

CUBAN BASEBALL PLAYERS IN AMERICA: CHANGING THE DIFFICULT ROUTE TO CHASING THE DREAM

*Evan Brewster**

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INTRODUCTION

For a long time, the game of baseball tied Cuba and America together. However as relations between the countries deteriorated, so did the link baseball provided between the two countries. As Cuba’s economic and social policies became more restrictive, the best baseball players were scared away from the island nation to the allure of professional baseball in the United States, taking some dangerous and extremely complicated routes

* Juris Doctor Candidate, 2017, University of Mississippi School of Law.

to achieve this goal. Over time, Major League Baseball (MLB), the professional baseball league in the United States, has evolved their rules around strict Cuban regulations. These rules, however, turn a blind eye to the danger involved in this process, which is essentially a black market for Cuban baseball players. Federal investigations and courts have tried to understand this market and attempted to make it safer. As America and Cuba currently attempt to create a new diplomatic relationship between the countries, MLB, along with help from both countries, should create safer and easier policies to get the best Cuban baseball players to America.

This analysis of Cuban baseball players in America begins with a look at the changes around the game on the island within the context of the deterioration of the nation's relationship with the United States. The examination will continue with an investigation into the changing policies of MLB in the context of Cuban and America law, resulting in the current black market for Cuban players. This study will look at different events that have brought this issue into the news, including the Baltimore Oriole's attempt to play the Cuban National Team in Cuba and the revelation of Yaisel Puig's route to baseball stardom in America. Before concluding, the analysis will look at the current state of this issue and how MLB and the federal government are responding. It is possible to make the route for Cuban baseball players to MLB safer, easier, and still strict, hopefully within the new diplomatic framework between the United States and Cuba, and this analysis will attempt to display that.

I. CASTRO, UNITED STATES-CUBA RELATIONS, AND THE GAME OF BASEBALL ON THE ISLAND

Following a revolt against the Cuban leadership, Fidel Castro began a socialist state in Cuba beginning in 1959.¹ This revolutionary socialist state would completely change the game of baseball not only in Cuba, but in America too. Prior to this political upheaval, baseball tied Cuba and America together. It was common for American baseball players to play in Cuba during

¹ *Timeline: US-Cuba Relations*, COUNCIL ON FOREIGN RELATIONS (2014), <http://www.cfr.org/cuba/timeline-us-cuba-relations/p32817>.

the offseason to strengthen their game and make more money as a part of the Cuban professional league.² Further, minor league baseball had teams located in Cuba, with the Havana Sugar Kings winning the AAA title in 1959.³ However, the Castro regime issued National Decree Number 936 banning participation in professional sports by Cubans, beginning in 1961.⁴ From this point forward, baseball in Cuba began to take on an amateurish model, having communities support teams representing their province, with these teams feeding to the Cuban national team.⁵ Baseball did not die in Cuba, but with this new “Cuban League” system it was not possible for Cuban players to leave to play professionally in MLB for the foreseeable future. Castro intended for the national team to fill this void left by Cuban departure from professional sports.

After the United States enacted a full economic embargo against Cuba in 1962, Lyndon B. Johnson passed the Cuban Adjustment Act in 1966, “allowing anyone who flees Cuba and reaches the United States the opportunity to pursue U.S. citizenship a year later.”⁶ As a result of this act, along with the 1986 Immigration Reform Act and the 1994 migration agreement between the United States and Cuba, the “wet foot, dry foot” policy became the norm, “[sending] Cuban nationals found in the waters between the two nations back home while those who land on dry ground can remain in the United States.”⁷

The Cuban National Team had been a juggernaut for most of the 1960s, 1970s, and 1980s, including the team, at one point, holding a streak of 156 games without defeat.⁸ This team provided the island nation with its athletic heroes, playing for a minimal salary in stadiums that deteriorated over the decades in

² Sam Anderson, *Baseball's Last Cuban Escapees*, THE NEW YORK TIMES MAGAZINE (Aug. 20, 2015) http://www.nytimes.com/2015/08/23/magazine/baseballs-last-cuban-escapees.html?_r=1.

³ John Walters, *Cuba's Been Losing Its Best Baseball Players to America*, NEWSWEEK (May 2, 2015), <http://www.newsweek.com/cubas-been-losing-its-best-baseball-players-america-327650>.

⁴ *Id.*

⁵ *Id.*

⁶ *Timeline: US-Cuba Relations*, *supra* note 1.

⁷ *Id.*

⁸ John Walters, *supra* note 1.

conditions that were less than ideal.⁹ Following the demise of the Soviet Union, “more than \$4 billion in yearly Soviet assistance to Cuba ceased, and the conditions of Cuban baseball deteriorated, Cuban players sought a better life in MLB. In 1991, a new wave of Cuban-trained players arrived, beginning with the defection of Cuban National Team pitcher Rene Arocha.”¹⁰ Players on the Cuban National Team began to take advantage of defection as means to become MLB players (this process is outlined in greater detail in Part Two). While Cuba attempted to stem this flow of their national team players defecting by preventing opportunities for those suspected to defect, this only increased the allure of MLB and their less restrictive conditions and, naturally, the increase in pay—defection became the only option for the best Cuban players.¹¹ The Cuban government could only do so much to prevent these players from leaving the national team, as defection became more and more common. Even with selections aimed at prevent defections, the Cuban government has not always been successful at preventing their national team players from leaving while overseas.¹² With this new system, these defected players have replaced the national team as stars for the island nation as it has become more commonplace and the players have become more successful.

As mentioned above, with the Arocha model to defection in place, the Cuban government became even more careful selecting

⁹ *Id.*

¹⁰ Matthew N. Greller, *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, 1667-68 (1998-99).

¹¹ *Id.* At 1665-66.

