cuba that is consistent with U.S. support for the Cuban people and in line with U.S. national security interests,” the White House explained that the United States will normalize and attempt to re-establish diplomatic relations with Cuba, which were previously severed in January of 1961.<sup>310</sup> The efforts will purportedly begin with a visit by the U.S delegation to Cuba for the U.S.-Cuba Migration talks in January of 2015.<sup>311</sup> The United States will also seek to re-establish a United States embassy in Havana in

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<sup>304</sup> Alexandra Jaffe & Elise Labott, *Historic thaw in U.S., Cuba standoff*, CNN (Dec. 17, 2014, 4:31 PM), <http://www.cnn.com/2014/12/17/politics/obama-cuba-castro-relations/> (detailing “Gross was arrested after traveling under a program under the U.S. Agency for International Development to deliver satellite phones and other communications equipment to the island’s small Jewish population”).

<sup>305</sup> *Id.* (Explaining he was “held for more than 20 years”).

<sup>306</sup> Peter Baker, *Starting Friday, U.S. Will Ease Restrictions on Travel to Cuba*, NEW YORK TIMES, (Jan. 15, 2015), [http://www.ny-times.com/2015/01/16/world/americas/us-eases-decades-old-rules-on-travel-to-cuba.html?\\_r=0](http://www.ny-times.com/2015/01/16/world/americas/us-eases-decades-old-rules-on-travel-to-cuba.html?_r=0).

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> The White House, *FACT SHEET: Charting a New Course on Cuba*, <http://www.whitehouse.gov/the-press-office/2014/12/17/fact-sheet-charting-new-course-cuba>.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

an effort to improve human rights conditions and further democratic reforms.<sup>312</sup>

Central to the announcement were plans to lift the heavy travel restrictions to and from Cuba.<sup>313</sup> The United States will expand the allowance of general licenses to traveling to Cuba to 12 existing categories of travel:

(1) family visits; (2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations; (3) journalistic activity; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; (7) public performances, clinics, workshops, athletic and other competitions and exhibitions; (8) support for the Cuban people; (9) humanitarian projects; (10) activities of private foundations or research or educational institutes; (11) exportation, importation, or transmission of information or informational materials; and (12) certain export transactions that may be considered for authorization under existing regulations and guidelines.<sup>314</sup>

Travelers in these categories may make arrangements with several airlines that will now fly directly to and from Cuba.<sup>315</sup>

Additionally, the Obama administration announced plans to raise the amount of money—remittance—Cubans may send to their home country. Although previous action of this sort required a specific license, it will no longer require formal permission to do so. This means that Cuban baseball players may now send money that they earn from their contracts back to their families. This may also allow for agents from the United States to help support Cuban players in hopes of landing them as clients. For remittance, Cuban Americans may send their relatives an unrestricted amount of money, while Non-Cuban Americans may send up to \$8,000 a year to any Cuban national.<sup>316</sup>

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<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> DeYoung, *supra* note 262.

<sup>316</sup> *Id.*

### B. *MLB Response*

Following the announcement of the normalization of relations on December 17, MLB's Commissioner's Office released the following statement:

Major League Baseball is closely monitoring the White House's announcement regarding Cuban-American Relations. While there are not significant details to make a realistic evaluation, we will continue to tract this significant issue, and we will keep our clubs informed if this different direction may impact the manner in which they conduct business on issues related to Cuba.<sup>317</sup>

It took less than three months for Major League Baseball to take its first official action following the announcement.

In January 2015, nineteen-year old Cuban infielder, Yoan Moncada, became the first player to apply to the OFAC for a license following the announcement.<sup>318</sup> Moncada had escaped to Guatemala in August, and received a permanent residency document, a statement from a Guatemala bank as proof of residency, and a Guatemalan Identity Card.<sup>319</sup> Based on the previous MLB rules that required a specific license for Cubans to sign with a Major League team, Moncada submitted a formal application to the OFAC.<sup>320</sup> His agent, David Hastings, received an email from the OFAC in response to the application.<sup>321</sup> The email confirmed that the OFAC "will not

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<sup>317</sup> Adam Kilgore, *Normalized Relations Between Cuba and United States Could Have 'Drastic' Impact on MLB*, WASHINGTON POST (Dec. 17, 2014), <http://www.washingtonpost.com/news/sports/wp/2014/12/17/normalized-relations-between-cuba-and-united-states-could-have-drastic-impact-on-mlb/>.

