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Recommended Citation
Available at: https://www.repository.law.indiana.edu/ijgls/vol25/iss2/12
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Alyson St. Pierre*

Abstract

As organizations and corporations construct an international reach, they become influential actors in foreign relations between sovereign countries. Particularly, while Major League Baseball continues to recruit players and build a large fan base across the globe, it increases its ability to facilitate civil relations between the United States and other nations. An exploration of how professional baseball provides a useful platform to improve diplomatic relations between the United States and Cuba best exemplifies how the League can promote change. Although the United States and Cuba have had a rather tumultuous relationship in recent history, a coordinated effort to improve the treatment of Cuban baseball players through changes in League rules and federal laws has the ability to spark a unified commitment to improved diplomacy. The proposed changes to improve relations with Cuba, can also be used by Major League Baseball and the United States to increase diplomatic success with other nations who have a vested interest in the success and fair treatment of their native baseball players.

Introduction

Since its invention in the 1840s, baseball has been a popular sport throughout the United States. Today, Major League Baseball (MLB) draws millions of fans from around the world who religiously watch thirty big league teams compete for the October pennant on an annual basis.1 Beyond those top-level teams, there is a sprawling network of

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1. See Team-by-Team Information, MLB.COM, http://mlb.mlb.com/team/index.jsp (last visited Mar. 9, 2018); see also 2017 MLB Attendance and Team Age, BASEBALL
affiliated minor league and privately-owned teams that strive to develop players who will eventually make it onto the MLB stage. Even at the minor league level, professional baseball in America serves as a beacon of hope for many talented players from developing or struggling nations in Latin America and the Caribbean. Large contracts, incomparable in size to the average wages in their home countries, and American freedoms draw foreign players to MLB. The road to MLB is difficult for any baseball player seeking to play professionally, but for some foreign players the journey can be costly and perilous.

Foreign baseball players who desire to come to the United States face a myriad of immigration laws and MLB guidelines, which impact individual players differently depending on their home country. Those laws and guidelines influence how foreign players choose to enter the country. MLB requires that residents of the United States, Canada, or Puerto Rico must enter the amateur draft before they can contract with a professional team. Players who reside outside of the United States, Canada, or Puerto Rico are free to contract with any team without


3. See Aaron Klein & Jake Marcus, Note, United States-Cuba Normalized Relations and the MLB Influence: The Baseball Coalition Committee, 47 U. MIAMI INTER-AM. L. REV. 258, 270 (2016) (“The average Cuban baseball player makes forty-dollars per month . . . . The average MLB salary in 2013 was almost $3.4 million, which equates to approximately $283,000 per month.”).

4. See id. (“The disparity in potential salary, coupled with the poor conditions in Cuba, creates a large incentive to escape, even at the expense of being branded disloyal to Cuba and being put through dangerous and traumatic experiences.”).

5. See Matthew J. Frankel, Note, Major League Problems: Baseball’s Broken System of Cuban Defection, 25 B.C. THIRD WORLD L.J. 383, 383–84 (2005) (discussing Rene Arocha, the first Cuban baseball player to defect in order to play in the United States, cast off the only team he had ever known and left his family behind to seek a career in the MLB; see also Klein & Marcus, supra note 3, at 262 (discussing Cuban player Yasiel Puig scaled some of the most isolated coasts in the world and evaded Cuban police in order to reach his smugglers on his fifth attempt to defect. “[T]ales of failed attempts to flee, run-ins with Cuban police, kidnappings, bribes, forgeries, and money laundering are common amongst those who have left Cuba to pursue professional baseball careers.”).


8. See id. at 158–59 (discussing Rule 3(a)(1)(A) of the Major League Baseball Rules and its application to legal residents of the United States, Canada, and Puerto Rico and its requirement that those players participate in the Rule 4 amateur draft).
participating in the draft. Once a professional team is interested in a foreign player, the player must obtain one of two appropriate visas to play and be employed in the United States. That system, though informal, seems fairly straightforward and for most foreign players, it is. Unfortunately, for players who reside in nations, like Cuba, with very restrictive immigration policies, that system pushes them to make difficult choices.

In addition to the impact immigration and MLB policies have on individual lives and choices, those policies have also played a role in the diplomatic relationship between various Latin American or Caribbean countries and the United States. This impact is clearest when considering the rocky relationship between Cuba and the United States. Within that relationship, baseball has proven to be a common interest and thus, grounds for cooperation; however, the current system also places a strain on the relationship due to the emigration of Cuban players to the United States. This paper sets out to demonstrate that the current system, made up of the embargo, MLB guidelines, and immigration laws, can be reformed to make baseball an effective vehicle of positive change in United States-Cuban relations. Additionally, the proposed reform, although in part inapplicable to nations without embargoes, can be used to optimize relationships with other Latin American and Caribbean nations and further increase opportunities for foreign players.

This paper will begin with a discussion of the transfer of baseball players between the United States and Cuba prior to 1959 and baseball’s role in the development of United States-Cuban relations during the subsequent decades. Then, this paper will illuminate the current system for immigration into the United States, both for Cuban

9. See id. (discussing how any individual residing outside of these countries or territories may contract with any MLB team as a free agent so long as they will reach the age of seventeen by the end of their signing season).

10. See Greller, supra note 6, at 1655–56 ("[T]he Immigration Act provides specific visa categories, known as the 'O' and 'P' categories, for the arrival of athletes who do not intend to permanently reside in the United States.").


