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**REVERSING PROGRESS: THE TRAFFICKING OF CUBAN
BASEBALL PLAYERS CONTINUES AFTER CANCELLATION OF
MLB-FCB AGREEMENT 103**

ABSTRACT

In December of 2018, Major League Baseball (“MLB”) signed an agreement with the Cuban Baseball Federation that would forever change how the MLB acquires its Cuban talent. The agreement established a formal process of immigration from Cuba to the United States for professional baseball players, replacing the decades-old practice of smuggling players into the United States with the help of dangerous human trafficking organizations. In April of 2019, during its decision to revert back to the traditional foreign policy strategy with Cuba, the Trump Administration scrapped the deal in its entirety, bringing the process back to square one. This Note tracks the political history between the United States and Cuban since the Cuban Revolution, and expounds on its effect on America’s pastime. While the agreement has been nullified, the groundwork has been laid to finally do away with the archaic process of Cuban defection. However, until lawmakers in Washington D.C. decide to address the human rights abuses that ultimately put Cuban baseball stars in America’s stadiums, the status quo will remain.

“It is a sin not to do what one is capable of doing.”¹

INTRODUCTION

In December of 2018, Major League Baseball (“MLB”), the MLB Players Association (“MLBPA”), and the Cuban Baseball Federation (“FCB”) reached a historic agreement that would have effectively ended the defection of Cuban baseball players from Cuba (“the Agreement”).² The Agreement was designed to end the dangerous trafficking process that many Cuban players endure in order to play professional baseball in the United States.³ Commissioner of MLB, Robert Manfred, Jr., echoed this sentiment:

For years, [the MLB] has been seeking to end the trafficking of baseball players from Cuba by criminal organizations by creating a safe and legal alternative for those players to sign with [MLB] Clubs. We believe that this agreement accomplishes that objective and will allow the next generation of Cuban players to pursue their dream without enduring many of the hardships experienced by current and former Cuban players who have played [in the MLB].⁴

The announcement of the Agreement was also celebrated by many Cuban ballplayers who suffered through the defection process.⁵ Yasiel Puig, whose journey to the United States is well-documented,⁶ was happy “[t]o know future Cuban players will not have to go through what we went through.”⁷

The Cuban government had long prevented Cuban ballplayers from playing professional baseball in the United States.⁸ However, after three years of negotiations with MLB and the MLBPA, the FCB changed this policy with the

1. *Jose Marti Quotes*, BRAINYQUOTE, https://www.brainyquote.com/quotes/jose_marti_225394 [<https://perma.cc/4LRH-GGPL>] (last visited Sept. 22, 2020).

2. Jenna West, *MLB, MLBPA Reach Deal With Cuban Baseball Federation Allowing Players to Come to U.S.*, SPORTS ILLUSTRATED (Dec. 19, 2018), <https://www.si.com/mlb/2018/12/19/cuba-mlb-deal-players-release> [<https://perma.cc/Z53J-ATW5>].

3. Jorge L. Ortiz & Alan Gomez, *MLB, MLBPA Strike Deal With Cuba That Allows Players to be Scouted, Signed Without Defecting*, USA TODAY (Dec. 19, 2018, 4:26 PM), <https://www.usatoday.com/story/sports/mlb/2018/12/19/mlb-cuba-players-scout-sign-defection/2366285002/> [<https://perma.cc/7ZT6-V4VY>].

4. *Id.*

5. *Id.*

6. See Scott Eden, *No One Walks Off The Island*, ESPN MAG. (Apr. 17, 2014), http://www.espn.com/espn/feature/story/_/id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba [<https://perma.cc/5N7A-RJDT>]; see also Jesse Katz, *Escape from Cuba: Yasiel Puig's Untold Journey to the Dodgers*, L.A. MAG. (Apr. 14, 2014), <https://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers/> [<https://perma.cc/7C7F-GGQT>].

7. Ortiz & Gomez, *supra* note 3.

8. Dave Sheinin & Karen DeYoung, *MLB, Cuban Baseball Federation Reach Agreement; Trump Administration Signals It Has Issues With Deal*, THE WASH. POST (Dec. 19, 2018, 8:59 PM), <https://www.washingtonpost.com/sports/2018/12/19/mlb-cuban-baseball-federation-reach-agreement-that-will-eliminate-need-players-defect/> [<https://perma.cc/5NEX-YMK8>].

signing of the Agreement.⁹ Pursuant to the Agreement, which only covers players under contract with the FCB, players could be signed directly out of Cuba and, subject to approval by the United States government, granted a work visa.¹⁰ The FCB must release the players who are either twenty-five years of age or have six or more years of professional service time.¹¹ However, the FCB may release players who are under twenty-five years of age and do not meet the service time requirements.¹² MLB clubs who sign players directly from Cuba would then pay a release fee directly to the FCB to obtain the services of the player.¹³ Similar to the structure of the FCB's agreement with Nippon Professional Baseball ("NPB") in Japan, the release fee would be between 15 and 20% of the total guaranteed value of the Cuban player's MLB contract or 25% of the signing bonus of the player's minor league contract.¹⁴

In 2016, during the Obama Administration's campaign to improve relations with the Cuban government, MLB obtained a license from the Office of Foreign Assets Control of the Treasury Department ("OFAC") to enter into a business arrangement with the FCB and began negotiations with the FCB.¹⁵ In MLB's January 2019 petition to the Trump Administration's Treasury Department, MLB attorneys stated that "[t]he objective of the [A]greement, which is the product of years of negotiations with the [FCB], is to end the dangerous trafficking of Cuban baseball players who desire to play professional baseball in the United States."¹⁶ Officials from the MLB were in frequent contact with the Trump Administration in the months and weeks leading up to the announcement of the deal, and confirmed with OFAC that the license was still valid.¹⁷ However, in April of 2019, the Trump Administration scrapped the deal claiming that it was created under an "erroneous ruling" by the Obama Administration.¹⁸ The Trump Treasury Department ruled that the FCB is a part of the Cuban government, thereby making the payments to the FCB in violation

9. *Id.*

10. *Id.*

11. Ortiz & Gomez, *supra* note 3.

12. *Id.*

13. *Id.*

14. Sheinin & DeYoung, *supra* note 8.

15. *Id.*

16. Karen DeYoung, *Trump Administration Cancels Major League Baseball Deal With Cuba*, THE WASH. POST (Apr. 8, 2019, 9:07 PM), https://www.washingtonpost.com/world/national-security/trump-administration-cancels-mlb-deal-with-cuba/2019/04/08/99c7d9be-5a2f-11e9-842d-7d3ed7eb3957_story.html [<https://perma.cc/LT4Y-FR5Z>].