¹² See David Perlmutter, *2 Cuban Baseball Players Defect in NC Before Game at BB&T Ballpark*, THE CHARLOTTE OBSERVER (July 4, 2015), <http://www.charlotteobserver.com/news/local/article26492407.html>. “As the USA Collegiate National Team and Cuba’s national team prepared to continue a series of ‘friendly’ games Saturday night at Charlotte’s BB&T Ballpark, the Cubans were suddenly without two star players who defected while the teams played in North Carolina...at some point during that span, third baseman Luis Yander La O and outfielder Yadiel Hernandez left the Cuban team, the country’s official sports media reported. They are the latest defections to hit the Cuban team, with four Cubans going to Canada to play on contracts and three to Japan. Cuban players are allowed to ask for a release from their local clubs, but the national federation decides if they are needed for Team Cuba, the Associated Press reported.” *Id.*

members for the national team.¹³ Selections for the national team have become based on political views as opposed to athletic talent.¹⁴ “Since the Cuban government selects the players for the Cuban national team, they refrain from choosing players they deem to be a ‘flight risk.’”¹⁵

Relations between the two countries remained essentially the same until December 17, 2014, when the United States and Cuba moved towards reinstating diplomatic ties.¹⁶ “The re-establishment of diplomatic relations was accompanied by Cuba’s release of Alan Gross and the exchange of a U.S. spy jailed in Cuba for three Cubans held in Florida. The plans do not overturn the economic embargo on Cuba that was passed by Congress more than 50 years ago. In other words, the path that Cuban players must take to get to [MLB] has not changed, at least for now.”¹⁷ From MLB and the MLB Player’s Association, to managers and agents of Cuban players, seemingly everyone around baseball hopes that this re-establishment of diplomatic relations between America and Cuba can be the beginning of a new era for Cuban baseball players, one that does not require defection and treacherous journeys.¹⁸ However, “the same day as President Obama’s announcement, MLB issued a directive to its 30 franchises reminding them that it was still illegal to scout players in Cuba, or to sign them directly. Cuba and the MLB are not business partners, and there’s no indication that they soon will be.”¹⁹

¹³ 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. 153, 161 (2011).

¹⁴ *Id.*, at 162.

¹⁵ *Id.*

¹⁶ *Timeline: US-Cuba Relations*, *supra* note 1.

¹⁷ Jesse Sanchez, *Shift in U.S.-Cuban Relations May Affect MLB*, MLB.COM (Dec. 17, 2014), <http://m.mlb.com/news/article/104325146/shift-in-united-states-cuban-relations-may-affect-major-league-baseball>.

¹⁸ *Id.*

¹⁹ John Walters, *supra* note 1.

II. MLB'S EVOLUTION UNDER CUBAN AND AMERICAN LAW REGARDING CUBAN BASEBALL PLAYERS

Following the passage of Cuba's National Decree Number 936 in 1961, MLB was seemingly closed to Cuban players. However, MLB never tackled the problem for the next fifteen years; they really had no reason to. It was not until 1977, when then MLB commissioner Bowie Kuhn addressed the issue with the Kuhn Directive, specifically delineating MLB's position on players from Cuba. The Kuhn Directive "forbids MLB teams from either discussing or negotiating with anyone in Cuba regarding the signing of any baseball player in Cuba. This clear policy effectively forces Cuban players to seek residency elsewhere if they desire to play in MLB."²⁰ This directive was not tested until 1991 when Rene Arocha wanted to become the first player from the Cuban National Team to defect in hopes of becoming an MLB player since Castro had taken power.²¹

Rene Arocha had been a member of the Cuban National Team for more than ten years when he wanted to leave the increasingly poor conditions of Cuban baseball for the opportunity of prosperity in MLB.²² He decided to defect while participating in an international tournament taking place in the United States. While concerned about the ramifications for his remaining family in Cuba, MLB needed to make a decision about how to handle a Cuban national within the United States under the Kuhn Directive.²³ Once inside the United States, Arocha immediately sought political asylum, while attempting to become an American resident under the Cuban Adjustment Act.²⁴ While this satisfied the requirements for Arocha to qualify for the 1991 MLB draft, a special process was applied to Arocha's situation, having a lottery-style draft with the winner (the St. Louis Cardinals) holding the rights to Arocha through the end of the 1992 season.²⁵

²⁰ Matthew N. Greller, *supra* note 10 at 1665.

²¹ Andrea Kupfer Schneider, *Baseball Diplomacy*, 12 MARQ. SPORTS L. REV. 473, 480 (2001-02).

²² Matthew N. Greller, *supra* note 10 at 1668.

²³ *Id.*, at 1668-69.

²⁴ *Id.*, at 1669-70.

²⁵ *Id.*, at 1670-71.

Under the successful defection of Rene Arocha, the Kuhn Directive was strengthened in a sense, solidifying the policy for MLB regarding Cuban players. The Kuhn Directive, as of 1991, “bars team representatives, such as scouts, from speaking with any Cuban player while they are in Cuba. However, if a scout sees a Cuban ballplayer outside of Cuba, there are no restrictions. Thus, while team representatives may not recruit or negotiate with the ballplayers in Cuba, they may do so in another country. Because MLB teams are only allowed to sign players who are residents of a country other than Cuba, this policy coerces Cubans who want to play baseball to leave their home and establish residency elsewhere. Consequently, Cubans are treated differently than any other athlete [under what has become known as the “Arocha” Model].”²⁶

Following Arocha’s defection, MLB wanted to normalize the process for Cuban players through making them enter the Rule 4 draft (normal first-year player draft), as opposed to having a special lottery-style draft for these players.²⁷ In 1992, two of Arocha’s Cuban National Team teammates, Osmani Estrada and Alexis Cabreja, attempted to enter the United States illegally as opposed to gaining political asylum, departing from Arocha’s method of gaining American residency.²⁸ This, they believed, would allow them to sign as free agents, avoiding the MLB draft.²⁹ MLB cautioned teams against signing these players until the INS would authorize them to work, stalling their plan.³⁰ This resulted in Estrada and Cabreja changing their plans and being signed by the Texas Rangers after being selected in the 1993 draft, nearly a year after they wanted to begin playing in MLB.³¹ This is arguably the first attempt by Cuban players to circumvent the system, to avoid taking part in the draft in order to sign for more money through free agency. This meant any Cuban defector who became an American citizen would have to wait until the traditional MLB Rule 4 draft, held once a year, to be signed by a team.

²⁶ Rachel D. Solomon, *supra* note 13 at 159-60.

²⁷ Matthew N. Greller, *supra* note 10 at 1671.

²⁸ *Id.*, at 1672.

²⁹ *Id.*

³⁰ *Id.*, at 1672-73.

³¹ *Id.*, at 1673.

MLB does not treat every player in America the same. As previously mentioned, Cuban defectors in America are subject to the MLB Rule 4 draft—the traditional draft that takes place every year. To be eligible for the Rule 4 draft, a player must be a resident of the United States, Canada, Puerto Rico, or other United States territory that have never signed a major league contract.³² This means that players from other countries or territories are not subject to this draft and can sign as free agents *at any time*.³³ Knowing this rule and its exception for foreign players is important to understanding the upcoming analysis of the changing process for Cuban players attempting to make it to MLB.