12. See Frankel, supra note 5, at 383–84.


15. See Ottenson, supra note 11, at 771 ("MLB teams aggressively recruit Latin American and Caribbean players, hoping to find the superstars of tomorrow. Unfortunately, this process provides little reward for the players' countries or themselves, short of the lucrative contracts that less than one percent of these players can hope to secure in the United States.").
and other foreign players. The third section will contemplate the flaws in the current system and how those flaws impact other nations. The fourth will address available reforms to rectify those flaws. And, finally, the fifth will propose a repayment and tax system that will alleviate the loss of revenue foreign nations suffer from the loss of talent while opening the door to the individual players seeking a different life.

PRIOR TO 1959

Baseball began in New York City in the 1840s and quickly gained popularity throughout the country. As the game spread, it became synonymous with American values and began leaving its mark on American culture. The impact of baseball was not lost on Cuban students and sailors located in the United States. When the sailors and students returned to their home country, they brought America’s pastime with them. Baseball was introduced to Cuba during an incredibly tumultuous and significant time. When the sport first came to the island, Cuba was under Spanish rule. And as baseball gained popularity, the Cuban people were fighting for their independence. As a result, baseball became a distinct symbol of change and national identity for the newly autonomous Cuba.

Starting in 1878, professional leagues from Cuba began operating and competing with their American counterparts. This competition established a bridge between the two countries based on their common

16. See Klein & Marcus, supra note 3, at 265.
17. See Solomon, supra note 7, at 156 ("Similar to its American counterpart, ‘Cuban baseball has always been tightly intertwined with history, politics, and social change."); see also John Rebstock, How Baseball Echoes U.S. Immigration Patterns and Social History, J-1 JOURNEYS (Oct. 10, 2014), http://j1journeys.org/how-baseball-echoes-american-immigration-patterns-and-social-history/ ("American English is shaped by baseball in many subtle ways. Ever hear someone describe a great success as ‘hitting a home run,’ or mention ‘striking out’ when they try to do something and fail?").
18. See Klein & Marcus, supra note 3, at 265.
19. Id.
20. See id. at 266.
21. See id.
22. See id.
23. See id. ("Cuban baseball emerged as a rejection of Spanish hegemony. Cuban baseball became symbolic of social change and independence. Cubans used baseball to establish a national identity that was distinct from Spain and as a symbol of their national pride.").
24. See Solomon, supra note 7, at 156.
interest. For the next fifty years, Cuban and American baseball players competed both against, and with, one another as they travelled freely between the two nations. Cuban players would come to the United States and play at all professional levels while American players would migrate to Cuba during the winter to develop their talents. American teams established spring training facilities in Cuba and the Cincinnati Redlegs (predecessor to the current Cincinnati Reds) established a minor league franchise in Havana.

AFTER 1959 AND THE CUBAN EMBARGO

When Fidel Castro overthrew the Cuban government in 1959, he instated a swath of nation-wide changes that reflected his socialist ideals. Some of those changes included abolishing professional baseball in Cuba and erecting a government-run, amateur system in its place. Additionally, Castro placed limits on the wages earned by Cuban players that were comparable to the wages earned by most of the Cuban labor force. During the transition to Castro’s socialist government, many Cuban citizens attempted to defect to the United States, seeking sanctuary. Due to baseball’s prominent role in the new administration, players who defected faced harsh penalties and were officially labeled as traitors by the government.

Following the establishment of the Castro government, the United States responded by cutting all diplomatic ties with Cuba. In 1963, President John F. Kennedy signed the Cuba Assets Control Regulations into law, which laid out the rules that formed the Cuban embargo.
1996, the United States enacted the Helms-Burton Act, which strengthened the embargo and further attempted to place global pressure on the Cubans to adopt a democratic form of government. The Cuban embargo prohibited United States citizens and corporations from conducting business, transferring property, or dealing with the Cuban government and Cuban nationals.

Castro’s ascension to power and the reactionary embargo brought to an end the relationship that American and Cuban baseball players had built over nearly a century; however, over the subsequent years, approximately two hundred Cuban baseball players have defected from their home country and sought asylum on United States soil. Thirty-six of those two hundred have made it to the major leagues and have attracted a large following of fans. The respect and cultural significance bestowed on baseball players means that those thirty-six individuals shine a bright light on the plight of the Cuban defector. Baseball’s prominent place in both American and Cuban culture means that it is a perfect vehicle for bringing about systemic change between the two nations.

**MLB Guidelines, Immigration Laws, and Their Impact on Migration**

MLB has organizational rules that dictate the signing of all prospective players, both native and foreign. These rules state that any prospective player who resides in the United States, Canada, or

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prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transaction involving, any property in which any foreign country or a national thereof has any interest in any person, or with respect to any property, subject to the jurisdiction of the United States.

36. Id. at 288–69.
37. Id.
38. Frankel, supra note 5, at 389.
40. See Solomon, supra note 7, at 154.
41. Id.
42. See Klein & Marcus, supra note 3, at 313 (discussing the recent interactions between the United States and Cuban baseball teams at both the collegiate and professional levels).
Puerto Rico must enter into the amateur draft. Requiring these players to enter into the draft means that the players are either selected by a professional team and obligated to negotiate with that team for one year or they are passed over by all teams and then allowed to enter into free agency. Players who reside outside of the United States, Canada, or Puerto Rico may directly enter into free agency. Because free agency means that the player can negotiate with all professional teams, and thus leverage bidding teams against each other, the rules seem to favor foreign players. Unfortunately for Cuban players, the federal laws that constitute the Cuban embargo make it illegal for any MLB team to negotiate with the players while they still reside in Cuba. This prohibition results in the MLB subjecting Cuban players to more stringent guidelines.