17. Sheinin & DeYoung, *supra* note 8.

18. Matt Spetalnick, *U.S. Nixes Deal for Major League Baseball to Sign Cuban Players*, REUTERS (Apr. 8, 2019, 2:07 PM), <https://www.reuters.com/article/us-cuba-usa-baseball/u-s-nixes-deal-for-major-league-baseball-to-sign-cuban-players-idUSKCN1RK27U> [<https://perma.cc/8NNM-FYHE>].

of the United States' trade embargo against Cuba and effectively ending the deal.¹⁹

This Note analyzes the interplay of United States-Cuba relations in MLB, the history of the forced defection process and its effect on Cuban baseball players and their families, and the fallout from the now-cancelled deal. Further, this note argues that the elimination of the humanitarian concerns via the approval of the deal outweighs the perceived benefits of strictly enforcing the trade embargo in this situation. However, this note concludes that the continuation of the current defection process of Cuban players will persist until the end of the Communist Party of Cuba's rule or until the United States eases its approach with Cuba.

I. THE HISTORY OF BASEBALL IN UNITED STATES-CUBA RELATIONS

The current system of scouting and signing Cuban ballplayers mirrors the strained relationship between the United States and the Communist government of Cuba.²⁰ Prior to the takeover of the island nation by the Castro regime during the Cuban Revolution of 1959, the two countries shared a common interest in their love of the game of baseball, however, the isolationist policies implemented by the Cuban government since the Communist Party's takeover have altered the once-fruitful relationship forever.²¹

A. *The Bond Over Baseball Prior to 1959*

Although the political relationship between the United States and Cuba is tempestuous today, baseball once served as common ground for the two nations.²² After the creation of the game in the 1840s, it soon reached the ports of Cuba.²³ The game was popularized on the island nation by both American military and merchant sailors, as well as Cuban students returning home from the United States.²⁴ As the port cities of Havana and Matanzas became "hotbeds for the new sport," professional and amateur leagues soon began to form.²⁵

19. *Id.*

20. Matthew Frankel, *Major League Problems: Baseball's Broken System of Cuban Defection*, 25 B.C. THIRD WORLD L.J. 383, 387 (2005).

21. *Id.*

22. 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).

23. *Id.*; Frankel, *supra* note 20, at 387.

24. Frankel, *supra* note 20, at 387.

25. *Id.* at 387-88.

B. Cuban Independence and Baseball

Until the latter part of the nineteenth century, Cuba was governed by the Spanish Crown.²⁶ In 1868, wealthy planters and landowners demanded their independence from Spain and created a movement which sparked uprisings leading to the *Guerra de los Diez Años*, or the Ten Years' War.²⁷ The Kingdom of Spain soon banned the game of baseball on the island following the uprisings, transforming the game into a symbol of Cuban independence.²⁸ Similar to the United States, baseball has remained a large part of the culture in Cuba to this day, serving as an emblem of *la nacionalidad cubana*, or Cuban national identity.²⁹

C. Baseball After the Cuban Revolution of 1959

With Fidel Castro's overthrow of Fulgencio Batista's United States-backed regime, Cuba became a socialist state governed by the Communist Party of Cuba.³⁰ As it did with nearly all aspects of the country, the Cuban government made sweeping changes to the nation's baseball system to emphasize the Cuban government's communist values.³¹ In 1961, the Castro regime abolished professional baseball leagues in Cuba, allowing only amateur leagues to nourish the hunger for baseball on the island.³² The baseball system in post-revolution Cuba was "centered on a socialist paradigm of amateur sports motivated by national ideals rather than money."³³ Consistent with the socialist values of the state, players who participated in these amateur leagues were paid a salary "comparable to the earnings of the majority of the labor force."³⁴

D. Implementation of El Bloqueo

In response to the revolutionist takeover of Cuba, the United States implemented a commercial, economic, and financial embargo against the nation.³⁵ The embargo was based upon the Trading with the Enemy Act of 1917

26. LOUIS A. PEREZ, JR., *CUBA: BETWEEN REFORM AND REVOLUTION* 82–84 (Rafael Hernandez & John H. Coatsworth eds., Oxford University Press 3d ed., 2006).

27. *Id.* at 88–90.

28. KC Gardner, *Baseball at the Intersection of Cuban Culture, Independence, and Identity*, (Dec. 21, 2014, 8:00 AM), <https://www.redreporter.com/2014/12/20/7424235/baseball-at-the-intersection-of-cuban-culture-independence-and-identity> [<https://perma.cc/ZGF4-SDQE>].

29. *Id.*

30. Solomon, *supra* note 22, at 156.

31. Frankel, *supra* note 20, at 390.

32. *Id.*

33. Solomon, *supra* note 22, at 156–57.

34. *Id.* at 157.

35. Matthew Poehl, *Double Play: How Major League Baseball Can Fix the Amateur Draft and International Player Acquisition with One Swing*, 8 WILLIAMETTE SPORTS L.J. 17 (2010).