During the 1990s, as more Cuban players desired to leave the strict confines of Cuban baseball, they attempted to find loopholes in the system to maximize their immediate potential and profits. This means Cuban baseball players wanted to find a way to pursue free agency instead of the typical draft process. “Free agency is the cherished goal of every athlete. It gives the athlete the ability to market their services to the highest bidder. It is the antithesis of the life of a baseball player in Cuba.”³⁴ After the defection of Arocha, and the failed attempt to become free agents by Estrada and Cabreja, applying the MLB draft rules described above and the “wet foot, dry foot” policy, a loophole became possible for Cuban players to establish residency in other countries (not the United States or Cuba) and then enter the United States as a foreign player, making them free agents with the ability to negotiate with MLB teams, avoiding the Rule 4 draft.³⁵

This loophole became a reality in July 1995 when Livan Hernandez, a member of the Cuban National Team, defected while in Monterrey, Mexico.³⁶ Joe Cubas, the agent that

³² MLB DRAFT RULES, MLB Draft Site (2015), available at <http://www.draftsite.com/mlb/rules/>.

³³ *Id.*

³⁴ Walter T. Champion and Danyahel Norris, *Why Not Row to the Bahamas Instead of Miami?: The Conundrum that Awaits Cuban Elite Baseball Players Who Seek Asylum and the Economic Nirvana of Free Agency*, 9 VA. SPORTS & ENT. L.J. 219, 229 (Spring 2010).

³⁵ *Id.* See Matthew N. Greller, *supra* note 10 at 1674.

³⁶ *Id.*, 229-30.

represented Estrada and Cabreja a few years prior, believed that he had found the new path for Cuban baseball players to MLB. After finding Livan in Monterrey, he “drove Livan to the Monterrey airport where he flew to Venezuela; after arriving safely in Venezuela, Livan left for the Dominican Republic where he applied for and received political asylum. Livan became a free agent and received a \$2.5 million signing bonus and a four year contract for \$4.495 million to play for the Florida Marlins.”³⁷

Following Livan’s defection, his brother, Orlando “El Duque” Hernandez, was removed from the Cuban National Team as an example not only to punish, but to serve as an example to prevent future defections.³⁸ Ultimately, Orlando became a resident of Costa Rica after fleeing Cuba on a raft with other baseball players, where he trained in front of MLB scouts before signing as a free agent with the New York Yankees for over \$6 million.³⁹ While the U.S. Coast Guard found Orlando’s raft on a Bahamian island and the State Department attempted to offer him entry on a humanitarian basis because of his ban from the national team, Cubas guided Orlando to become a resident of Costa Rica as he would become a free agent with the ability to negotiate with all MLB teams.⁴⁰ This decision allowed Orlando to make millions more as he avoided the MLB Rule 4 draft.

With both Hernandez’ brothers signing lucrative contracts with MLB teams, it was clear that the path to fortune was through becoming a resident of a country outside the United States to become a free agent, not defecting directly to the United States to avoid the MLB Rule 4 draft. Combining Cuban restrictions on their baseball players with American law and MLB rules, this resulted in more players leaving Cuba like Orlando Hernandez in what has become known as the “El Duque” Model. “The millions received by Livan and Orlando Hernandez as a result of signing contracts as free agents may appear to be a sufficient incentive to risk life and limb. The granting of free agency to Cuban ballplayers [created] a feeding frenzy for their

³⁷ *Id.*

³⁸ *Id.*

³⁹ Walter T. Champion and Danyahel Norris, *supra* note 34 at 230-31.

⁴⁰ *Id.*

services.”⁴¹ Under this model, defection became more dangerous and difficult than under the “Arocha” Model⁴² (which will be described in greater detail later in this analysis), especially once places like the Bahamas and Costa Rica began sending these refugees back to Cuba and denying visa applications perceived for use to jumping to the United States.⁴³

Keeping all of these regulations in mind, defection increased during the 1990s as more Cuban players were infused into MLB while circumventing their rules through becoming free agents. Knowing this, MLB attempted to tighten this loophole. In 2001, Mayque Quintero and Evel Bastida attempted to establish residency in the Dominican Republic after arriving in Tampa, directly from Cuba.⁴⁴ MLB determined that baseball determined residency different than immigration law and that Quintero and Bastida were legal residents of the United States, not the Dominican Republic, subjecting them to the Rule 4 draft.⁴⁵ Further, in April 2001, Rolando Viera defected directly to the United States from Cuba, receiving refugee status on his visa, meaning the Cuban pitcher would be subjected to the Rule 4 draft.⁴⁶

Viera, along with his attorneys, “filed a motion for a temporary restraining order and emergency injunctive relief, trying to prevent MLB from interfering with Viera’s ability to act as a free agent. His attorneys argued that Viera’s choice of either entering the draft or leaving the United States in order to establish residency elsewhere (and therefore jeopardizing his United States visa) would cause irreparable harm.”⁴⁷ Viera argued that forcing Viera into the draft would cause him irreparable harm through lost wages, tying him to a team for a longer period of time instead of allowing him to select his suitor.⁴⁸ Further, Viera argued that making him leave the country to avoid the draft could change the status of his visa, making it difficult for him to

⁴¹ *Id.*

⁴² Matthew N. Greller, *supra* note 10 at 1678-79.

⁴³ Andrea Kupfer Schneider, *supra* note 21 at 482.

⁴⁴ *Id.* at 482-83.

⁴⁵ *Id.* at 483.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Andrea Kupfer Schneider, *supra* note 12 at 483.

re-enter the United States in the future; claiming these decisions forced by MLB rules were discrimination against Cuban players based on national origin as no other players were subject to these narrowly construed rules.⁴⁹ Viera was essentially arguing that the “El Duque” Model was discriminatory towards Cuban players.

Viera’s motion for a temporary restraining order and emergency injunctive relief was ultimately struck down following a motion by MLB opposing these accusations. First, the motion struck was down because Viera should have brought the complaint with the EEOC under Title VII instead of an Eleventh Circuit Federal Court.⁵⁰ Second, the motion was struck down because the “harm” caused by forcing Viera into the draft or to first find residency in another country was not irreparable as it could be remedied at a later date and it was speculative, not actual and imminent.⁵¹

This ruling strengthened MLB’s specific rules towards Cuban players. They did not want to expand the loophole that had already been exposed by the Hernandez brothers, but they also seemingly endorsed the “El Duque” Model by encouraging Viera to first find residency in a third country to become a free agent in order to avoid the Rule 4 draft. This decision, along with the continued influx of Cuban players using the “El Duque” Model, exhibits MLB’s complacency with its policies toward Cuban players. It could be argued they are complicit with the establishment of this loophole and its continued use into the twenty-first century, as MLB’s policies have not changed despite Cuban players trying to circumnavigate around the rules.