FOREIGN PLAYERS OUTSIDE OF CUBA

For foreign players who are not granted asylum upon touching United States soil, a work visa must be obtained. The work visas available to baseball players who do not yet seek permanent residence in the United States are separated into two categories: “O” and “P” visas. “O” visas are granted to exceptional baseball players who can satisfy two requirements. First, a player must sign a contract with a

44. See Klein & Marcus, supra note 3, at 278 (Rule 3(a)(1)(A) states: “A player who has not previously contracted with a Major or Minor League Club, and who is a resident of the United States or Canada, may be signed to a contract only after having been eligible for selection in the First-Year Player draft.”); see also Solomon, supra note 7, at 158.
45. See Frankel, supra note 5, at 395-96 (“Once an MLB team drafts a player, that franchise holds exclusive negotiating rights to that player until just before the following year’s draft.”).
46. Id. at 396.
47. Id. (“Free agency tends to produce larger contracts for these players, a result of bidding wars between teams vying for their services.”).
48. Id. at 396-97.
49. Id. at 397 (“MLB rules work with the political and legal considerations discussed above to effectively compel Cuban players to defect if they want to play American baseball.”).
50. See Greller, supra note 6, at 1655-56; Cuba-United States: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, 35 INT’L LEGAL MATERIALS 327, 328 (1996) (Cuban players are granted asylum upon landing on United States soil under the “wet feet, dry feet” policy).
51. Greller, supra note 6, at 1656.
52. Id. at 1656-57.
professional team before he can obtain an “O” visa.\textsuperscript{53} The second hurdle requires that baseball players seeking an “O” visa consult with a peer group that can attest to the player’s “extraordinary” ability.\textsuperscript{54} If the player can satisfy these two requirements, then he may obtain a visa and also obtain visas for his spouse, children, and an accompanying coach or trainer.\textsuperscript{55}

“P” visas allow temporary employment for renowned athletes and entertainers.\textsuperscript{56} Like “O” visas, individual athletes may obtain “P” visas.\textsuperscript{57} Unlike “O” visas, “P” visas can also be obtained by each member of an internationally renowned team, regardless of his individual reputation.\textsuperscript{58} A “P” visa requires certification that the individual or team seeking temporary employment has a contract in place with MLB or another professional team.\textsuperscript{59} Additionally, two of the following factors must be demonstrated:

Evidence of having participated to a significant extent in a prior season with a major United States sports league; Evidence of having participated in international competition with a national team; Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition; A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized; A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized; Evidence that the individual or team is ranked if the sport has international rankings; or Evidence that the alien or

\textsuperscript{53} Id. at 1657 (stating that the team that contracts with the player is required to file a petition that includes the locations and dates of each game with the Immigration and Naturalization Service).

\textsuperscript{54} Id. at 1657–58 (citing 8 C.F.R. § 214.2(o)(5)(i)(A) (2018) (“Aliens of extraordinary ability or achievement”)).

\textsuperscript{55} Id. at 1660–61 (“Although the procedures for obtaining a ‘P’ visa are generally the same for the ‘O’ visa, the ‘P’ visa category contains less stringent eligibility requirements and a longer period of stay.”).

\textsuperscript{56} Id. at 1659–61.

\textsuperscript{57} Id. at 1660.

\textsuperscript{58} Id.

\textsuperscript{59} Id. at 1661.
team has received a significant honor or award in the sport. 60

For players, the “P” visa offers a very obtainable option for entrance into the United States. 61 However, although the “P” visa allows for whole teams to enter the United States at once, it does not allow spouses or children to accompany the baseball player. 62

For foreign players being pursued by MLB teams, the procedures required by the “O” and “P” visa categories are readily accomplished. 63 This straightforward process is in deep contrast to the experience of the players’ Cuban counterparts.

FOREIGN PLAYERS RESIDING IN CUBA

In 1977, Bowie Kuhn, the then-commissioner of MLB, published MLB’s policy on Cuban players. 64 This policy became known as the Kuhn Directive. 65 The directive embodied the spirit and regulations of the Cuban embargo and expressly prohibited any MLB team from negotiating with Cuban nationals while they still reside in Cuba. 66

The intersection of MLB guidelines with the Cuban embargo means that any Cuban player seeking to play at the professional level must defect. 67 To reap the benefits of MLB Rule 3(a)(1)(B) and enter straight into free agency, most Cuban players desire to defect to countries outside of the United States or Canada. 68 This is because Rule 3(a)(1)(A)

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61. See Greller, supra note 6, at 1661.
62. Id.
63. See id. at 1657 (explaining the “O” visa category provides an “extremely practical form of entry for proven baseball players”; see also id. at 1661 (“MLB’s own operating procedures with respect to the signing and drafting of baseball players tremendously assist the ability of foreign baseball players to obtain either ‘O’ or ‘P’ visas.”).
64. Frankel, supra note 5, at 397; see also Solomon, supra note 7, at 159.
65. See Frankel, supra note 5, at 397.
66. Id.; see also Solomon, supra note 7, at 159 (“The Directive, updated in 1991, prohibits ‘the discussion or negotiation with anyone in Cuba regarding the signing of any player in Cuba.’ In other words, it 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.”).
67. See Frankel, supra note 5, at 419; see also Solomon, supra note 7, at 159–60 (“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.”).
68. See Frankel, supra note 5, at 396; OFFICE OF THE COMM’R OF BASEBALL, supra note 43.
would require any Cuban player who defects and establishes residency in the United States through asylum to enter into the amateur draft, which is less desirable and time-consuming. This requirement results in many Cuban players seeking temporary sanctuary in surrounding countries, like Mexico, where they can begin negotiating with MLB teams before they step foot into the United States.