(TWEA), which was originally passed in response to WWI.³⁶ The TWEA forbids “transfers of property between United States citizens and enemy nations, unless authorized by the President.”³⁷ The TWEA confers broad powers to the President, whether in times of peace or war, to “engage in extensive regulation of international economic transactions when a national emergency so required.”³⁸

With the powers granted to the President by the TWEA, the Kennedy Administration adopted the Cuban Assets Control Regulations (“CACR”) in 1963.³⁹ The CACR serves as the basic governing rules for the Cuban embargo.⁴⁰ Similar to the language found in the TWEA, the CACR forbids “‘transactions incident to travel to, from, and within Cuba’ as well as any ‘payment or transfer’ to any Cuban national.”⁴¹

The Cuban Democracy Act of 1992 (“CDA”)⁴² and the Cuban Liberty and Democratic Solidarity Act of 1996, also known as the Helms-Burton Act,⁴³ strengthened the American embargo against the Communist regime. The CDA included a “ban on conducting business in Cuba to U.S.-owned or controlled businesses located overseas.”⁴⁴ The CDA’s purpose was to uphold the Cuban embargo “so long as [the Cuban government] refuse[d] to move toward democratization and greater respect for human rights.”⁴⁵ Meanwhile, the Helms-Burton Act looks to discourage third-party nations from engaging in commercial relationships with the Cuban government.⁴⁶ Similar to the CDA, the Helms-Burton Act places sanctions on Cuba to encourage democratization within the country.⁴⁷

E. The Enactment and Modification of the Cuban Adjustment Act

President Lyndon Johnson signed the Cuban Adjustment Act (“CAA”) into law on November 2, 1966, permitting “thousands of Cuban refugees to adjust to lawful permanent residence.”⁴⁸ A majority of the refugees were “parolees or

36. *Id.*

37. Solomon, *supra* note 22, at 169.

38. *Id.* at 168 (quoting *Cornet Stores v. Morton*, 632 F.2d 96, 97 (9th Cir. 1990)).

39. Cuban Assets Control Regulations, 31 C.F.R. § 515 (2009); *see also* Frankel, *supra* note 20, at 393.

40. Frankel, *supra* note 20, at 393.

41. 31 C.F.R. §§ 515.305, 515.309(a), 515.415(a)(1, 6); *see also* Frankel, *supra* note 20, at 393.

42. Cuban Democracy Act of 1992, 22 U.S.C. §§ 6001–10 (2018).

43. Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. § 6021–91 (2018).

44. Solomon, *supra* note 22, at 170; *see* Cuban Democracy Act of 1992, note 42, at § 6005.

45. 22 U.S.C. § 6002

46. Solomon, *supra* note 22, at 170.

47. *Id.*

48. DEP’T OF HOMELAND SEC. U.S. CITIZENSHIP & IMMIGR. SERV. POL’Y MANUAL § 23.11(a) (1966).

nonimmigrants who could not return to Cuba for political reasons but could not seek residence through other means.”⁴⁹ The original 1966 Act allowed Cuban refugees to become permanent United States citizens if they had been physically present within the United States for at least one year.⁵⁰

The introduction of the “wet foot, dry foot” policy reduced the application of the CAA, as the Clinton Administration made a deal with the Cuban government that would require the United States to reject any Cuban migrant intercepted on the waters between the two countries, while those who made it ashore received a chance at permanent legal residence in accordance with the CAA.⁵¹ The risk of being caught at sea caused many Cubans to enter the United States via Mexico, a path known as “dusty foot” Cuban immigration.⁵² “Dusty foot” immigration has drawn criticism from immigration groups due to the asylum granted to Cubans who step foot onto United States soil, while other Central and South American immigrants are not afforded the same status.⁵³ The Department of Homeland Security under President Obama effectively ended the “wet foot, dry foot” policy in 2017, citing concerns that the “outdated” policy had caused many “Cuban nationals [to make] a dangerous journey through Central America and Mexico; [while] others have taken to the high seas in the dangerous attempt to cross the Straits of Florida.”⁵⁴ President Obama further stated that with the end of the “wet foot, dry foot” policy, Cuban migrants would be treated the same as any other migrant who entered the United States, “consistent with U.S. law and enforcement priorities.”⁵⁵ The end of the policy fails to address the problem of trafficking, as the financial benefits awarded to Cuban players who sign free agent contracts with MLB clubs remain major incentives to undergo the risky smuggling process to reach the United States.⁵⁶

49. *Id.*

50. Cuban Adjustment Act of 1966, 8 U.S.C. § 1255 (2018).

51. Russell Cobb & Paul Knight, *Immigration: Cubans Enter U.S. at Texas-Mexico Border*, HOUSTON PRESS (Jan. 9, 2008, 4:00 AM), <https://www.houstonpress.com/news/immigration-cubans-enter-us-at-texas-mexico-border-6575312> [https://perma.cc/S35W-UD7U].

52. Patricia Zengerle & David Adams, *U.S. Turns Back Central Americans, Welcomes ‘Dusty Foot’ Cubans*, REUTERS (July 30, 2014, 3:40 PM), <https://www.reuters.com/article/us-usa-immigration-cuba/u-s-turns-back-central-americans-welcomes-dusty-foot-cubans-iduskbn0fz2e420140730> [https://perma.cc/L694-922P].

53. *Id.*

54. Press Release, U.S. Department of Homeland Security Press Office, Fact Sheet: Changes to Parole and Expedited Removal Policies Affecting Cuban Nationals (Jan. 12, 2017), <https://www.dhs.gov/sites/default/files/publications/DHS%20Fact%20Sheet%20FINAL.pdf> [https://perma.cc/N88S-93SF].

55. Press Release, Office of the Press Secretary, Statement by the President on Cuban Immigration Policy (Jan. 12, 2017), <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/statement-president-cuban-immigration-policy> [https://perma.cc/N2EM-DADP].

56. Eric Gomez, *‘Wet Foot, Dry Foot’ Policy Benefitted Many Cuban MLB Stars*, ONE NACION-ESPN (Jan. 18, 2017), https://www.espn.com/blog/onenacion/post/_id/6712/wet-foot-dry-foot-policy-benefitted-many-cuban-mlb-stars [https://perma.cc/4BNJ-J74N].