The system for Cuban players to MLB is unlike anything else in American professional sports as a result of MLB rules, American law and court decisions, and Cuban law. Cuban players are treated as their own class in comparison to other foreign players and despite a system developing circumventing laws and rules, it has continued to grow as people in the United States and Cuba watch, as does MLB, knowing what is going on.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

III. THE DEFECTION BLACK MARKET BY SEA FOR CUBAN BASEBALL PLAYERS

As already mentioned, the “El Duque” Model has become the norm for Cuban baseball players wanting to defect to the United States (for players that are not allowed to leave the country on the national team or not patient enough to wait for an opportunity to leave the island). As already mentioned, Cuba’s selections for the national team are strictly based on political views as a result of the Arocha defection. This means that successful players perceived to have the potential to defect must follow the “El Duque” Model (or defect directly to the United States) to make it to MLB as they cannot leave the island. Because of the strict economic conditions in Cuba, the allure of free agency has made defection by sea to countries other than the United States the desired model for the best Cuban baseball players. This circuitous route of human smuggling (not unique to Cuban baseball players, normal citizens follow this route also), however, carries many dangers.

Defecting by sea from Cuba has become extremely dangerous, as many will take the most extreme and desperate measures to ensure they make it as far from the reach of Cuba as possible. “The boats that Cubans use are frequently poorly constructed, overflowing, and unsafe. Despite the fact that one of the major goals of the 1995 U.S.-Cuba migration treaty is safe travel, the leniency of U.S. immigration laws encourages Cuban refugees to take the short, yet treacherous, journey to America.”⁵²

There are numerous examples of journeys that have encountered difficulties and struggles. For example, Orlando “El Duque” Hernandez only ended up in the Bahamas before becoming a resident of Costa Rica because his boat was in terrible shape (MLB would not let teams communicate with Orlando while his status was uncertain in the Bahamas, leading his agent to recommend residency in Costa Rica).⁵³ Another example is the story of Yunel Escobar. After being denied a slot on the Cuban National Team, Escobar defected directly to America.⁵⁴ His

⁵² Rachel D. Solomon, *supra* note 13 at 162.

⁵³ *Id.* at 162-63.

⁵⁴ *Id.* at 163.

overcrowded boat was stranded at sea as a result of one of the motors breaking during a tumultuous storm.⁵⁵ Without a motor, and with numerous passengers getting seasick, the boat finally made it to Florida after two and one-half nights.⁵⁶ This meant that Escobar was subject to the traditional Rule 4 draft because he defected directly to America; however, it shows that the journey for players following the “Arocha” model can also have difficulties when not attempting to exploit the loophole in the rules.

These difficulties are representative of greater problems within the context of human smuggling from Cuba to the United States. Only separated by ninety miles, the journey from Cuba to the United States can be difficult, but for many, it is short enough to be worth a shot at leaving Castro’s regime and economy. The “wet-foot, dry-foot” policy (allowing Cubans to remain in the United States once they touch the soil and sending them back if intercepted at sea), along with the CAA (which grants political asylum and, ultimately, permanent residency for Cuban defectors who make it to the United States⁵⁷), provides the easiest opportunity for many to leave the island.

Because of the significant number of legal defections during the 1980s and early 1990s, Cuba and the United States agreed to limit the number of visas provided to Cuban immigrants to 20,000 per year beginning in 1994.⁵⁸ This has resulted in many Cubans attempting alternate methods of immigration, with many using the services of professional smugglers to cross into America illegally.⁵⁹ These smugglers not only have the boats and resources to evade law enforcement, but they also have the strategies and insight to evade law enforcement through their smuggling networks as well.⁶⁰ These journeys are dangerous, which is well known by both the United States and Cuban governments and all

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Green Card for a Cuban Native or Citizen*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/green-card/other-ways-get-green-card/green-card-cuban-native-or-citizen>. (last updated Mar. 22, 2011).

⁵⁸ Rachel D. Solomon, Note, *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. 153, 166 (2011).

⁵⁹ *Id.* at 166-167.

⁶⁰ *Id.* at 167.

parties involved; stories of small, overcrowded ships overturning, drowning all of the passengers, sometimes with the United States Coast Guard becoming involved in the search for the bodies, became common.⁶¹ This has not deterred many Cubans from attempting the voyage, however. Human smuggling has become a popular method for baseball players simply attempting to leave Cuba for the United States and for players attempting to leave Cuba for a third country before signing with an MLB team in America.

As more Cuban prospects have defected to America, more details about their journeys have become public, specifically their ties to human smuggling rings:

The most ambitious and most talented Cuban ballplayers have, in recent years, come to rely on a clandestine group of operatives—most of them Cuban émigrés based in Miami; Cancun, Mexico; and the Dominican Republic—to move them across borders and get them in front of MLB scouts. But these aren't just high-end coyotes. According to federal law enforcement officials, violent elements within the rings—some affiliated with the ultraviolent drug cartel Los Zetas—have carried out murder, armed robberies, home invasions, kidnap-for-ransom plots, and trafficked in nonathlete Cuban migrants, whom they sometimes have beaten and threatened with death if their relatives didn't immediately pay up.

Whenever a major league club signs a Cuban player, the smugglers take a 20 percent to 30 percent cut of the contract, according to documents from prior smuggling-related court cases and interviews with people involved in the underground smuggling networks. Money flows from a team to the newly signed Cuban player to his smugglers, whom the player pays in much the same way as his agent—though following the smugglers' instructions.⁶²

For many years, the United States (and MLB, to a lesser extent) was unable to punish anyone involved with these

⁶¹ *Id.*

⁶² Scott Eden, *Federal Investigations into Cuban Smuggling, Major League Baseball Slow*, ESPN (Aug. 7, 2015), http://espn.go.com/espn/otl/story/_id/13383092/holand-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed.

transports involving baseball players. In July 2007, this began to change as a Florida federal sentenced agent Gustavo “Gus” Dominguez to five years on alien smuggling charges.⁶³ A Cuban native, Dominguez was charged with twenty-one counts of alien smuggling, mainly Cuban baseball prospects.⁶⁴ “At trial, prosecutors said Dominguez wired \$225,000 to a convicted drug-trafficker, Ysbel Medina, through the bank account of a client, Chicago Cubs catcher Henry Blanco...The trafficker used part of the money for the smuggling ventures.”⁶⁵ Dominguez became the first sports agent to be convicted of alien smuggling. “According to the evidence presented at trial, Dominguez organized two smuggling trips by hiring individuals to pick-up baseball players in Cuba using go-fast boats. The government established that Dominguez paid for the smuggling of five Cuban baseball players into the United States for the purpose of profiting by subsequently representing them as their sports agent.”⁶⁶

Not only does Dominguez’s story serve as an example of the types of people involved in these smuggling rings, it also foreshadows the potential legal problems when human smuggling is involved in a Cuban player’s journey to America. As human smuggling increased and the stories became more extreme, the issue became increasingly tied with Cuban baseball players and their journeys to MLB, and it has only become a bigger issue since the prosecution of Dominguez - the first of its kind - in 2007.