Defection is not ideal

Encouraging defection through MLB guidelines and federal regulations is not optimal. Defection is not ideal for multiple reasons, including the danger involved and the detrimental aftermath of permanently leaving behind family and country.

After Rene Arocha, one of the most talented and popular pitchers in Cuba, defected by walking away from the Cuban National Team (Cuban Serie Nacional or Equipo Cuba) as he and his teammates waited for a flight out of Miami, the Cuban government tightened its selection process. Now team members are selected largely based on their political views, leaving prospective Cuban baseball players who are classified as a "flight risk" by the government with nearly zero chances to travel overseas. Unfortunately, this lack of options leads ambitious, young players to defect to pursue professional opportunities in the United States. Without the option to travel to the United States with a team, defection is most frequently accomplished one of two ways, either by boarding an amateurishly crafted boat or by subjecting themselves to a human smuggling operation.

69. See Office of the Comm'r of Baseball, supra note 43; see also Klein & Marcus, supra note 3, at 263.

70. See Klein & Marcus, supra note 3, at 263 ("[A] loophole . . . allows these players to negotiate with teams once they have established residency in a foreign country."). Take, for example, Yasiel Puig, who was smuggled from Cuba onto a small island outside of Cancun before establishing residency in Cancun and commencing negotiations with MLB teams. Id. at 261–62.

71. See Solomon, supra note 7, at 161 ("Defection is not a simple task; it entails abandoning one's family, friends, as well as one's country.").

72. Id. at 162; see also Frankel, supra note 5, at 383.

73. See Solomon, supra note 7, at 162 ("Since the Cuban government selects the players for the Cuban national team, they refrain from choosing players they deem to be a 'flight risk.' Therefore, Cubans who want to defect, but cannot leave the country, are forced to resort to defecting by sea via tragically deficient means, such as a float or a makeshift boat, or professional smuggling.").

74. Id. at 163 ("When the Cuban National team failed to add Yunel Escobar to the roster, he decided that he needed to pursue his future somewhere else. After gathering five fellow baseball friends, they organized their escape to America. On October 6, 2004, at approximately 8 p.m., they boarded an undersized boat with thirty other people. The
Defecting by sea as part of an individual or amateur venture is especially dangerous if the quality of boat, ship, or raft is not seaworthy or the vessel is overcrowded. Defecting by sea as part of an individual or amateur venture is especially dangerous if the quality of boat, ship, or raft is not seaworthy or the vessel is overcrowded. Both occur frequently in the world of illegal immigration and defection, and prospective players are left to turn to these options when they are excluded from legal means of immigration. Defecting by sea is also dangerous because it runs a high risk of detection. A Cuban immigrant caught en route to another country is repatriated back to his home country, where he faces the harsh penalties of an attempted defection.

The most consistent way for prospective baseball players to reach U.S. soil, and be eligible for asylum, is professional, illegal smuggling. Although professional smuggling operations carry with them a lower chance of repatriation or discovery than amateur trips by sea, smuggling is still carried out under similarly dangerous circumstances. Vessels are still frequently overcrowded and smugglers frequently remove safety measures to maximize space. Professional smuggling operations additionally involve risks for the individuals funding the trips, frequently those who have already defected or

weather was exceptionally stormy, with waves up to eighteen feet high. The tumultuous waves broke one of the motors, requiring Escobar and the other passengers to remain at sea an extra day.

75. See Frankel, supra note 5, at 409–10 (describing how Alex Sanchez, the centerfielder for the Detroit Tigers, “was eighteen years old when he and ten others boarded a rickety raft held together with tire tubes, bolts, and ropes.”).

76. See id. at 409 (“For the banned players who want a shot in professional baseball, the dangerous water route becomes their only escape from an impoverished life devoid of baseball. So long as the Cuban government maintains its strict policy of banning from baseball those suspected of defecting, there will be players willing to risk sea voyage.”).

77. See id. at 410.

78. See id. at 410–11 ("[P]layers that are interdicted or turned over to authorities are placed in notoriously unpleasant detention camps, sometimes for months on end. . . . After their repatriation], the defectors [a]re banned from playing baseball, allegedly threatened, and placed under surveillance.").

79. See id. at 412; see also Donald L. Brown, Comment, Crooked Straits: Maritime Smuggling of Humans from Cuba to the United States, 33 U. MIAMI INTER-AM. L. REV. 273, 279 (2002); Cuba-United States: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, supra note 50.