II. THE DEFECTION PROCESS

The embargo bars Cuban nationals from traveling to the United States directly from Cuba.⁵⁷ It also “prohibit[s] MLB organizations from conducting any business in Cuba, such as scouting or signing players.”⁵⁸ While visiting the United States with the Cuban National Baseball team in 1991, Rene Arocha “[found] an exit sign’ at Miami International Airport,” and became the first Cuban player to defect from Cuba to the United States.⁵⁹ Arocha’s defection “single-handedly ended Castro’s monopoly on Cuban baseball talent,”⁶⁰ and since that day, nearly 200 Cuban players have followed in his footsteps.⁶¹ During the 2019 season, thirty Cuban players appeared on MLB rosters.⁶²

A. *Acquiring the Services of Cuban Players: MLB’s Framework*

Due to the complex and unique nature of the relationship between the United States and Cuba, Cuban ballplayers are subject to a different set of rules than other foreign-born players.⁶³ Players living in the United States, its territories, and Canada enter MLB’s annual first-year player draft, while foreign-born players are not drafted.⁶⁴ Once a team drafts a North American player, that team has exclusive negotiating rights with that player for nearly a year.⁶⁵ On the other hand, foreign-born players are able to sign with *any* team at the age of sixteen, as long as they turn seventeen “prior to September 1 of the first season covered by the contract.”⁶⁶ This is actually quite beneficial for foreign-born players, as it causes bidding-wars between clubs which result in lucrative contracts for the players.⁶⁷

Rule 3 of MLB’s Official Rules governs the eligibility for foreign-born players.⁶⁸ Rule 3(a)(1)(B) provides:

57. Frankel, *supra* note 20, at 394.

58. *Id.* at 393.

59. *Id.* at 383–84.

60. *Id.* at 384.

61. *List of Cuban Defectors*, BASEBALL REFERENCE, https://www.baseball-reference.com/bullpen/List_of_Cuban_Defectors [<https://perma.cc/AQ9V-MSLB>] (last visited Feb. 17, 2020).

62. *Major League Baseball Players Born in Cuba / Played in 2019*, BASEBALL ALMANAC, <https://www.baseball-almanac.com/players/birthplace.php?loc=Cuba&y=2019> [<https://perma.cc/DSW5-A3RR>] (last visited Feb. 17, 2020).

63. MAJOR LEAGUE BASEBALL, *THE OFFICIAL PROFESSIONAL BASEBALL RULES BOOK*, R. 3, 4 (2019).

64. *Id.* at R. 4(a).

65. *Id.* at R. 4(d)–(f).

66. *Id.* at R. 3(a)(1)(B).

67. Frankel, *supra* note 20, at 399; *see also* Jason Browning, *Resolving (Then Un-Resolving) The Human Trafficking Issue For Cubans Joining America’s National Pastime*, 54 ARK. L. REV. 18, 19–20 (2019).

68. MAJOR LEAGUE BASEBALL, *supra* note 64, at R. 3(a)(1)(B).

(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 September 1 of the first season covered by the contract.⁶⁹

While Cuban players are technically “foreign-born,” the restrictions set in place by the embargo and MLB force Cuban ballplayers to go to great lengths to reach the normal eligibility for a foreign-born player.⁷⁰ In April of 1977, then-Commissioner of MLB, Bowie Kuhn, sent a letter to all MLB teams outlining the League’s Cuba policy.⁷¹ The “Kuhn Directive” stated that no MLB club could sign, recruit, or negotiate with a player residing *in* Cuba.⁷² If they wish to play in the MLB, Cuban players must first defect to another country and establish residency there.⁷³ The Kuhn Directive does not prevent MLB clubs from scouting Cuban players in these third-party countries, thus, the players are essentially smuggled into these countries for their MLB auditions.⁷⁴ This process can, and often does, result in dangerous situations for the defecting players and their families as a result of relying on criminal organizations and smugglers to provide passage out of Cuba.⁷⁵

B. *Smuggling of Cuban Players and the Consequences of Dealing with Smuggling Rings*

The money to be made from smuggling high-value migrants, such as Cuban baseball players, has inspired many leading actors within *la bolsa negra*, Cuba’s black market for baseball players, to consolidate all smuggling efforts within the communist nation.⁷⁶ Perhaps the most documented and discussed defection by

69. *Id.*

70. Solomon, *supra* note 22, at 159.

71. Frankel, *supra* note 20, at 397.

72. *Id.*

73. *Id.*

74. *See* Solomon, *supra* note 22, at 159, 166.

75. *Id.* at 162. *See also* Sheinin & DeYoung, *supra* note 8; Erika Pesantes & The Associated Press, *Cuban Baseball Smugglers Sentenced to Federal Prison*, SUN SENTINEL (Nov. 2, 2017, 7:30 PM), <https://www.sun-sentinel.com/local/miami-dade/fl-reg-cuban-smugglers-sentencing-20171102-story.html> [<https://perma.cc/8TNC-XRHQ>]; *see also* Jose Pagliery, *Cuban Baseball Smugglers Used Threats and ‘Kidnapping’*, CNN MONEY (Nov. 23, 2016, 11:04 AM), <https://money.cnn.com/2016/11/22/news/mlb-cuban-smuggling/index.html> [<https://perma.cc/8XYX-DQRT>]; Jose Pagliery & Ahiza Garcia, *The Cuban Smuggling Machine Behind MLB*, CNN MONEY (Dec. 15, 2016, 3:32 PM), <https://money.cnn.com/2016/12/15/news/mlb-cuban-baseball-players-smuggled/index.html#:~:text=Gilberto%20Suarez%20was%20convicted%20of,the%20criminal%20enter%20in%20motion.> [<https://perma.cc/9QT6-HQVB>].

76. Eden, *supra* note 6.

a Cuban player was that of Yasiel Puig.⁷⁷ In April of 2012, when Puig was just twenty-one years old, he left his hometown of Cienfuegos to embark on a grueling journey that would eventually lead him to tens of millions of dollars and MLB fame.⁷⁸ To facilitate his escape, Puig employed the services of a few *lancheros*, professional smugglers who specialize in transporting escapees to Central and South American countries.⁷⁹ As is the case with many *lancheros*, those who were charged with the task of smuggling Puig and others out of the island nation and into Mexico were involved in an “alien-smuggling-and-boat-theft ring with links to the Mexican cartel *Los Zetas*.”⁸⁰

Puig’s childhood friend and professional boxer, Yunior Despaigne, orchestrated Puig’s flight from Cuba, which Despaigne accompanied him on.⁸¹ Despaigne had a connection in south Florida who, according to Despaigne, promised the boxer \$150,000 and a house in Hialeah, Florida if he were to successfully get Puig on United States soil.⁸² Despaigne accepted this proposition and his contact wired him \$25,000 over the course of the next year, which Despaigne transferred to Puig and his family.⁸³