IV. THE STORY OF YASIEL PUIG

The best, and most current, example tying the issue of human smuggling with the defection of a Cuban baseball player to MLB is that of Yasiel Puig. His story is typical of that of a Cuban player who arrives in America through a human smuggling ring. Puig became a household name for not only his play, but also his brash personality and style, as a member of the Los Angeles

⁶³ Jay Weaver & Cammy Clark, *Agent Gets 5-Year Sentence in Smuggling Case*, MIAMI HERALD (July 10, 2007), <http://djournal.com/sports/agent-gets-5-year-sentence-in-smuggling-case/>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Baseball Sports Agent Found Guilty of Alien Smuggling*, KOLKEN & KOLKEN IMMIGRATION LAWYERS (Apr. 17, 2007), <http://www.kolkenandkolken.com/?src=news&rfno=471&PHPSESSID=9b3360797eebcdd1313934632ed614cb>.

Dodgers during the 2013 season. In 2014, his journey from Cuba to the Dodgers was outlined in great detail by ESPN the Magazine.⁶⁷ This story not only serves as an example of the dangers involved in this increasing black market for Cuban baseball players, but it also serves as an example for the legal aftermath for those involved, especially when this type of story becomes public.

After months of planning and numerous failed attempts to leave the island, due to either the U.S. Coast Guard or Cuban authorities intercepting him, Puig attempted another escape in June 2012.⁶⁸ He left his home in Cienfuegos, attempting to avoid Cuban authorities, and after days of treacherous journeying and hiding, he ultimately arrived on a barrier island in the Bay of Pigs, where Puig - along with a boxer, a model, and a priest - “was met at the water’s edge by a cigarette boat, long and narrow and fast, which instead of racing straight to Miami took them west and then south, following a 350-mile arc to the Yucatán Peninsula.”⁶⁹ This would allow Puig to become a free agent in Mexico. “The five men piloting Puig’s vessel, mostly Cuban Americans, belonged to a smuggling ring whose interests ranged from human cargo to bootleg yachts to bricks of cocaine. At least two were fugitives—one, on the run from a federal indictment in Miami, was alleged to have extorted Cubans traveling this very route. They were all in the pocket of Los Zetas, the murderous Mexican drug cartel, which charged the smugglers a ‘rite of passage’ to use Isla Mujeres as a base.”⁷⁰

Similar to other Cuban prospects, Puig’s journey was funded by Raul Pacheco, president of an air-conditioning company and a recycling company in Miami. Pacheco was friends with Yunion Despaigne, who was not only friends with Puig, but also the boxer

⁶⁷ See Scott Eden, *No One Walks Off the Island*, ESPN THE MAGAZINE (Apr. 17, 2014), http://espn.go.com/espn/feature/story/_/id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba. See also Jesse Katz, *Escape from Cuba: Yasiel Puig’s Untold Journey to the Dodgers*, L.A. MAGAZINE (Apr. 14, 2014), <http://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers>.

⁶⁸ See Katz.

⁶⁹ *Id.*

⁷⁰ *Id.*

venturing with him to the United States.⁷¹ “Pacheco had allegedly agreed to pay the smugglers \$250,000 to get Puig out of Cuba; Puig, after signing a contract, would owe 20 percent of his future earnings to Pacheco. They were not the first to employ this scheme, a version of which has catapulted many of baseball’s new Cuban millionaires to American shores.”⁷² By the time Puig was in Mexico, Pacheco had only paid the smugglers \$70,000 of the required \$250,000.⁷³ Pacheco continued to balk at paying the smugglers, and the smugglers increased their price as they began to hold Puig and Despaigne captive in a Mexican hotel, threatening to harm Puig and end his career if the money was not delivered.⁷⁴

In order to sign a free agent contract, Puig would need to become a Mexican citizen. MLB teams could not negotiate with him while he was still a Cuban citizen, captive in a Cancun hotel. Pacheco, however, failed to pay the smugglers, and the cost to gain Puig entry into the United States was reaching around \$400,000.⁷⁵ Fearing they would never receive their money, the smugglers began to contact American sports agents, including “Gus” Dominguez (who was now out of prison), trying to auction Puig off by offering part of his contract.⁷⁶ Growing frustrated with his negotiations with the smugglers, Pacheco, “with the help of several other Miami financiers, hired a team of fixers to descend on Isla Mujeres. In a scene that could have been cribbed from a thousand screenplays, they stormed the motel and, according to court papers, ‘staged a kidnapping [targeting Puig and Despaigne].’ Within days Puig was auditioning [for MLB teams] in Mexico City.”⁷⁷

The Los Angeles Dodgers quickly seized on the opportunity, realizing Puig’s potential. Within days of arriving in Mexico City,

⁷¹ *Id.*

⁷² *Id.*

⁷³ Scott Eden, *No One Walks Off the Island*, ESPN The Magazine (Apr. 17, 2014), http://espn.go.com/espn/feature/story/_id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba.

⁷⁴ Jesse Katz, *Escape from Cuba: Yasiel Puig’s Untold Journey to the Dodgers*, L.A. Magazine (Apr. 14, 2014), <http://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

the Dodgers signed Puig to a seven-year deal worth \$42 million in early July 2012.⁷⁸ Soon, Puig was playing for the Dodgers rookie team as he adjusted to life in America—a stark contrast to Cuba, where he was only being paid \$17 a month to play for the local team.⁷⁹ Puig quickly made his way to the Dodgers, where he made an immediate impact in the summer of 2013. He continued to play as he was taught in Cuba, angering many of the traditional American baseball fans and players. Puig’s rookie season put an instantaneous spotlight on him as he became another Cuban baseball player to succeed in MLB. This, however, would not be the end of his defection story.

After settling in Miami and opening his own business, the smugglers found Despaigne and threatened to kill him if Puig did not pay. The smugglers also threatened to burn down the homes of Despaigne’s and Puig’s families if they did not receive their money.⁸⁰ Despaigne demanded Puig to pay, yet Puig, according to Despaigne, claims to have paid his financiers and the numerous parties involved in his escape from the Cancun hotel, including Pacheco and a man named Gilberto Suarez. Despaigne claims he was with Puig when he asked Suarez to handle the threats being made by the smugglers.

Suarez told Puig not to worry: He would have Leo, the captain of the smugglers, “neutralized.”

A month later, according to the affidavit, Suarez called Despaigne, offering proof that he “took care of problems.” Asked what that meant, Suarez told Despaigne to search the Internet for Leo’s name. And there it was, on a Mexican news site, albeit spelled phonetically: *Cuban Yandris León Placía, mafioso wanted for trafficking illegals in Cancún, executed.*

On October 3, 2012, in an upscale district of Cancún, Leo’s body had been found on the side of the road, riddled with 13 bullets. Five of the wounds were to his back, which led the Yucatán newspaper *Quequi* to speculate that his

⁷⁸ *Id.*

⁷⁹ Jesse Katz, *Escape from Cuba: Yasiel Puig’s Untold Journey to the Dodgers*, L.A. Magazine (Apr. 14, 2014), <http://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers>.