<sup>318</sup> Jeff Passan, *Sources: Star Cuban Prospect Yoan Moncada's Free Agency Imminent*, YAHOO! SPORTS (Jan. 27, 2015, 6:05 PM), <http://sports.yahoo.com/news/sources--star-cuban-prospect-yoan-moncada-s-free-agency-imminent-230856047.html>.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> Mark Townsend, *OFAC Confirms Stance on Unblocking Cuban Baseball Players*, YAHOO! SPORTS (Jan. 31, 2015, 2:27 AM), <http://sports.yahoo.com/blogs/mlb-big-league-stew/ofac-reaches-out-to-yoan-moncada--other-cuban-stars-062132165.html>.

grant a specific license to Cuban nationals who are already unblocked via the general license.”<sup>322</sup> In other words, because Moncada met the requirements of the general unblocking license—he possessed at least two permanent residency documents from a third country—he need not apply for the specific license.<sup>323</sup> By once again altering its policies to support a preference for a general license over a specific license requirement, MLB, in effect, softened its stance toward Cuban nationals.<sup>324</sup> Moncada has since made his way through the Boston Red Sox’s minor league system and developed into one of the best prospects in baseball today.<sup>325</sup>

#### VII. MOVING FORWARD: UNITED STATES-CUBAN BASEBALL COALITION COMMITTEE

The above-mentioned solutions do show signs of promise if all parties are willing to cooperate. Out of the proposed solutions, Serrano’s Baseball Diplomacy Act appears to be the most promising and realistic one, but it has been a Bill since 1995 and has yet to be enacted into law. Instead of seeking a solution that assumes a compromise amongst various parties, establishing a committee to align incentives could aid in improving international relations and working towards elimination of this issue.

Now that the countries have an operative agreement in place through the goal of normalizing relations, there is an opportunity for the ongoing difficulties associated with Cuban players to improve relations between the two countries and eliminate the unsafe procedures in line with the issue. A workable framework could seek to enhance the safety involved with the process and increase the efficiency of transitions for players who would like to escape the island. This would not be a route to encourage Cuban players to go to the MLB. Rather, it would serve to improve the morale of the troubling issues and reach a compromise with the involved parties. The goals

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<sup>322</sup> *Id.*

<sup>323</sup> *See id.*

<sup>324</sup> *Id.*

<sup>325</sup> Baseball America Staff, *Midseason Top 100 Prospects*, BASEBALL AMERICA, (Jul. 11, 2016), <http://www.baseballamerica.com/minors/midseason-top-100-prospects/>

of this committee will be in line with the normalized relations discussions economically, socially in encouraging stability, and in terms of cooperation between the U.S. and Cuba.

As the two countries seek to normalize relations, the baseball issue could be seen as a means of exacerbating the link between the two countries, but could alternatively be used as a platform to make the link between the two countries even stronger. Normalizing relations between the United States and Cuba can only do so much and will likely take years to have relations completely normal. In order to account for all of the moving parts, the negotiations could begin by setting up a committee, which will consist of representatives from: 1) United States government; 2) Cuban government; 3) Sports agents; 4) Major League Baseball; 5) Serie Nacional de Béisbol; and 6) Liaisons on all ends to mediate the process, ideally from the United Nations Charter. The representatives would be able to negotiate arrangements and provisions of the movement of players from Cuba to other countries to ensure the legitimate concerns for individuals who seek to flee the island, while keeping the committee's respective interests in mind to align the goals of all groups involved. The liaisons will ensure good faith negotiations to maintain order in line with the United Nations Charter.