After their risky escape from Cuba, the *lancheros* transported Puig and Despaigne to Isla Mujeres, an island just off the coast of Cancún, Mexico, which was commonly used as a holding place until the “financier” paid the *lancheros* for their services.⁸⁴ If the families could not come up with the “fee,” the *lancheros* would either keep the migrants as their prisoner until the payment arrived or kick them out on the street where, if apprehended, Mexican authorities would deport them back to Cuba.⁸⁵ Typically, these smuggling rings make two or three runs per month, collecting approximately a quarter of a million dollars for each group of migrants successfully transported out of Cuba.⁸⁶ However, due to Puig’s elevated status, the *lancheros* charged \$250,000 for his extraction alone.⁸⁷ Shortly after their arrival on Isla Mujeres, Despaigne’s contact informed the pair that he did not yet have the money to pay the *lancheros*.⁸⁸ Puig and Despaigne were not permitted to leave the hotel and were under constant supervision during this time; however, the *lancheros* were reluctant to cause any

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Eden, *supra* note 6.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Eden, *supra* note 6.

87. *Id.*

88. *Id.*

real harm, recognizing the exorbitant amount of money they would receive from the job.⁸⁹

Leaders within *la bolsa negra* “have developed a highly specialized expertise, encompassing marine navigation, boat handling, bribery, forgery, money laundering, the immigration policies of multiple nations, and the ins and outs of MLB’s collective bargaining agreement.”⁹⁰ Smugglers often contact the players, enticing them to defect by offering cash payments and promising MLB fame.⁹¹ As noted, the smugglers hire *lancheros* to extract the player from the island nation.⁹² The smugglers also finance the daily needs of the player while they are held in the third-party country.⁹³ Because these up-front costs can be quite expensive for the smugglers, they often demand 20-30% of the player’s first MLB contract as compensation.⁹⁴

While Puig sat on Isla Mujeres, a group of Cuban-based partners engaged in an alien-trafficking ring on the Yucatán Peninsula caught wind that a valuable five-tool baseball player was being held there.⁹⁵ The group, led by a character referred to as “El Rubio,” reached out to Despaigne’s connection in South Florida and together they hatched a plan: they were going to “steal” Puig and Despaigne from the island.⁹⁶ The *lanchero* charged with keeping Puig in captivity while awaiting payment for the extraction was known as “Tomasito.”⁹⁷ On a night when Tomasito unfortunately decided to relax security on the Cubans, two men dressed in all black knocked on the door of the hotel room where Puig and Despaigne were being held and they were quickly ferried to the mainland near Cancún without the knowledge of Tomasito or his crew.⁹⁸ The group led by El Rubio knew they had stirred up a hornet’s nest with this heist, and they were aware of the consequences.⁹⁹ To them, Puig was worth the trouble.¹⁰⁰

Soon Puig was in Mexico City performing in front of MLB scouts, and by June 28, 2012, he had signed a \$42 million contract with the Los Angeles Dodgers, \$8.4 million of which would be paid to the Miami-based partners led by El Rubio.¹⁰¹ At a port of entry in Hidalgo, Texas, Puig claimed asylum

89. *Id.*

90. *Id.*

91. Eden, *supra* note 6.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Eden, *supra* note 6.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. Eden, *supra* note 6.

pursuant to the Cuban Adjustment Act of 1966.¹⁰² He was finally touching American soil.¹⁰³ Just after Puig and Despaigne arrived in the United States, Tomasito and his associates began to make threats towards the pair and El Rubio's group.¹⁰⁴ Calls to Puig, Despaigne, El Rubio, and even Despaigne's mother had one common message: "What you did is not a joke. Give us our money or we're going to kill you."¹⁰⁵ One day as Despaigne drove home from work, another man began honking at him.¹⁰⁶ Both pulled over and exited their cars.¹⁰⁷ According to Despaigne, the other driver rushed him, and put a handgun up against his left side, and speaking with a Cuban accent said: "Tell Puig to pay . . . [I]f he doesn't, all of you are going to die."¹⁰⁸ The Los Zetas-backed Tomasito made it clear that he wanted his cut.¹⁰⁹

It is not uncommon for payment issues to arise during these transactions, resulting in the use of threats, extortion, and torture by the smugglers and *lancheros*. In 2014, Eliezer Lazo pled guilty to federal extortion charges involving the smuggling of more than 1,000 migrants out of Cuba, including former MLB player Leonys Martín.¹¹⁰ Similar to the *lancheros* who transported Puig and Despaigne, Lazo would smuggle migrants by boat to Mexico where they would remain until their fees, essentially ransom payments, were paid.¹¹¹ Migrants who were not baseball players were kept in cramped rooms and if their ransom payments were not immediately paid, they were often "restrained and beaten while relatives could hear the screams on the phone."¹¹² Details of Martín and his family's harrowing experience came to light in 2013 in a suit filed against him by Estrellas del Béisbol, a Mexican entity linked to Lazo.¹¹³ As detailed by court documents, once Martín and his family arrived on Mexican soil they were brought to a house guarded by two armed men, one of them being Lazo, who told Martín that he was extremely valuable to him, and that he wouldn't let him go.¹¹⁴ Martín offered Lazo \$40,000 to leave him and his family

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Eden, *supra* note 6.

107. *Id.*

108. *Id.*

109. *Id.*

110. The Associated Press, *Cuban Player Smuggler Pleads Guilty*, ESPN (Aug. 22, 2014), https://www.espn.com/mlb/story/_/id/11394359/eliezer-lazo-enters-guilty-plea-leading-human-trafficking-ring [<https://perma.cc/5K2B-WLVU>].

111. *Id.*

112. *Id.*

113. The Associated Press, *Leonys Martín Ransom Case Detailed*, ESPN (Dec. 21, 2013), https://www.espn.com/mlb/story/_/id/10176810/alleged-kidnapping-texas-rangers-leonys-martin-detailed. [<https://perma.cc/G8ZE-DU6Q>] [hereinafter AP].