⁸⁰ *Id.*

killers had “deered” him—underworld slang for allowing a victim to run so that he can be hunted down.⁸¹

Whether or not it was a coincidence of timing, one of Leo’s smugglers - a man known as Tomasito - was arrested for the murder, yet he was only charged for smuggling crimes as he asserted that Leo was killed in a drug deal.⁸²

Once Puig made it to MLB in 2013, he became a visible figure who was difficult to hide. Miguel Angel Corbacho Daudinot, a Cuban resident, sued Puig in a Florida federal court “under the Torture Victim Protection Act of 1991. The act permits civil cases to be filed in the United States against individuals who commit torture while acting in an official capacity for a foreign nation.”⁸³ Daudinot asserted that Puig, along with his mother, were informants for the Cuban government, falsely testifying against him. Puig and his mother had testified against Daudinot when he was convicted of human trafficking in 2010 for attempting to plan Puig’s route out of Cuba. Daudinot further asserted that “Puig and his mother made false allegations against him to demonstrate Puig’s allegiance to the Cuban government because Puig wanted to be reinstated into the country’s top baseball league and national team program. According to the suit, Puig had been demoted to the Cuban league team’s developmental squad because the government suspected him of wanting to flee the island.”⁸⁴ Daudinot brought his claim under the Torture Victim Protection Act because he claims he is in poor mental and physical condition as a result of inhumane imprisonment in Cuba.⁸⁵

Important to completely understanding the story of Puig is that of his fellow journeyman, Yunior Despaigne, whose business went under by the summer of 2013 and who ultimately went broke—a far cry from what Puig had accomplished in such a short time. While things were going south for Despaigne, he began to give information about Puig to Daudinot’s lawyers, agreeing to

⁸¹ *Id.*

⁸² *Id.*

⁸³ Dylan Hernandez, *Dodgers’ Yasiel Puig sued for \$12 million by man imprisoned in Cuba*, L.A. TIMES (July 19, 2013), <http://articles.latimes.com/2013/jul/19/sports/la-sp-0720-dodgers-notes-20130720>.

⁸⁴ *Id.*

⁸⁵ *Id.*

serve as a witness in the lawsuit against Puig.⁸⁶ Some of the information in constructing this story comes from Despaigne's affidavit in the lawsuit as he described how the two made it to America. As Puig began to realize what Despaigne had done, the two were no longer friends. Ultimately, Despaigne's brother, Eduardo Soriano, was jailed in Cuba for human trafficking. The indictment against Soriano "read, in part, '...the individuals not present, Yasiel Puig Valdes and Raul Pacheco Hernandez, who are living abroad ... conceived of a plot to extract from Cuba ... Cuban ballplayers, taking advantage of the relationships that Puig Valdes, when he was a player in Cuba, had established and maintained with some of his teammates, whom he would convince to leave the country...' The Cuban government, in other words, has accused Yasiel Puig of human trafficking."⁸⁷ While it is entirely possible that the Cuban government targeted Puig because of his high-profile defection, it is also plausible that Puig, getting back at Despaigne, laid a trap for Soriano, leading to his arrest by the Cuban government.⁸⁸

This was not the end of this story, however, for some of the parties involved, including Gilberto Suarez. Suarez was charged in fall 2014 with assisting in smuggling Puig to the United States.⁸⁹ "Suarez denie[d] any ties to smuggling or crime rings, but in an interview he said he alone negotiated Puig's contract with White and Brito [two Dodgers scouts extremely familiar with these types of players; often seen in the Dominican Republic], describing in great detail a marathon back-and-forth session that took place at a Mexico City hotel as he tried to extract as much money as he could from the Dodgers on Puig's behalf."⁹⁰ Suarez initially pleaded not guilty to these smuggling conspiracy

⁸⁶ Jesse Katz, *Escape from Cuba: Yasiel Puig's Untold Journey to the Dodgers*, L.A. Magazine (Apr. 14, 2014), <http://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers>.

⁸⁷ Scott Eden, *No One Walks Off the Island*, ESPN The Magazine (Apr. 17, 2014), http://espn.go.com/espn/feature/story/_/id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba.

⁸⁸ *Id.*

⁸⁹ Scott Eden, *Federal Investigations into Cuban Smuggling, Major League Baseball Slow*, ESPN (Aug. 7, 2015), http://espn.go.com/espn/otl/story/_/id/13383092/homeland-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed.

⁹⁰ *Id.*

charges.⁹¹ While many of the details have already been outlined in this story, it was initially alleged that Suarez and his conspirators received twenty percent of Puig's initial contract for assisting his escape from Cancun.⁹² The case ultimately turned, however, on Suarez's involvement in actually getting Puig into the United States because, otherwise, there would not have been a violation of American law.

Suarez was charged with illegally financing the smuggling of Puig and ultimately cooperated with authorities, which led to a lessened sentence of thirty days in prison and five months of house arrest.⁹³ "Suarez admitted that he paid \$1,500 for a driver to take the men to the U.S. border because the smugglers and a bounty hunter were after them Court documents show that Suarez got \$2.5 million from Puig's seven-year, \$42 million contract with the Dodgers. He agreed to forfeit a house, a condominium and a Mercedes-Benz as part of his plea deal."⁹⁴ United States District Judge Robert Scola "said he was showing Suarez some leniency because Puig and others in the smuggling trip were threatened by the Zetas and possibly by corrupt Mexican police."⁹⁵ This constituted a criminal action by Suarez. He "initially sought only to assist Puig in signing a Major League Baseball contract. . . . Where Suarez went wrong, . . . was deciding to take Puig to the U.S. border without immigration papers."⁹⁶ To this point, Suarez is the only person being punished by the American government over the Puig defection.⁹⁷

While Puig's story might seem dramatic and difficult to believe, it "involved many of the classic smuggling elements, including contact between MLB personnel and at least one

⁹¹ Scott Eden, *Feds Interviewing Cubans in U.S.*, ESPN (Sept. 16, 2014), http://espn.go.com/mlb/story/_id/11539728/feds-interviewing-cuban-players-us-part-investigation-smuggling.

⁹² *Id.*

⁹³ Roger Lohse, *Gilberto Suarez Sentenced for Smuggling Yasiel Puig out of Cuba*, LOCAL 10 ABC (Mar. 6, 2015), <http://www.local10.com/news/gilberto-suarez-sentenced-for-smuggling-yasiel-puig-out-of-cuba>.