#### *A. Parties Involved and Representatives*

In order to ensure that the parties are negotiating with everyone's best interests in mind, certain representatives will be assigned to the five groups on the committee, as well as intermediaries to ensure good faith negotiations. For the United States Government and Cuban Government, current U.S. President, Barack Obama, and Cuban President, Raul Castro, have held bilateral discussions regarding the normalized relations. Moreover, U.S. Secretary of State, John Kerry, and Cuban Foreign Minister, Bruno Rodriguez Parilla, have held meetings in Cuba and at the Summit of the Americas Conference to discuss ongoing formalities involved with the normalized relations (i.e. setting up respective embassies). These representatives would continue to focus on normalizing relations but could be integral players in the resolution discussions.

For the sports agents' representatives, people responsible for the international relations on the Major League Baseball Player's Association (MLBPA) Executive Board, who promulgate the Agents'

rules and regulations, would be useful towards aligning the MLBPA's incentives. The main group could consist of Javier Vasquez, International Special Assistant, Tony Clark, Executive Director, Richard Shapiro, Senior Advisor, and Leonor Barua, Associate Director of Player Services.<sup>326</sup>

The current Collective Bargaining Agreement (full agreement between the MLB and MLBPA) is set to expire on December 1, 2016, which could be a time for newly-appointed MLB Commissioner, Rob Manfred, to execute some changes on the foreign policy front. Manfred should also be the main representative for the MLB on this committee. Similarly, Vice President of the International Baseball Federation and representative for the Cuban National League (Serie Nacional de Béisbol), Antonio Castro, would be a good counterpart for to the MLB representative.

A recently implemented group could serve as liaison between the MLB and Serie Nacional, the International Talent Committee, which was created as a Basic Agreement between the Office of the Commissioner and the MLBPA in 2012 to examine a number of areas related to the procuring of international players, including but not limited to the exploration of the possibility of an international draft, improving the education and acculturation programs of Clubs at their international academies, and the development of appropriate country-by-country plans for playing and development opportunities for players prior to draft eligibility.<sup>327</sup> Specific to Cuba in the current Collective Bargaining Agreement, the International Talent Committee "will be charged with advising the MLBPA and Office of the Commissioner on how to treat Cuban players under an amateur talent system in light of legal and political factors that affect their signability."<sup>328</sup> The Committee consists of Manfred, Clark, Shapiro, New York Mets General Manager Sandy Alderson, Tampa Bay Rays Executive Vice President of Baseball Operations Andrew Friedman, MLB Senior Vice President of Baseball Operations Kim Ng.

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<sup>326</sup> MLBPA Info, <http://mlb.mlb.com/pa/info/contact.jsp#staff>.

<sup>327</sup> Press Release, *International Talent Committee to Seek Input from Foreign Baseball Experts*, <http://m.mlb.com/news/article/26379998/international-talent-committee-to-seek-input-from-foreign-baseball-experts>.

<sup>328</sup> Major League Baseball Collective Bargaining Agreement, 2012-2016 Basic Agreement, Attachment 46(I)(D)(12), Dec. 12, 2011.

### 1. United States Government

The respective government's involvement could serve as a means of ensuring that there is full transparency with regards to the international relations and continued discussions between Obama and Castro and Kerry and Rodriguez. The U.S. Government is unlikely to be able to play too much of a role with regards to the substantive baseball involvement. However, the current economic embargo in place does not allow Cubans to play in the MLB without first escaping the country. This could be an area of focus to reach a compromise for the U.S. Government.