114. *Id.*

alone, but Lazo refused.¹¹⁵ Shortly thereafter, the Martín family, minus Leonys, were taken across the border to a townhouse in Laredo, Texas, where they would live for five months.¹¹⁶ Leonys was taken to a training facility in Monterrey, Mexico, known as “The Ranch.”¹¹⁷ The Laredo townhouse was owned by Lazo and he kept the Martín family under his supervision, using their safety as leverage over Leonys.¹¹⁸ While at “The Ranch,” the players were told they could not leave the premises and would be shot on sight if they tried to escape.¹¹⁹ While Martín gained exposure by playing in front of MLB scouts during his time in Monterrey, he “had no choice” but to go along with this process and sign a contract with Estrellas del Béisbol, guaranteeing that entity 35% of his future salary and bonuses.¹²⁰

It was not until Martín signed a five-year, \$15.5 million dollar contract with the Texas Rangers in 2011 that he was allowed to leave Mexico and reunite with his family in the United States.¹²¹ Martín paid Estrellas del Béisbol \$1.35 million before he stopped paying his former captors.¹²² Estrellas de Beisbol then initiated a breach of contract suit against Martín.¹²³ Martín claimed that the contract should have been declared void because he signed it “under extreme fear and duress.”¹²⁴ Federal authorities eventually ordered Lazo and Estrellas del Béisbol to forfeit any earnings derived from stakes in Martín’s contract, as well as earnings derived from similarly made contracts.¹²⁵ Federal investigations ultimately revealed that Lazo’s smuggling ring had done this to at least seventeen other Cuban baseball players, including prominent names such as José Abreu and Adeiny Hechavarría.¹²⁶ Lazo was subsequently sentenced to twenty years in prison.¹²⁷

These two cases shed light on what seems to be a rampant culture of illegal smuggling of Cuban-born baseball players. For years, the MLB was accused of turning a blind eye to the “violent criminal underworld” that supplies the League with Cuban talent, and rightly so.¹²⁸ Former agent now-consultant Joe Kehoskie described the notoriety and access to the black market for Cuban players “like going on eBay or Amazon.com. It was a buy-it-now price, and you’re buying

115. Pagliery & Garcia, *supra* note 76.

116. AP, *supra* note 114.

117. *Id.*

118. Pagliery & Garcia, *supra* note 76.

119. *Id.*

120. *Id.*

121. *Id.*

122. AP, *supra* note 114; Pagliery & Garcia, *supra* note 76.

123. AP, *supra* note 114; Pagliery & Garcia, *supra* note 76.

124. AP, *supra* note 114.

125. Pagliery & Garcia, *supra* note 76.

126. *Id.*

127. *Id.*

128. Pagliery & Garcia, *supra* note 76.

human beings.”¹²⁹ So long as these Cuban stars put fans in the seats and improved their bottom line, the League and its clubs had no incentive to end, improve, or even acknowledge *la bolsa negra*. Johnny DiPuglia, MLB’s 2019 International Scout of the Year and current Washington Nationals Assistant General Manager, put it bluntly: “My only concern is getting these guys to the majors.”¹³⁰

But what was the League to do? The travel restrictions imposed by the Cuban Embargo coupled with the Kuhn Directive made it virtually impossible for a Cuban player to be scouted or signed by an MLB team without being smuggled to a third-party country.¹³¹ Until 2013, Cubans could not leave the country lawfully unless they were approved for an “exit permit” by the government to work outside of the country.¹³² However, because the Cuban government wishes to protect their sports industries which generate revenue for the state, these exit permit restrictions remain in place for professional athletes such as baseball players and boxers.¹³³ If the state will not allow them to leave the country, the only option is to contract with criminal smuggling rings to extract them from the island. When cases such as Puig and Martín’s came to light, the League soon developed a black eye, and the need to fix this broken system was ever apparent. The MLB took a major step toward correcting its past ignorance by striking a deal with the FCB, which would have destroyed the black market for Cuban players, only to have their efforts ripped to shreds via United States government intervention.

I. THE MODERN EBB AND FLOW OF THE UNITED STATES-CUBA RELATIONSHIP, AND THE EFFECT ON MLB-FCB NEGOTIATIONS

Under President Barack Obama, multiple U.S. entities were given a license by the United States Treasury Department to engage in financial arrangements with entities owned and controlled by the Cuban government.¹³⁴ Similarly, it appeared that the deal between the MLB and the FCB, negotiated under the

129. Jeff Passan, Charles Robinson & Rand Getlin, *Leonys Martín Lawsuit Details Allegations of Cuban Baseball Player Smuggling*, YAHOO! SPORTS (Dec. 6, 2013), <https://www.yahoo.com/news/leonys-martin-lawsuit-details-allegations-of-cuban-baseball-player-smuggling-061730936.html> [https://perma.cc/E5BL-8P4Z].

130. Jose Paglier & Ahiza Garcia, *MLB accused of ignoring Cuban player smuggling*, CNNMoney Sport (Dec. 15, 2016), <https://money.cnn.com/2016/12/15/news/mlb-cuban-baseball-players-smuggled/index.html> [https://perma.cc/4G3C-6J4N]; Pagliery & Garcia, *supra* note 76.

131. Frankel, *supra* note 20, at 395–99.

132. Nick Miroff, *After 50 Years, Cuba Drops Unpopular Travel Restriction*, NPR (Jan. 11, 2013, 3:33 AM), <https://www.npr.org/2013/01/11/169070431/after-50-years-cuba-drops-unpopular-travel-restriction#:~:text=After%2050%20years%2C%20Cuba%20Drops%20Unpopular%20Travel%20Restriction%20New%20rules,to%20travel%20to%20other%20countries.> [https://perma.cc/U5TP-HRUE].