80. See Solomon, supra note 7, at 167 ("[N]ovember] 2001, thirty Cuban men, women, and children each reportedly secured payment in excess of $10,000 to smugglers in Florida for covert transit to the United States. They crowded onto a hired stranger’s speedboat on the north coast of Cuba for the 100-mile crossing under the cover of darkness. When the vessel failed to arrive in South Florida the following day. . . the United States Coast Guard was notified. The Coast Guard’s search discovered a capsized vessel believed to be that driven by the hired smuggler, but no survivors or bodies were found. This event is typical of many unsuccessful human smuggling trips in the Straits of Florida, as smuggling has flourished in this corridor since 1998.”).

81. See Frankel, supra note 5, at 413.
professional baseball agents, who are subject to federal criminal penalties if the operation is uncovered and the players are intercepted.82

CHANGE IS NECESSARY

The current state of affairs between the United States and Cuba results in a player choosing between his future and his home if he has aspirations to earn a living by playing baseball.83 Cuban baseball players face an especially harsh decision due to the animosity they receive from the Cuban government on defection.84 The government labels defectsing baseball players as traidores al beisbol (baseball traitors) and adjusts their Cuban statistics or records to show that they have abandoned their home country.85

The prohibitions and animosity between the two countries mean that, once he has defected, no Cuban baseball player can return home to his family.86 In some cases, baseball players leave behind wives and young children who must then make the perilous journey to the United States alone or face an indefinite separation from their husband and father.87 These circumstances are heart-wrenching, especially given the fact that every Cuban baseball player defects without any certainty that his dreams of playing in the major leagues will materialize.88 Because the laws and guidelines put in place prevent MLB officials from

82. See id. at 415 (“By planning and providing payment for the activities, the players and their agents expose themselves to serious criminal penalties under federal law.”); see also 8 U.S.C. § 1324(a) (2018) (criminal penalties for bringing in and harboring certain aliens).

83. See id. at 402 (“By defecting, players relinquish their basic human right to return home, a right ‘fundamental to exercising one’s personal autonomy.’” (quoting HURST HANNUM, THE RIGHT TO LEAVE AND RETURN IN INTERNATIONAL LAW AND PRACTICE 56–60 (1987))).

84. See id. (“The Cuban government reinforces the implication that defecting players have rejected all things Cuban by laboring mightily to create a public façade of intransigence, anger, and disgust.”).

85. See id.

86. See id. at 403.

87. See id. at 404–05 (discussing how Chicago White Sox pitcher, Jose Contreras, defected without even telling his wife, leaving her and his young daughters alone in Cuba. Although Contreras and his agent attempted to bring his family to the United States through one of the few still available forms of legal emigration, the Cuban government denied the request due to Contreras status as a baseball traitor. As a consequence, his wife and young daughters had to make the dangerous journey from Cuba to the United States on a small vessel, more than a year since Contreras had left them in Cuba.).

88. Id. at 407 (“Family separation is even more tragic when one considers the high rate of failure among MLB prospects. Most Cuban defectors never play a game at the major league level, and those who do reach MLB can be hampered by injuries or, for older players, age-related decline.”).
contacting or negotiating with Cuban baseball players prior to their defection, there is currently no way for players to acquire an accurate assessment of their talent or opportunities. This system leaves Cuban players with an extremely difficult decision and with no empirical evidence to justify their decision to seek a professional position.

The dangers surrounding defection, compounded by the inhumane results, demonstrate that the current framework of guidelines, rules, and laws is not an adequate way to optimize the opportunities MLB offers Cuban baseball players. Additionally, the current system’s encouragement of defection is contrary to the political viewpoints of both the United States and Cuba, which have jointly agreed to prevent unsafe and risky defections from Cuba. The system should be reformed to open the market for baseball players between the United States and Cuba so there is less animosity between the two countries and less detrimental consequences when a Cuban player seeks to play at a higher level than offered by his country’s amateur system. The first step in this process is the re-establishment of a civil relationship between the two countries. Baseball has proven to be an effective, although slow-moving tool in this more pleasant direction.

BRIGHT SPOT: THE BALTIMORE ORIOLES AND THE NEW CUBAN SERIE NACIONAL

Although relations between the United States and Cuba remained rocky for most of the 1990s, in 1999 the Clinton administration put forth an olive branch in the form of the Baltimore Orioles. Before the MLB season began, the Orioles traveled to Cuba for multiple games

89. Id. at 408 (“It is questionable whether players would be as eager to leave Cuba if given a realistic assessment of their chances of success.”).

90. Id. (“Yet, asking whether or not the trade-off—giving up one’s family for a chance to play professionally in America—is worthwhile seems to be the wrong question to ask. A better question might be why Cubans are the only ballplayers on the planet who are forced to choose between their families and professional baseball.”).

91. Id. (“The very fact that young Cuban ballplayers must make this forced choice is ample evidence that the system is broken and needs to be overhauled.”).