Moreover, it appears that the U.S. Government is likely willing to reach an agreement with other parties according to MLB Chief Legal Officer, Dan Halem. Halem remarked that the MLB asked the Treasury Department's Office of Foreign Assets Control (OFAC) for a specific license in early June to enter into a deal with the Cuban government that will allow MLB to sign Cuban players.<sup>329</sup> Halem went on to say, "There's a willingness on the part of our government to end the trafficking. The White House has been very sympathetic to helping us end some of the abusive practices."<sup>330</sup>

### 2. Cuban Government

Similar to the U.S. Government's role, the Cuban Government could use this problem as a means to continued communications between the U.S. counterparts. In the normalized relations communications, it's been stated that Castro and Cuba do not plan on changing too much of their structure internally. However, even though Raul Castro is similar to his predecessor, Fidel, with regards to maintaining a passion for baseball within Cuba, he has made the exception to allow Cuban players to play abroad in Japan and Mexico so may be apt to a more lenient travel policy for Cuban baseball players. This approach remains to be seen in respects to the MLB but due to the precedent of allowing Cuba players abroad in other countries and continued communications, it is important to have Castro and Rodriguez on the Committee.

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<sup>329</sup> Daniel Trotta, *Major League Baseball Asks Permission to Sign Cuban Players*, REUTERS (Dec. 24, 2015 at 8:53AM), <http://www.kcrg.com/content/sports/Major-League-Baseball-Asks-Permission-to-Sign-Cuban-Players-363463811.html>.

<sup>330</sup> *Id.*

As evident by a December 2015 goodwill return of a few Cuban players, it appears that the Cuban Government is also open to utilizing baseball as a means of U.S.-Cuban diplomacy. President of the Cuban Baseball Federation, Higinio Velez, stated “This demonstrates that Cuba is open to the world, that we are not closed, not even with our players who are playing in MLB.”

### 3. Sports Agents’

As noted above, an area that could aid towards rehabilitating the issue is for the MLB to crack down on sports agents’ aggressive activity towards the Cuban players. On the MLBPA Executive Board, Vasquez, Clark, Shapiro, and Barua would be the structural backbone to implement proper guidelines for sports agents in this area. Sports agents tend to have an unequal bargaining power in many situations and the discrepancy is exacerbated in Cuba where the individuals are risking a lot more by leaving behind their family, but could be swayed by the perceived promise of a life filled with extravagance. Already, a few sports agents have got in trouble from taking advantage of the issue as indicated previously with the agents Suarez and Dominguez.

The MLBPA Executive Board members that I selected have been the most involved with international relations, players, and sports agents. These members will also be at the forefront of negotiations to changes in the Collective Bargaining Agreement for December 1, 2016. The Executive Board likely does not have to come down directly on the sports agents with harsh guidelines and it is in their best interest to be respectful of the norms of the field, but structuring some protocol in the CBA with regards to the changes in international relations could be a good starting point to develop some order.

### 4. Major League Baseball

Newly assigned MLB Commissioner, Rob Manfred, is adamant about an approach to creating a better avenue to link Cuba and America on the baseball front. Manfred is in a good spot to make some decisions right now as he starts out his tenure in a few different areas. With regards to the new CBA Agreement, Manfred will have a lot of decision-making power in changes to the agreement to align with the normalized relations agreement. Moreover, with the MLB

All-Star Game in Miami in 2016, just 200 miles from Cuba, Manfred could implement some activities involving Cuba in the weeklong event.

While these are two areas where Manfred and the MLB can make stark alterations to the current ambiguous agreements, he recently announced there are other short term and long-term ventures the League hopes to embark on. For now, Manfred said he hopes to stage exhibition games in Cuba next spring to advance the process of restoring baseball ties with the Caribbean nation.<sup>331</sup> In the long-term, Manfred stated that “[o]ver the long haul, we’d like to see a more regularized process for Cuban players to come to the United States and, if they want, return to Cuba. It’s really important to us to have the best athletes in the world playing Major League Baseball and we think a more regularized immigration process would help us in that regard.”<sup>332</sup>