133. *Id.*

134. DeYoung, *supra* note 16.

Obama Administration and signed under the Trump Administration, would be granted the same permission.¹³⁵ When the deal was signed, it was clear that the Trump Administration would review its legality, given the administration's harsh attitude towards the Communist regime.¹³⁶ Trump Administration treasury officials accused the Obama Treasury Department of exaggerating facts and thereby its finding that the FCB was not an entity of the Cuban government.¹³⁷ Conversely, the Trump Administration considered the FCB to be an arm of Cuba's National Sports Institute, which is a designated entity of the Cuban government.¹³⁸ Cuba maintains that the FCB answers to the Cuban Olympic Committee, which reports to the International Olympic Committee, not the Cuban government.¹³⁹ Because the FCB would receive a percentage of the salaries and signing bonuses paid to Cuban players, the Trump Treasury Department ruled that these constituted payments to the Cuban government, thereby violating § 515.571(e) of the CACR.¹⁴⁰

A. *Calculating the Release Fee*

To determine how much the FCB, and essentially the Cuban government, would receive from these fee payments, it is helpful to look at past contracts signed by Cuban players.¹⁴¹ The formula for computing the fee, commonly referred to as a "posting fee" within baseball circles, is "20% of the first \$25MM, 17.5% of the next \$25MM and 15% of over \$50MM."¹⁴² Since 2000, there have been twenty-two Cuban position players and fourteen Cuban pitchers who received signing bonuses, with the largest bonuses going to Yoán Moncada (\$31.5 million), Héctor Olivera (\$28 million), and Aroldis Chapman (\$16.25 million).¹⁴³ This chart displays the most lucrative signing bonuses received by Cuban players since 2000:¹⁴⁴

135. *Id.*

136. *Id.*

137. *Id.*

138. Spetalnick, *supra* note 18.

139. *Id.*

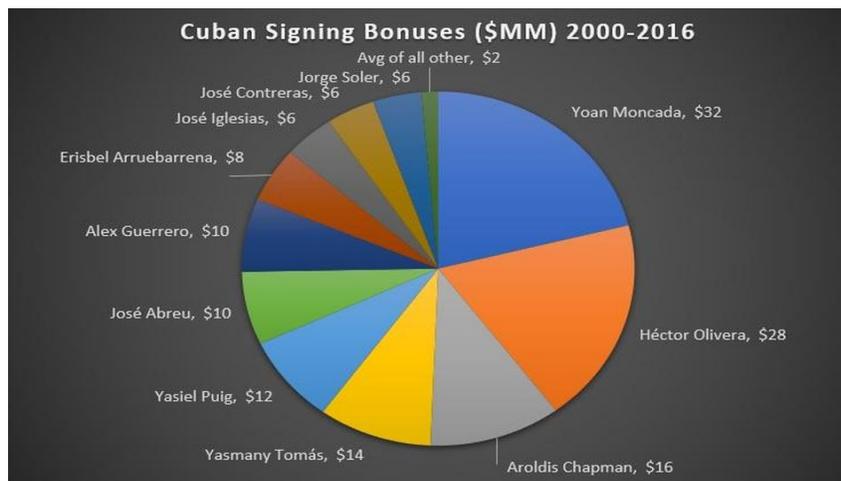
140. Browning, *supra* note 68, at 21.

141. Ari Kaplan, *Cuba Baseball Federation Agreement With MLB: Examining The Value Of Posting*, FORBES (Feb. 25, 2019, 9:30 AM), <https://www.forbes.com/sites/arikaplan/2019/02/25/cuba-baseball-federation-agreement-with-mlb-examining-the-value-of-posting/#10a86d9ef6e2> [<https://perma.cc/7CXL-VB7Y>].

142. *Id.*

143. *Id.*

144. *Id.*



In total, thirty-six Cuban players received a total of \$199MM in signing bonuses between 2000 and 2016.¹⁴⁵ This averages out to \$5.5MM per player, or \$4.1MM per player when the thirteen additional Cuban players who did not receive signing bonuses are included.¹⁴⁶ Adding the salary of the contracts to the signing bonuses, Cuban players raked in approximately \$972MM from their first MLB contracts between 2000 and 2016.¹⁴⁷ While posting fees are not the same as signing bonuses, the trend of rising signing bonuses presages a trend of rising posting fees.¹⁴⁸

The total and average signing bonuses skyrocketed between 2007 and 2014 due mostly to Moncada and Olivera's exorbitant signing bonuses, but the total of signing bonuses were also influenced by an influx of Cuban talent into the MLB such as Yasiel Puig, Yasmany Tomás and José Abreu, who also received rather large signing bonuses during that period.¹⁴⁹ If the Agreement between the MLB and the FCB had been in place beginning in 2000, MLB clubs would have paid the FCB approximately \$181 million in posting fees for Cuban players.¹⁵⁰

B. The Agreement Becomes a Casualty of Proxy Battles

The cancellation of the deal was the latest in a series of crackdowns on the Cuban government by the Trump administration.¹⁵¹ This is a stark policy change

145. *Id.*

146. Kaplan, *supra* note 142.

147. *Id.*

148. *Id.*

149. *Id.*

150. Kaplan, *supra* note 142.

151. DeYoung, *supra* note 16.

from the Obama Administration, which promoted a normalization of relations with the Communist regime.¹⁵² When asked if the scrapping of the MLB-FCB deal was an “effort to pinch Cuba,” Secretary of State Mike Pompeo replied, “Yep.”¹⁵³ Further, Trump officials suggested that this deal would subject Cuban players to human trafficking by the Cuban government.¹⁵⁴ However, Cuban players are currently trafficked by brutal criminal organizations who are paid for their services.¹⁵⁵ The protocol which would be followed under the MLB-FCB deal would protect Cuban players and their families from the dangers of associating with these organizations and would take money out of the pockets of the dangerous smugglers who facilitate their egress from the island nation.

Some Republicans who supported President Trump’s hardline attitude towards the communist nation urged the President to cancel the deal between the MLB and the FCB.¹⁵⁶ Republican Senator Marco Rubio of Florida, a Cuban-American, called the deal “both illegal and immoral” and called on the State Department to immediately put an end to the “terrible one-sided deal.”¹⁵⁷ Rubio’s fellow Cuban-American and Republican Congressman, Representative Mario Díaz-Balart, called MLB’s actions shameful and said “it would be unconscionable for an American organization to participate in human trafficking which enriches the very regime that oppresses the Cuban people.”¹⁵⁸ Those who wished to see the deal cancelled did not feel that way because of a mere hatred or disdain for the Cuban regime.¹⁵⁹ Cuba remains a staunch supporter of the Maduro regime in Venezuela, one of America’s most prominent geopolitical rivals. Thus, many United States politicians perceive any payment received by Cuba as a payment gained by Maduro.¹⁶⁰ Diaz-Balart cited the Cuban government’s support for the Maduro regime as the reason “it is crucial

152. *Id.*

153. *Id.*

154. *Id.*

155. *See supra* note 76.

