

THE EFFECT OF MAJOR LEAGUE BASEBALL ON UNITED STATES-CUBA
RELATIONS

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TABLE OF CONTENTS

- I. INTRODUCTION
- II. THE HISTORY OF MAJOR LEAGUE BASEBALL'S IMPACT ON THE UNITED STATES-CUBA RELATIONS
 - A. United States-Cuba Relations Pre-Embargo
 - B. United States-Cuba Relations Post Embargo
 - C. The Embargo's Restrictions on the Freedom of Cuban Baseball Players
- III. AMATEUR DRAFT v. FREE AGENCY
 - A. MLB Eligibility Rules
 - B. Free Agency
- IV. IMPLICATIONS OF DEFECTION
 - A. Dangers of Defection by Sea
 - B. Humanitarian Violations
- V. FUTURE IMPLICATIONS OF BASEBALL ON UNITED STATES-CUBA RELATIONS
 - A. Strides Toward Improvement
 - B. Possible Solutions
 - 1. Baseball Diplomacy Act
 - 2. Worldwide Draft
 - C. Cuban Participation in Major League Baseball Benefits Both the United States and Cuba
- VI. CONCLUSION

ABSTRACT

Since the United States began its embargo of Cuba, Cuban-born men have defected from their homeland to pursue their dreams of freedom and playing Major League Baseball. Attempts at defection from Cuba pose significant risks to these players, ranging from death during the treacherous 90-mile journey from Cuba to the Florida coast, to their capture in route and repatriation back to Cuba to face harsh punishment from the Cuban Communist government. This paper examines the history of Major League Baseball's impact on the United States-Cuba relations pre-embargo compared to the restrictions the embargo placed on Cuba after enactment and the effect the embargo had on Cuban men competing in the Major Leagues. It will examine how the Major League draft differs from the free agency system and the incentive free agency provides to Cuban men to defect. This paper discusses how the game of baseball has affected the relationship between the United States and Cuba. It concludes by discussing future implications of the embargo unless there is an end to Castro regime and an end to the embargo.

I. INTRODUCTION

Prior to the United States embargo of Cuba, over 100 Cubans played Major League Baseball.¹ Once Fidel Castro took power in Cuba, all Cuban participation in the major leagues ceased.² The United States forced all Cubans hoping to play professional ball to defect with little hope of ever returning.³ The understandable desire of MLB teams to obtain talent from Cuba, coupled with Cuban players' desire for liberty, has led to such defections from Cuba.⁴

The implementation of the embargo was also detrimental to Major League Baseball teams. As a result of the embargo, major league clubs were prohibited from scouting Cuban players.⁵ The Los Angeles Dodgers was the first team to violate this rule and consequently, the team lost their contractual rights to the players they were caught scouting.⁶ "The Dodgers helped two Cuban-born players defect to the Dominican Republic, which, under MLB rules, allowed the Cubans to sign as free agents with the Dodgers."⁷ If the two men had come straight to the United States, the players would have had to enter baseball's amateur draft.⁸ They subsequently would have been available to any MLB team with a higher draft pick than the Dodgers.⁹ "This is an

¹ Scott M. Cwiertyny, Note, *The Need for a Worldwide Draft: Major League Baseball and Its Relationship with the Cuban Embargo and United States Foreign Policy*, 20 LOY. L.A. ENT. L. REV. 391, 413-414 (2000); Kevin Baxter & Fernando Dominguez, *Baseball Si, Cuba No*, SPORTING NEWS, Mar. 21, 1994, at 12, 12.

² See Cwiertyny, *supra* note 1, at 392; See Proclamation No. 3447, 3 C.F.R. 26 (Supp. 1962), reprinted in 22 U.S.C. § 2370 (1994); See generally Steve Fainaru, *LA Loses Minor Leaguers: Dodgers Punished for Holding Secret Tryouts*, BOSTON GLOBE, June 28, 1999, at D1. MLB rules prohibit teams from scouting in Cuba. See *Id.*

³ See Rachel D. Solomon, *Cuban Baseball Players, The Unlucky Ones: United States-Cuban Professional Baseball Relations Should Be An Integral Part of the United States-Cuban Relationship*, 10 J. INT'L BUS. & L. 153, 156 (2011)

⁴ See Cwiertyny, *supra* note 1, at 392; See Solomon, *supra* note 3 at 13.

⁵ See Cwiertyny, *supra* note 1, at 392; See Fainaru, *supra* note 2.

⁶ See Cwiertyny, *supra* note 1, at 392; See Hal Bodley, *Selig's Signing Ban Punishes Dodgers*, USA TODAY, July 2, 1999, at 8C.

⁷ See Cwiertyny, *supra* note 1, at 392; See Fainaru, *supra* note 2.

⁸ See Cwiertyny, *supra* note 1, at 392;

⁹ *Id.* at 392.

example of how the current MLB rules encouraged the Dodgers to violate the embargo just to contract a player.”¹⁰

This paper examines the history of Major League Baseball’s impact on the United States-Cuba relations and the effect the embargo had on Cuban men hoping to play Major League Baseball. It will examine how the Major League draft differs from the free agency system and the incentive free agency provides to Cuban men to defect. Additionally, this paper discusses how the game of baseball has influenced the relationship between the United States and Cuba as a result of the embargo. It concludes by discussing the possible termination of the embargo and the effects that would have on baseball’s future.