##### 5. Serie Nacional de Béisbol

Along the same lines as the MLB approach, the Cuban Baseball equivalent, Serie Nacional de Béisbol and its decision makers, are optimistic about pushing for closer ties with American baseball. Antonio Castro, son of Fidel and VP of the International Baseball Federation, is all for Cuban players participating in international leagues. In an interview, Castro said “I think our ballplayers who trained here earned the right to go play in other leagues and measure themselves against a higher level. They should be able to do it - without fear - and come back and play with their national team.”<sup>333</sup> Similarly, while the culture formerly used to be averse towards Cuban players leaving their home country for the MLB, a lot of the fans enjoy seeing these players succeed at the highest level in the MLB. Castro states further that “the problem exists and [Cuba and MLB] need to resolve this. The question is, why not? Why don’t we find the solution? The only thing we need is the will to do that. For sure

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<sup>331</sup> Maria Guardado, *Rob Manfred says MLB is ‘Anxious to Move Forward on Cuba’*, NJ.COM (July 25, 2015 at 8:55 PM), [http://www.nj.com/yankees/index.ssf/2015/07/rob\\_manfred\\_says\\_mlb\\_is\\_anxious\\_to\\_move\\_forward\\_on.html](http://www.nj.com/yankees/index.ssf/2015/07/rob_manfred_says_mlb_is_anxious_to_move_forward_on.html).

<sup>332</sup> *Id.*

<sup>333</sup> Paula Lavigne, *Cuba has to Budge*, ESPN (Feb. 6, 2014) [http://espn.go.com/mlb/story/\\_/id/10397211/antonio-castro-believes-cuban-baseball-sever-ties-political-espn-magazine](http://espn.go.com/mlb/story/_/id/10397211/antonio-castro-believes-cuban-baseball-sever-ties-political-espn-magazine).

we can find a solution, but we need to work together - everybody."<sup>334</sup> With the Major League season being so long, allowing players to return during the offseason to play would not be ideal due to possibilities of burnout. However, Castro appears to be optimistic about discussing options to reach a compromise for the leagues that could entail a simpler avenue for the players and improving the current system.

## 6. Liaisons

There are a couple of liaisons that could serve on both the baseball and international relations front. The aforementioned International Talent Committee can come in to monitor that proper negotiating is taking place between the Cuban baseball and American baseball representatives. Also, as the representatives for international relations in the current CBA, they could help in amending the provisions related to international relations with Cuba to align with the normalized relations agreement and ongoing discussions.

The other group that could help monitor the entire Committee and specifically U.S.-Cuban relations is the United Nations Charter. In the United Nations General Assembly, the most applicable committees to monitor the Baseball Committee are the Second (Economic and Financial Committee) and Third (Social, Humanitarian, and Cultural). To maintain order and to keep the discussion on the topics related to improving the morale, good faith negotiations, and improving the troubling immigration issue, the U.N. Charter will be a strong mediator to watch over all parties and the discussions. To keep the conversations in line with the normalized relations documents, the U.N. Charter can serve as liaison to remind everyone of the economic and social goals of each country. Also, they can help maintain security and boundaries on any discussions that get out of hand or are too lopsided. Chapter VI, Article 34 of the U.N. Charter states "the Security Council may investigate any dispute, or any situation, which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." This clause could ensure that the two countries

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<sup>334</sup> *Id.*

that have had friction for over five decades will be on the same page towards the normalizing relations documents.

### B. *Aligning Incentives*

There is currently no one-size-fits-all solution, but getting a Committee like this together involving the U.S. Government, Cuban Government, Sports Agents, MLB, and Serie Nacional could be a first step towards addressing the major platforms for change as the countries continue advancing the normalized relations. The current MLB CBA already has verbiage in place that is subject to change based on the political relationship. The document is set to expire on December 1, 2016, and more concrete language can be put in its place based on discussions amongst the Committee and in the normalized relations agreement. Important areas to address are to account for players who do not end up making it to the MLB who have fled the island, improving the ease and access to the difficulties associated with escaping the island, possible events to improve morale between the countries (spring training and All-Star Game), and keeping both countries satisfied. The end result will not necessarily be for the countries to reach an agreement where Cuban players can travel back-and-forth freely to the U.S., but where both countries do not feel slighted and the process becomes safer (i.e. could be to add incentives/concessions for players to stay in Cuba instead of venturing into the escape process).