⁹⁴ *Id.*

⁹⁵ *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.

⁹⁶ *Id.*

⁹⁷ *Id.*

handler who was later indicted on smuggling charges. The Puig saga also provides an example of MLB money flowing from a team to a player to people with alleged ties to a violent smuggling operation.”⁹⁸ It was extremely difficult for Puig to leave Cuba; it took numerous attempts. Further, the journey to get to Mexico City was dangerous and involved criminals. The aftermath was not clean either, with threats from smugglers, destroyed relationships, and legal trouble for numerous parties (attempting to protect themselves). As Puig’s story illustrates, the cost is high for a Cuban baseball prospect to make it to MLB, and their decisions have ramifications extending far beyond just their families and inner circles.

V. THE AMERICAN GOVERNMENT’S AND MAJOR LEAGUE BASEBALL’S CONTEMPORARY RESPONSE TO CUBAN DEFECTION

As Cuban defection has increased, and more stories about the process have become public, the American government and MLB have responded to what is perceived to be a problem. The first example of action was the conviction of “Gus” Dominguez in 2007, as already outlined in this analysis. Dominguez became the first sports agent ever convicted for smuggling Cuban baseball players into America. This has continued, as evidenced by the conviction of Gilberto Suarez for illegally assisting in Puig’s journey to the United States, as outlined in the previous section. The increased prosecution and punishment for smuggling Cuban defectors related to MLB indicates that the United States government wants this process to end.

Beginning as early as 2011, and increasing during the summer of 2014, the Department of Homeland Security and FBI began dual investigations to probe Cuban MLB players, targeting smugglers, financiers, and handlers of Cuban defectors in an attempt to stymie smuggling rings.⁹⁹ As part of this investigation, federal authorities personally interviewed Cuban players, specifically targeting Yasiel Puig, about how they got to the country. Essentially, this investigation is turning these players

⁹⁸ Scott Eden, *Federal Investigations into Cuban Smuggling, Major League Baseball Slow*, ESPN (Aug. 7, 2015), http://espn.go.com/espn/otl/story/_id/13383092/homeland-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed.

⁹⁹ *Id.*

into informants for the United States government.¹⁰⁰ The investigation turned to MLB and whether the league office and team officials ignored the illegal activities involved in getting the athletes to America or financed their journeys to America. By the fall of 2015, the Justice Department informed MLB that they did not have evidence to continue pursuing the portion of the investigation targeting them, yet the investigation continues as the Justice Department aims to prevent the violence associated with the smuggling rings and to find any potential connections to teams in the process.¹⁰¹

While some of these investigations have been successful, they have also become increasingly difficult as the smuggling process has become more sophisticated. “[T]he smugglers take care to cover their tracks. And they appear to have familiarized themselves with the ins and outs of U.S. immigration law to such a degree that they have found what amount to loopholes.”¹⁰² Essentially, these smugglers have found their way around American immigration law to avoid prosecution by the federal government. One successful prosecution was that of Eliezer Lazo in August 2014 on extortion charges related to smuggling Cubans to the United States. “Lazo led an organization that smuggled Cubans by boat into Mexico, where they were held until ransom payments were made. The cost was typically about \$10,000 for each person, although it could be much higher in the case of Cuban baseball stars”¹⁰³ Lazo was tied to a baseball academy that showcased talent to MLB scouts in Mexico. This academy sued Texas Rangers outfielder Leonys Martin. “Details of Martin’s journey through Mexico to the big leagues came to light in a lawsuit filed against him by the Estrellas baseball academy,

¹⁰⁰ Scott Eden, *Feds Interviewing Cubans in U.S.*, ESPN (Sept. 16, 2014), http://espn.go.com/mlb/story/_/id/11539728/feds-interviewing-cuban-players-us-part-investigation-smuggling.

¹⁰¹ Scott Eden, *Federal Investigations into Cuban Smuggling, Major League Baseball Slow*, ESPN (Aug. 7, 2015), http://espn.go.com/espn/otl/story/_/id/13383092/homeland-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed.

¹⁰² Scott Eden, *Feds Interviewing Cubans in U.S.*, ESPN (Sept. 16, 2014), http://espn.go.com/mlb/story/_/id/11539728/feds-interviewing-cuban-players-us-part-investigation-smuggling.

¹⁰³ *Cuban Player Smuggler Pleads Guilty*, ESPN (Aug. 22, 2014), http://espn.go.com/mlb/story/_/id/11394359/eliezer-lazo-enters-guilty-plea-leading-human-trafficking-ring.

which claimed that he had agreed to pay up to 35 percent of his MLB contract to its operators, including Lazo. Martin paid about \$1.2 million to the group but refused to fork over any more.”¹⁰⁴ This lawsuit began a chain reaction, which ultimately resulted in Lazo’s prosecution. To avoid these consequences, many smugglers avoid resorting to the American legal system to recoup their unpaid debts.

MLB continued to publicly reiterate its stance on the issue, despite internal evidence suggesting ignorance of concern.

In prior public comments on the issue, officials from Major League Baseball and its franchises have argued that they are passive recipients of Cuban talent, innocent bystanders disconnected from the sophisticated human smuggling operations that bring the players to MLB’s doorstep. . . . Still, as early as 2009, internal MLB communication described an ‘organized mafia’ that had developed around the black-market business of extracting and trading Cuban baseball players. But MLB officials did not aggressively try to learn more, stood down on lines of inquiry regarding residency-status fraud, and didn’t consistently share information with federal authorities.¹⁰⁵

Has MLB done anything to remedy the perceived problem? Team officials from teams have reportedly stated they don’t care how a player makes it out of Cuba, as long as their team is not involved with getting him there. Yet MLB asserts they have investigated criminal allegations related to Cuban players entering the country and reported to law enforcement officials when they believe one of their players is in danger because of continued threats.¹⁰⁶ During the federal investigation into MLB, however, it was found that the league’s department of

¹⁰⁴ *Id.*

¹⁰⁵ Scott Eden, *Federal Investigations into Cuban Smuggling, Major League Baseball Slow*, ESPN (Aug. 7, 2015), http://espn.go.com/espn/otl/story/_/id/13383092/holand-security-fbi-agents-look-major-league-baseball-cuban-player-smuggling-slowed.

¹⁰⁶ *Id.*

investigation (DOI) discovered fraud and dangers involved with the process as it looked more closely into Cuban defection.