156. Elliot Abrams, *Trump Should Veto MLB’s Foul Deal With Cuba*, NAT’L REV. (Dec. 27, 2018, 6:30 AM), <https://nationalreview.com/2018/12/mlb-cuba-deal-payoff-to-communist-regime/> [<https://perma.cc/DR4P-BTDB>]; Marco Rubio (@marcorubio), TWITTER (Dec. 27, 2018, 9:00 AM), <https://twitter.com/marcorubio/status/1078304735189450753?lang=en> [<https://perma.cc/WT5M-LQCU>]; Mario Diaz-Balart, (@MarioDB), TWITTER (Dec. 19, 2018, 10:47 AM), <https://twitter.com/mariodb/status/1075432511835119618?lang=en> [<https://perma.cc/W9VJ-GR7K>].

157. Rubio, *supra* note 156.

158. Diaz-Balart, *supra* note 156.

159. Andrea Torres & Hatzel Vela, *Rubio Says Travel Restrictions to Cuba are Fulfillment of Bolton’s Promise*, WPLG LOCAL10 (June 5, 2019, 4:15 PM), <https://www.local10.com/news/2019/06/05/rubio-says-travel-restrictions-to-cuba-are-fulfillment-of-boltons-promise/> [<https://perma.cc/J7XB-BSFSJ>].

160. Tom Rogan, *Counter Venezuela’s Move to Consolidate Cuba*, THE WASH. EXAMINER (Jan. 24, 2020, 9:11 AM), <https://www.washingtonexaminer.com/opinion/counter-venezuelas-move-to-consolidate-cuba> [<https://perma.cc/V33S-CHEQ>].

that [the United States] do all we can to deny U.S. dollars to that brutal dictatorship.”¹⁶¹ With the Trump Administration’s recognition of opposition leader Juan Guaidó as interim President of Venezuela, it seemed highly unlikely that the Trump Administration would be willing to make any deal with Cuba as long as the island nation maintains its support for Maduro in Venezuela.¹⁶²

C. *Political Concerns Should Be Outweighed by Humanitarian Issues*

While Cuba’s support for the Maduro regime may seem like a plausible justification for cancelling the MLB and the FCB’s Agreement, statements made by United States government officials, such as Senator Rubio, insinuating that this Agreement would “further exploit the Cuban people,” are disingenuous at best.¹⁶³ As is apparent through the stories of Yasiel Puig and Leonys Martín, Cuban players are already being exploited by ruthless criminal organizations and greedy agents.¹⁶⁴ Their families are threatened.¹⁶⁵ They are approached at gunpoint in their own neighborhoods.¹⁶⁶ This Agreement addressed the decades-long problem of smuggling Cuban players by criminal organizations such as the *Los Zetas* cartel.¹⁶⁷ Actually, the Agreement did more than just address the issue, it eliminated it all together.¹⁶⁸ Under the new deal, there would have been no need to employ *lancheros* or make contact with smugglers because the Cuban government would have allowed the Cuban player to leave without incident.¹⁶⁹ It is difficult to comprehend how the Trump Administration viewed the smuggling and subsequent captivity of a Cuban player by “terrorist organizations”¹⁷⁰ as less exploitative than the secure method put forth by the MLB-FCB Agreement. Rescinding this Agreement only serves to perpetuate the very exploitation the Trump Administration claims to denounce.

161. Torres & Vela, *supra* note 159.

162. Scott R. Anderson, *What Does It Mean for the United States to Recognize Juan Guaidó as Venezuela’s President?*, LAWFARE (Feb. 1, 2019, 2:29 PM), <https://www.lawfareblog.com/what-does-it-mean-united-states-recognize-juan-guaid%C3%B3-venezuelas-president> [<https://perma.cc/QEB7-NPX4>].

163. Rubio, *supra* note 156.

164. See Eden, *supra* note 6; AP, *supra* note 114.

165. Eden, *supra* note 6.

166. *Id.*

167. West, *supra* note 2.

168. *Id.*

169. *Id.*

170. Jonathan Landay, Ted Hesson & Arshad Mohammed, *Exclusive: After Cabinet Opposed Mexican Cartel Policy, Trump Forged Ahead*, REUTERS (Dec. 26, 2019, 10:07 AM), <https://www.reuters.com/article/us-usa-mexico-cartels-exclusive-iduskbn1yu0xq> [<https://perma.cc/G5HK-JBT6>].

CONCLUSION

What is Next? It is unlikely that this issue will be resolved soon. President Joe Biden spoke on U.S.-Cuba relations during his first few weeks in office, stating that his administration's Cuba policy will be governed by "support for democracy and human rights."¹⁷¹ Further, there seems to be growing support within the Republican Party for a path toward normalization with the communist nation.¹⁷² Thus, from an optimistic viewpoint, there is a somewhat viable chance that a deal could be reached and approved under this administration, or the next. Until then, the smuggling of Cuban baseball players, aided by violent and obviously money-hungry criminal organizations, will be the way talented Cuban ballplayers make their way into America's baseball stadiums.

VAN DE GREGORIO*

171. Wire Service Content, *Biden Administration to Review Trump Policy on Cuba: White House*, REUTERS (Jan. 28, 2021, 3:25 PM) <https://www.usnews.com/news/world/articles/2021-01-28/biden-administration-to-review-trump-policy-on-cuba-white-house> [<https://perma.cc/58TF-BP7C>].

172. Richard Lardner, *Republicans Divided as Trump Reverses Some Obama Cuba Policy*, PBS (June 17, 2017, 4:44 PM), <https://www.pbs.org/newshour/politics/republicans-divided-trump-reverses-obama-cuba-policy> [<https://perma.cc/YM8D-2YUS>]; John Bowden, *Republicans Slam Trump's New Policy Toward Cuba*, HILL (June 16, 2017, 2:59 PM), <https://thehill.com/latino/338166-trumps-rewrite-of-obama-cuba-policy-met-with-gop-resistance> [<https://perma.cc/7KNF-RRJA>].

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