92. Id. at 407 (“Agents often compound this problem by enticing players to defect, inflating their capabilities, helping them sign a professional contract, and abruptly moving on to the next big catch.”); see also id. at 401 (“In encouraging such action, the defection system runs counter to Cuba’s and the United States’ ‘common interest in preventing unsafe departures from Cuba which risk loss of human life.’” (quoting Cuba-United States: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, supra note 50)).

against the Cuban National team. 94 And shortly thereafter, the Cuban team traveled to Baltimore for a round of exhibition games. 95 Although the trip received mixed reviews due to various opinions regarding the recruitment of Cuban defectors, the trip was a cooperative measure carried out in concert by the United States and Cuban government. 96 The trip also spoke to an important balance: while the Cuban players were exposed to a significantly more competitive level of play, the MLB teams promised that the games were not a recruiting exercise, thus opening the door to a more competitive and free market, while not stepping on the socialist ideals of the Cuban government. 97

Fourteen years after this attempt to use baseball as a peace tool, there was some favorable movement toward an open market amongst the Cuban ranks. 98 In September 2013, Fidel Castro and executive members of the Cuban National Team decided to allow players to travel overseas and participate in professional leagues in Japan and Mexico. 99 Although the administration did not alleviate its harsh stance on baseball defectors, allowing Cuban players to participate in professional leagues was a big change from the directives originally set forth by Castro. 100 This slight change in policy suggests that the Cuban government may have warmed to the idea of allowing their star players to form relationships with other teams. And perhaps it suggests that the Cuban government is subtly relaxing from its original fear of losing players to professional leagues. To further the changes hinted at by the new Cuban Serie Nacional, reforms must be put in place that will foster trust between the United States and Cuba and eventually lead to the legal and safe participation of Cuban players in MLB.

94. Id. at 475.
95. Id.
96. Id.; see also Greller, supra note 6, at 1694 (“[T]he exhibition games between the Orioles and the Cuban National team illustrated baseball’s power to bring the Cuban and American people closer together. Although both nations asserted that the games only represented people-to-people contacts, and not an attempt to normalize relations, the potential exists for baseball to forge closer ties between the two nations without abandoning their principles.”).
98. Klein & Marcus, supra note 3, at 273–74.
99. Id. at 273.
100. Id.
Any initial reform to MLB and its relationship with Cuba must be considered within Cuba’s prohibitions against immigration to the United States and the United States’ reciprocal embargo. Although baseball may be an effective vehicle for bringing about change, the procedure for commencing such an idealistic goal must be built within the existing framework. Scholarship on the intersection of baseball, immigration, and Cuba offers a variety of solutions. The consensus among these solutions is that baseball is an effective vehicle for bringing about positive change in United States-Cuba relations. Where the theories differ is exactly how to place baseball, more specifically MLB, in the best position to optimize its significance. Some theories propose a worldwide draft, or simply removing the Kuhn Directive. Although a worldwide draft has its strong points and removing the Kuhn Directive is necessary to allow for better treatment of Cuban players, these are not the most developed of the proposed solutions. Instead, the solutions that are the most practical are the ones that combine the removal or relaxing of prohibitory legislation and guidelines with a compensation plan that pays back nations who lose talent to MLB.

A worldwide draft refers to an amateur draft held exclusively for foreign players, which would mirror the draft held for domestic players. The idea behind this theory is that eliminating the direct free agency option for foreign, including Cuban, players would deter bidding wars that drive up the price of foreign players. In turn, the more moderate contract sizes produced by the limited negotiations with a single team would keep predatory agents from violating the Kuhn

101. See Solomon, supra note 7, at 185–86 (describing how baseball has been used as an instrument for social change in the past, and how both nations share a common history with the sport); see also Greller, supra note 6, at 1700–12 (describing possible changes to the MLB draft, signing process, and immigration law).

102. See Solomon, supra note 7, at 186 (“Baseball is as much a part, if not more, of United States-Cuba past relations and should be an integral part of the future United States-Cuba relationship. Altering the current Cuban baseball policy has the potential of effecting U.S.-Cuban relations as a whole.”).

103. See Klein & Marcus, supra note 3, at 311 (“There is currently no one-size-fits-all solution . . . .”).

104. Id. at 298–99 (citing Scott M. Cwiertny, Comment, The Need for a Worldwide Draft: Major League Baseball and its Relationship with the Cuban Embargo and United States Foreign Policy, 20 LOY. L.A. ENT. L. REV. 391, 426 (2000)); see also Frankel, supra note 5, at 419.

105. Frankel, supra note 5, at 420.

106. See Ottenson, supra note 11, at 772; Greller, supra note 6, at 1705.

107. See Klein & Marcus, supra note 3, at 298–99.

108. Id.
Directive and persuading players to defect.\textsuperscript{109} Although there are tangible positives to a worldwide draft, the solution does not get at the heart of the issue.\textsuperscript{110} A worldwide draft may change some of the incentives surrounding defection but it does nothing to change the policies that would still forbid Cuban players from participating at the professional level.\textsuperscript{111} As a result, Cuban players would still be left with the same limited options, either play amateur ball in Cuba or defect. As a result of the draft, those defectors would also be without any financial support from the “predatory” agents who have helped them reach America and pursue their goals for the last two decades.\textsuperscript{112} Without looking toward a change in policy, the worldwide draft is certainly not the best way to use baseball to improve diplomatic relations.\textsuperscript{113}

Unlike the worldwide draft, removing the Kuhn Directive is imperative to reestablishing a relationship between MLB and the Cuban amateur system.\textsuperscript{114} Unfortunately, while the provisions that make up the Cuban embargo are still in place, removing the Directive will not result in any practical changes as any negotiation or transfer of business between MLB and Cuba would still violate the embargo.\textsuperscript{115} Accordingly, removing the Kuhn Directive is merely a policy shift that would hopefully influence the federal government to consider relaxing the embargo, at least in part.\textsuperscript{116} As a result, the end of the Kuhn Directive is not an all-around solution.\textsuperscript{117}

\textsuperscript{109} Id. at 299 ("[T]his would lower the temptation for MLB scouts to breach the Kuhn Directive and the current embargo.").