The MLB and new commissioner, Rob Manfred, have a great opportunity to oversee all the relations with sports agents and create new avenues for Cuban baseball and the MLB through bilateral and unilateral solutions. Manfred could amend the MLB CBA on December 1, 2016 in regard to Cuban relations to align with international relations as normalized relations continue for the better. The MLB is currently under a lot of scrutiny for turning a blind eye to these problems, so Manfred could play a big role in keeping the owners', agents', and players' goals in line while maintaining an ethical stream in the enterprise. Manfred could also increase the exposure for Cuban baseball in the US by having an international game in the 2017 All-Star Game, which will be played close to Cuba in Miami. The All-Star Game has decreased in prestige over the year as the MLB has attempted to increase its glamour by making it count for home field in the World Series for the winning League

(American or National), but the popularity has definitely decreased. However, the weeklong Summer Classic has various events throughout the host city. If the MLB and the Marlins leverage the Cuban influence in Miami that week - especially by showcasing the Cuban talent - players, fans, and teams will all be interested in this rising talent pool. Hosting a Cuban All-Star team vs. an American All-Star team could be included as a festivity for the week. The revenue stream from concessions involving Cuban players/influence can be apportioned to the Cuban government. Alternatively, Manfred also would like to see American baseball in Cuba via exhibition games, which could happen as soon as 2016 Spring Training.<sup>335</sup>

All parties should look at baseball as a way to help the normalized relations run more smoothly and not as a channel that could deter the possible growth of the relationship. In recent months, there have already been strides made.

Notably, Puig and Jose Abreu returned to Cuba, their homeland, for the first time since fleeing via boat in 2012 and 2013, respectively, on December 15, 2015.<sup>336</sup> The return home for the Cuban players was part of an MLB delegation that hosted workshops and meetings with Cuban officials on a four-day tour.<sup>337</sup> The trip occurred at the one-year anniversary of the normalized relations agreement and was made possible due to the thaw in U.S.-Cuban relations.

The change in U.S.-Cuba relations did have an immediate impact on the signing process for Cuban prospects as was evident in the case involving Moncada.<sup>338</sup> Moreover, in September 2015, the MLB granted waivers for Jonathan Machado and Omar Estevez, who left Cuba but missed the deadline to register for the 2015-16

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<sup>335</sup> Marc Topkin, *Details of Rays' planned Cuba trip come into focus*, TAMPA BAY TIMES (Feb. 4, 2016, 6:38 PM), <http://www.tampabay.com/sports/baseball/rays/details-of-rays-planned-cuba-trip-come-into-focus/2264191>.

<sup>336</sup> Hector Velasco, *Cuba defectors return home on MLB goodwill trip*, YAHOO! SPORTS (Dec. 15, 2015, 6:01 PM), <http://sports.yahoo.com/news/major-league-baseball-gets-us-cuban-thaw-163927152--mlb.html>.

<sup>337</sup> *Id.*

<sup>338</sup> *Passan, supra* note 134.

international signing period.<sup>339</sup> Machado and Estevez were still in Cuba on the May 15 deadline, but, under the MLB's collective agreement, the MLB can waive the registration deadline when an international prospect has a "compelling justification."<sup>340</sup> The use of the CBA provision marks the first waiver for Cuban players, which shows that the MLB may be opening up to the situation of Cuban baseball players.<sup>341</sup>

There are even greater strides being made on the diamond between Serie Nacional and United States baseball.<sup>342</sup> In November 2015, the Penn State baseball team became the first United States team—amateur or professional—to compete against teams from the Cuban National Series.<sup>343</sup> Albeit, the competition did not involve an MLB team, but the Penn State Nittany Lions had the opportunity to become fully immersed in the Cuban culture during the trip.