The DOI's investigators reported what they had found to MLB executives, concerned that MLB's own policies—which allow Cuban defectors to become free agents, but only if they first gain residency in a country other than the U.S.—were enabling corruption, according to sources familiar with the federal investigation. However, those sources said, MLB executives believed that the validity of a person's permanent-residency status in such cases had already been cleared by federal government agencies; as a result, investigators stood down on looking into the matter further.¹⁰⁷

While the federal government wants to address the issue of human smuggling tied to Cuban defection to MLB, the league itself does not seem to want to tackle the issue. It appears that, while addressing the issue publicly, they have not done anything to change the process that has become extremely dangerous, enabling unsavory people to commit atrocities as Cuban players enter their league. While MLB claims they assisted the federal government in their investigation, they certainly could do more to exhibit concern for the well-being of those that want to enter their league.

VI. HOW TO CHANGE THE POLICIES SURROUNDING CUBAN DEFECTION TO MAJOR LEAGUE BASEBALL

Faced with the dangers currently surrounding the journey for Cuban players to MLB, there is an increased call for changes to policies by the Cuban and American governments, in addition to MLB, to make the process safer. Many changes were proposed before the restoration of diplomacy between America and Cuba, and now such proposals are even more applicable because there is no reason for the players (and those close to them) to be subjected to the threats and harm associated with the defection black market.

¹⁰⁷ *Id.*

In 1995, Representative Jose Serrano introduced what became known as the Baseball Diplomacy Act. This proposed bill would have created an exception to the American embargo on Cuba, creating a special work visa allowing Cuban baseball players to enter the country. This visa would have only allowed baseball players to remain in the country during baseball season, but would have allowed them to bring their earnings back to Cuba.¹⁰⁸ While an interesting idea, the Baseball Diplomacy Act has never been passed. Hopefully, the restoration of diplomatic ties between America and Cuba will eventually allow the embargo to be lifted and not make this type of legislation necessary.

Different theories exist as to how MLB could change its rules to allow for a different process in getting Cuban baseball players to America. One idea proposes a worldwide draft process. Not only would this allow for more competitive balance in the league, it also would prevent the third-country free agency problem for Cuban players by treating them the same way other foreign players are treated.¹⁰⁹ This would also prevent potential relationships between teams, agents, and smugglers as all players would be treated the same and be subject to the same requirements. It would be difficult, however, to implement this sort of draft without changing the requirement of Cuban players to defect. There must be a change in American or Cuban policy or else Cuban players would still need to defect to play in MLB. If, however, MLB were to treat Cubans no differently than it treats other international players - whether having a worldwide draft, including all international players in the Rule 4 draft, or even allowing Cuban players to be free agents (like other international players) once in America - it could decrease the dangers involved in defecting by sea to a third country.

The ultimate goal should be to treat Cuban players with normalcy, not with exceptions to rules:

The United States' recent decision to normalize relations with Cuba should, among all its other geopolitical effects, signal the end of this strange cloak-and-dagger era in baseball

¹⁰⁸ Rachel D. Soloman, *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. 153, 178-179 (2011).

¹⁰⁹ *Id.* at 180.

migration. The next generation of prospects will be greeted not as fugitives but as normal international rookies. This introduction of safety and legality — admirable, necessary, humane — will also nevertheless signal the end of a long tradition of Cuban mystery and romance: the whispered legends that would build around a prospect long before he actually appeared in the flesh, the excitement of his sudden arrival, and then — if we were lucky — the display of exorbitant talent that seemed to push the limits of the sport. . . . In the newly regulated future, Cuban players may become, for better and worse, a little more ordinary. They may also become a little less wealthy: Initial salaries, instead of being driven up and up by bids in the open market, will start on Major League Baseball's much lower rookie scale. \$42 million could turn into just above \$500,000.¹¹⁰

While this would decrease the money flow to Cuban prospects, it would hopefully make it significantly less difficult for these players to make it to MLB.

While a discussion of changing American policy is important, it is also important to look at Cuban policies and any potential changes. First, the Cuban government receives nothing in return for the players that leave the island for MLB because the players leave for America. Within the last two years, however, Cuba has loaned players to the Nippon League of Japan, kicking back part of their salaries to the Cuban government and baseball program, as both desperately need the money.¹¹¹ Allowing a similar policy for players in MLB could serve the Cuban government well as MLB pays their players significantly more than any other league in the world. Such policies would require a change in the embargo, but this would be a strategy that could benefit Cuba and Cuban baseball players, as this would not require the players to defect.¹¹²

¹¹⁰ Sam Anderson, *Baseball's Last Cuban Escapees*, N.Y. TIMES MAGAZINE (Aug. 20, 2015), http://www.nytimes.com/2015/08/23/magazine/baseballs-last-cuban-escapees.html?_r=1.

¹¹¹ John Walters, *Cuba's Been Losing Its Best Baseball Players to America*, NEWSWEEK (May 2, 2015), <http://www.newsweek.com/cubas-been-losing-its-best-baseball-players-america-327650>.

¹¹² *Id.* It is important to note that if Cuba were to adopt this type of policy or any policy favoring baseball players moving to America for MLB, as long as the current economic infrastructure on the island remains, the government would want to prevent MLB infiltration in Cuba.

There are different ways for the policies surrounding Cuban defection to America to change. While MLB could change its rules, it would be better served by changes in American and Cuban policy. Similarly, while American and Cuban policy could create an easier path to defection for baseball players, it would be better served by changes in MLB rules. Ultimately, the hope is that the restoration of diplomatic relations between the United States and Cuba will begin change.

CONCLUSION

As discussed in this note, there is hope that restoration in diplomatic relations between the United States and Cuba will end the period of highly dangerous, high-stakes journeys for Cuban players from the island to a third country to be signed as a free agent to an MLB team. Nothing has changed, however, neither in MLB rules nor in Cuban and American policy. The previous section outlines potential strategies for change in greater detail, but until changes are made either within the MLB or government policy, smuggling Cuban prospects to America will continue, involving illegal activities in third countries, criminals, hostage situations, and threats of personal harm to the prospects themselves or people close to them. It is clear through the federal government's recent actions that this is becoming an important issue in the eyes of U.S. officials, yet the smugglers continue to find ways around American law. MLB, however, is acting much more slowly, seemingly ignoring the potential harm to players that will bring their league money and publicity.

Baseball used to serve as a link between America and Cuba, and it could again serve as a link as the countries restore diplomatic relations. If both countries were to embrace baseball (and the financial benefits that accompany it), the sport could play an important role in strengthening diplomatic relations between the countries seeking renewed engagement. Baseball has become a global game, but its extreme popularity in Cuba and continued popularity in America should serve as a bond that should be embraced, not ignored. The best Cuban athletes could maximize their talent by making MLB better through their participation with more possible opportunities than they had in the previous half-century. There are many possibilities for creating this

relationship, but its potential to benefit both countries should motivate the American and Cuban governments, and the MLB, to create policies more favorable to Cuban baseball players.