\textsuperscript{110} Frankel, supra note 5, at 420 ("But a worldwide draft could also cause negative consequences for Cuban ballplayers. From a humanitarian standpoint, a worldwide draft is not likely to improve the current system materially.").

\textsuperscript{111} Id.

\textsuperscript{112} Id. ("Without the help of an agent—or, more specifically, his bank account—many players will lack the financial resources needed to defect successfully. . . . Thus, by chilling agent involvement in Cuba, a draft might have the unfortunate effect of trapping more young ballplayers in their economically failing, authoritarian country.").

\textsuperscript{113} Id. ("It is conceivable that a global draft will 'create[] more problems than it solves.'" (quoting Dave Sheinin, Player Draft Remains Unsettled, WASH. POST (June 3, 2003), https://www.washingtonpost.com/archive/sports/2003/06/03/player-draft-remains-unsettled/2218905d-87ed-4805-8ad8-cbee5c76af1a/?utm_term=.1da11954ae61)).

\textsuperscript{114} Id. at 422.

\textsuperscript{115} Id. ("Since the Directive is best viewed simply as MLB's reiteration of the restraints imposed by the Cuban embargo, such action would be relatively ineffectual.").

\textsuperscript{116} Id.

\textsuperscript{117} Id. at 422–23 ("[I]t would only be a symbolic gesture to revoke the Kuhn Directive before the embargo is substantively altered to accommodate Cuban ballplayers.").
Unsurprisingly, the most effective solution combines the changes previously suggested with policy reforms. Removing or replacing the Kuhn Directive is certainly the first step toward opening MLB to Cuban players.\textsuperscript{118} In that same vein, the second step is the reformation of MLB’s acquisition rules.\textsuperscript{119} A change in the rules that would require all players, foreign and domestic, to enter into the amateur draft would eliminate the disparities in freedom of contract and contract price that incentivize Cuban players to defect to other nations before seeking asylum in the United States.\textsuperscript{120} Like the worldwide draft, requiring all players to enter into an amateur draft does not bring about effective policy changes, but it does alleviate some of the pressure that incentivizes so many to defect.\textsuperscript{121} Instituting the universal amateur draft is an integral part of the process.\textsuperscript{122} Updating guidelines and rules to reflect MLB’s willingness and desire to bring Cuban players into the professional circuit lays vital groundwork for important policy changes.\textsuperscript{123}

The change that has the ability to truly build a bridge between the United States and Cuba is the establishment of a contract tax, which would apply when MLB teams enter into contracts with Cuban players.\textsuperscript{124} The tax would be paid by MLB teams to a central revenue fund, which the league could use to support the Cuban baseball system.\textsuperscript{125} MLB could use the funds collected by the tax to help develop the Cuban baseball system and work toward reestablishing MLB influence in Cuban baseball.\textsuperscript{126} The tax, although not without issues, is

\textsuperscript{118} See Greller, \textit{supra} note 6, at 1700.
\textsuperscript{119} \textit{Id.} at 1702–03 (“To remain close to the Cuban government’s desire to respect the principles of Cuban sports and to bolster the competitive balance within MLB, Baseball Diplomacy requires further proactive efforts. Accordingly, MLB must implement a system that exposes Cuban players who desire to play in MLB to the June Draft, instead of allowing these players to follow the ‘El Duque’ model [of defection].”).
\textsuperscript{120} See Klein & Marcus, \textit{supra} note 3, at 298–99.
\textsuperscript{121} See Frankel, \textit{supra} note 5, at 420.
\textsuperscript{122} See Greller, \textit{supra} note 6, at 1705 (“Drafting Cuban players, therefore, will allow Baseball Diplomacy to move halfway towards its goals, and advance to Second Base.”).
\textsuperscript{123} \textit{Id.}
\textsuperscript{124} \textit{Id.}
\textsuperscript{125} \textit{Id.} (Much like the payroll and player salary taxes that go to baseball’s central revenue fund, MLB teams should pay a tax on the contracts signed by Cuban players into a MLB fund designed to support both the Cuban baseball infrastructure and the Cuban scouting efforts of all thirty MLB teams.).
\textsuperscript{126} \textit{Id.} at 1706 (“Thus, while the United States will absorb talented Cuban players, the success of these players will assist the development of future Cuban stars by improving the infrastructure of Cuban baseball through better equipment and training.”).
a practical way for the asset that is a player’s talent to be shared more proportionately by all interested parties.\footnote{127} This acknowledges that the transfer of talent from Cuba to the United States financially impacts Cuba and works to rectify that impact.\footnote{128} Instituting a contract tax would also demonstrate to Cuba that MLB is interested in developing talent and giving players the best opportunities instead of simply enticing Cuban players to betray their homeland under the auspices of capitalist gains.\footnote{129}

The return of MLB influence in the Cuban system would relieve major problems in the current system.\footnote{130} Specifically, with MLB representatives in Cuba, it would be possible to assess a player’s talent without him leaving the island.\footnote{131} The ability to assess talent prior to immigration allows Cuban baseball players to access accurate information regarding their chances of success at a professional level.\footnote{132} This would mean that fewer players would attempt to defect, risking life and status in the process.\footnote{133} Hopefully, as MLB and Cuba rebuild networks of communication and work in concert for the betterment of players and systems, the United States and Cuba could establish more easily accessible routes for immigration that would eliminate the player’s need to defect.