While the college roster made huge strides with their November game, an MLB team engaged in a similar competition in the spring of 2016. The Tampa Bay Rays beat the Cuban national team 4-1 in the landmark game, which marked the first time an MLB team played in Cuba since the Orioles played there in 1999.<sup>344</sup> The week-day game also involved a historic visit by President Obama as he became the first sitting U.S. President to travel to Cuba in 88 years.<sup>345</sup> While there were huge benefits an the historic game was largely positive, there was some negative resentment from Cuban

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<sup>339</sup> Matthew Rocco, *U.S.-Cuba Ties May Open Doors for MLB*, FOX BUSINESS (Oct. 13, 2015), <http://www.foxbusiness.com/features/2015/10/13/us-cuba-ties-may-open-doors-for-mlb.html>.

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *In November 2015, the Penn State baseball team became the first United States team—amateur or professional—to compete against teams from the Cuban National Series*, PENNSYLVANIA STATE UNIVERSITY, [http://www.psu.edu/feature/2016/01/21/first-pitch\\_\(last visited May 17, 2016\)](http://www.psu.edu/feature/2016/01/21/first-pitch_(last%20visited%20May%2017,%202016)).

<sup>343</sup> *Id.*

<sup>344</sup> ESPN.com News Services, *Rays beat Cuban team with Barack Obama, Raul Castro in attendance*, ESPN (March 22, 2016), [http://espn.go.com/mlb/story/\\_/id/15045394/tampa-bay-rays-beat-cuban-national-team-landmark-game](http://espn.go.com/mlb/story/_/id/15045394/tampa-bay-rays-beat-cuban-national-team-landmark-game).

<sup>345</sup> Hector Velasco, *When a US-Cuba Baseball Game is Bigger than Politics*, YAHOO (March 18, 2016, 5:38 PM), <http://sports.yahoo.com/news/us-cuba-baseball-game-bigger-politics-213834637--mlb.html>.

protestors, which signifies that a lot still must be done before the countries are entirely civil with one another.<sup>346</sup> Moreover, this shows that baseball is serving as a large platform in the normalizing relations process.

With that being said, the game is a large stride and opens up the opportunities for all parties to open up the foreign relationships even more. The MLB could utilize the game as a platform to continue to play exhibition games in Cuba or to increase Cuban baseball involvement by way of the 2017 All-Star Game to be played in an area with a lot of Cuban ties, Miami.

### VIII. CONCLUSION

The proper solution will appease the MLB's view by being able to sign the Cuban players without having to deal with the negative publicity of the awful process, or, alternatively, allow Cuban players the option to have more flexibility in career endeavors. It will also bring the relations between the U.S. and Cuba closer together and please the Cuban players and their families so that they feel as though they have flexibility to go back to Cuba and do not have to experience a circuitous route just to play in the MLB. Additionally, the solution will appease sports agents by allowing them an opportunity to fairly negotiate deals with the players without any negative morality surrounding the situation.

Regardless, the situation will take a while to completely mitigate. However, something where all parties are addressed could smooth the relations with regard to the countries and baseball in general. In the short term, it is unlikely that the normalized relations will have much of an impact on the current procedures Cuban players go through to enter the MLB. In the long term, hopefully the problematic system is something that can be smoothed out.

"Knowing the history of things, I would think that baseball will be one of the slowest things to change, because it is such a major institution in Cuba," Bjarkman said. "If they ever worked out some agreement on this down the road, well, it may happen eventually. But Obama announcing in Washington that they're going to ease the

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<sup>346</sup> *Rays beat Cuban team, supra* note 344.

embargo, and [Raul Castro] announcing that he wants smoother diplomatic relations to the U.S., that doesn't mean the baseball situation changes."<sup>347</sup>

If the goal is truly to normalize relations, then the restrictions in place currently that are causing a lot of hardship on various parties should be relaxed. Setting up a formal United States-Cuban Baseball Coalition Committee will help with reaching agreements and taking small steps to amending and creating documents pertinent to the issue.

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<sup>347</sup> Travis Waldron, *The MLB's Cuba Problem*, THINK PROGRESS (Dec. 18, 2014, 10:31 AM), <http://thinkprogress.org/sports/2014/12/18/3604720/cuba-embargo-obama-normalized-relations-major-league-baseball/>.