**The Broad Impact of MLB Changes**

By first replacing prohibitory guidelines with more lenient options and fostering an avenue of open communication and cooperation, MLB can build a relationship with Cuba that will effectively alleviate some of the tensions present between the United States, U.S. organizations, and

\footnote{127. See Ottenson, *supra* note 11, at 789 (“This payment will serve as compensation for the social costs of MLB recruitment in the country.”).}

\footnote{128. *Id.*

129. *Id.* at 790 (“This will help to disentangle local baseball operations from the neocolonial aspects of MLB recruitment in the region by shifting control over local baseball operations from MLB teams back towards the countries themselves.”); see also Klein & Marcus, *supra* note 3, at 267 (“Officials of the Revolution believed that the profit motive under a capitalist system corrupted the sport.”).

130. See Ottenson, *supra* note 11, at 790.

131. Under the Kuhn directive, MLB representatives and scouts are prohibited from engaging Cuban players in discussions on Cuban soil. As a result, Cuban players are required to leave Cuba in order to exhibit their abilities without ever having a conversation with a scout who is aware of their potential prowess. Because the proposed solutions would unravel the Kuhn directive, scouts could meet, see, and honestly discuss the professional chances of the Cuban players without the players having to flee their homes. See Solomon, *supra* note 7, at 159–160.

132. See *id.*

133. See Frankel, *supra* note 5, at 407–08.
Cuba since the Cold War.\textsuperscript{134} Paying homage to the role Cuba played in the development of the players' talent through a contract tax is a practical way for MLB to demonstrate that it, and possibly other organizations, will take active steps to work with Cuba instead of unilaterally encouraging players to abandon their home land and forsake their team. Although these reforms face opposition in the form of established regulations and federal laws, recent changes suggest that both the United States and Cuba may be open to the idea of a cooperative effort. During President Obama's tenure, changes to the embargo were introduced to foster interaction between American and Cuban people.\textsuperscript{135} Similarly, toward the end of his life, Fidel Castro entered into international agreements that would build political and economic ties as a response to Cuba's deepening economic crisis.\textsuperscript{136} The new leader of Cuba, Raul Castro, has shown that he is more open to reform than his brother.\textsuperscript{137} Baseball, with its roots in the culture of both the United States and Cuba, is an optimal starting point for the rebuilding of diplomatic relations.

With a larger lens toward MLB and United States relations with Latin American and Caribbean nations, the contract tax is a very effective means for building a positive relationship.\textsuperscript{138} In many nations surrounding the United States, such as the Dominican Republic, baseball players are enticed by the large contracts and fancy lives that are available through MLB.\textsuperscript{139} Although individuals in Latin American and Caribbean nations, other than Cuba, are free to negotiate and contract with MLB teams without an embargo or the danger and

\textsuperscript{134} See Greller, supra note 6, at 1712–13 ("Enacting these policies, however, will act as a catalyst in that direction, and allow the world's baseball fans to collectively cheer for the best baseball available. Ultimately, such changes will insure a true World Series each October.").

\textsuperscript{135} Id. at 1697–98 ("The recent changes in the embargo against Cuba indicate the United States' willingness to seek greater contacts between the people of these two nations. Moreover, Fidel Castro's recent international agreements recognize the importance of forging political and economic ties to ease Cuba's economic crisis. Consequently, changes regarding Cuban baseball immigration can provide the impetus for creating the greater contacts and economic ties desired by both nations.").

\textsuperscript{136} See id.

\textsuperscript{137} Steven Visser & Catherine E. Shoichet, Cuba: What's Next Under Raul Castro?, CNN (Nov. 28, 2016, 2:49 PM), https://www.cnn.com/2016/11/28/americas/cuba-future-raul-castro/index.html ("[Raul] has allowed some reforms to be enacted that Fidel would never have been OK with.").

\textsuperscript{138} See Ottenson, supra note 11, at 790.

\textsuperscript{139} See Diana L. Spagnuolo, Comment, Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk Their Futures for a Chance in Major League Baseball, 24 U. Pa. J. Int'l. L. 263, 272 (2003) ("Most of these guys have never had three meals [a day] in their lives and every organization is giving them a chance and an opportunity to be somebody in life.").
consequences of defection looming over their heads, players who flock to MLB deprive their native countries of valuable assets.\(^{140}\) Additionally, many of these countries are in the midst of poor economic situations and assistance is imperative.\(^{141}\) Under these conditions, a contract tax that would spread the money made off of an individual player amongst interested parties would go a long way in forging positive relationships.\(^{142}\)

**CONCLUSION**

Because a significant portion of its well-paid players hail from Cuba, Major League Baseball is especially called to use its power to smooth ties with the island nation. The improvement of ties between the United States and Cuba is also a self-interested endeavor for MLB because the quality of life for players will increase when their homeland no longer deems them traitors and room for profit will increase as the price of Cuban contracts goes down. As a major network of athletes that wields a lot of influence over a large portion of the western hemisphere, Major League Baseball should take steps to use that influence to affect positive social and economic change. Similarly, the United States government, in accordance with the policies promulgated by President Obama, should utilize Major League Baseball’s avenues of communication and commerce with Cuba to effectuate long-lasting changes to diplomatic relations, which would hopefully increase the opportunities available to the Cuban people.

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140. See Ottenson, *supra* note 11, at 790; see also OFFICE OF THE COMM’R OF BASEBALL, *supra* note 43, at r. 3, r. 4.