II. THE HISTORY OF MAJOR LEAGUE BASEBALL’S IMPACT ON THE UNITED STATES-CUBA RELATIONS

A. United States-Cuba Relations Pre-Embargo

Prior to the Cuban Revolution of 1959, baseball acted as a way to unite the United States and Cuba.¹¹ Before Castro took power in Cuba, baseball helped bridge the differences between the two countries.¹² Much like American baseball, “Cuban baseball has always been tightly intertwined with history, politics, and social change.”¹³ Baseball originated in New York City in the 1840s,¹⁴ and quickly spread to Cuba, with organized Cuban leagues dating back to 1878.¹⁵ “In Cuba, the game was popularized by American sailors, both military and merchant, and

¹⁰ *Id.*

¹¹ See Solomon, *supra* note 3 at 156; Matthew N. Greller, Note, *Give Me Your Tired, Your Poor, Your Fastball Pitchers Yearning For Strike Three: How Baseball Diplomacy Can Revitalize Major League Baseball and United States-Cuba Relations*, 14 AM. U. INT’L L. REV. 1647, 1685 (1999).

¹² Matthew J. Frankel, Note, *Major League Problems: Baseball’s Broken System of Cuban Defection*, 25 B.C. Third World L.J. 383 (2005); See Greller, *supra* note, 11 at 1708-1710.

¹³ See Solomon, *supra* note 3 at 156; See Frankel, *supra* note 12 at 387.

¹⁴ *Id.*

¹⁵ See Solomon, *supra* note 3, at 156; Katherine E. Baird, *Cuban Baseball: Ideology, Politics, and Market Forces*, 29 J. of Sports & Social Issues 164, 166 (2005).

Cubans returning from American universities.”¹⁶ “Baseball became a cultural bridge between Cuba and the United States, with ballplayers constantly in transit from one country to the other.”¹⁷ Cuban baseball players traveled to the United States to play baseball.¹⁸ Additionally, Major League teams traveled to Cuba for exhibition games.¹⁹ Up until 1959, Cuba was a major source of Latin American baseball talent in Major League Baseball.²⁰ “The Cuba-United States baseball relationship was so intertwined that several Cubans envisioned a future that included a Cuban MLB franchise.”²¹

B. Decline United States-Cuba Relations

The close relationship between American and Cuban baseball came to an unfortunate end with the start of the Cuban Revolution in 1959.²² “Guerilla leader Fidel Castro seized power after the collapse of the authoritarian Batista regime, which was weighed down by corruption, ineptitude and popular opposition.”²³ Upon taking power in Cuba, Castro employed different types of socialist policies, most markedly agrarian reform, presumably geared toward empowering the “popular classes.”²⁴ “But the United States, which opposed Castro’s nationalization of key industries and the appropriation of American property in Cuba, sought to

¹⁶ See Frankel, *supra* note 12; See ROBERTO GONZALES ECHEVARRIA, *The Pride of Havana: A History of Cuban Baseball* at 83, 90 (1999) (crediting Nemesio Guillo with bringing the first bat and ball to Cuba in 1864 after attending Springhill College in Mobile, Alabama).

¹⁷ See Solomon, *supra* note 3, at 156; See Frankel, *supra* note 12, at 388.

¹⁸ See Solomon, *supra* note 3, at 156; See Frankel, *supra* note 12, at 388.

¹⁹ See Solomon, *supra* note 3, at 156; See Baird, *supra* note 15, at 166; Frankel, *supra* note 12, at 389.

²⁰ See Solomon, *supra* note 3, at 156; MILTON H. JAMAIL, *Full Count: Inside Cuban Baseball* 1, at 20 (2000) (explaining that players like Orestes “Minnie” Miñoso, Tony Olivia, and Tony Pere’z, were a crucial part of professional baseball in the US); See Frankel, *supra* note 12, at 389.

²¹ See Solomon, *supra* note 3, at 156; See Baird, *supra* note 15, at 166.

²² See Frankel, *supra* note 12, at 389; See Jamail, *supra* note 20 at 16-28.

²³ See Frankel, *supra* note 12, at 389; See Marifeli Perez-Stable, *The Cuban Revolution: Origins, Course, and Legacy* 52-60 (1999); see also Echevarria, *supra* note 16, at 302-304 (describing (Batista as “a fairly ludicrous small-time populist dictator” who was not as corrupt at Trujillo in the Dominican Republic or the Somoza family in Nicaragua).

²⁴ See Frankel, *supra* note 12, at 389; See Perez-Stable, *supra* note 23 at 61-81.

replace the new regime with one friendlier to American interests.”²⁵ Cuba’s shift towards communism coupled with pressure from the United States’ government, set up a perfect opportunity for Cuba to align with a powerful ally-the Soviet Union, a major rival of the United States during the Cold War. ²⁶

“In this turbulent Cold War context, epitomized by the Bay of Pigs debacle and the near catastrophic Cuban Missile Crisis, baseball relations between Cuba and the United States ceased.”²⁷ Two major developments were, and continue to be, responsible for this end in diplomacy: “Castro’s ban on professional sports and the United States’ embargo of Cuba.”²⁸ Castro reformed Cuban sports to promote socialist values, which ultimately led to the abolishment of professional baseball in Cuba.²⁹ Declaring the victory of “free baseball over slave baseball,” Castro initiated a baseball program, which he hoped would one day mirror that of the MLB.³⁰

At around the same time, the United States enacted the Cuban embargo, creating even more distance between Cuban and American baseball.³¹ The Eisenhower administration initiated a partial embargo in 1960, which banned American exports to Cuba, and severed all diplomatic relations.³² The main purpose of the embargo was to cut off the Castro regime economically to hasten its failure and further the security of Americans by discouraging Castro’s relationship

²⁵ See Frankel, *supra* note 12, at 389; See Perez-Stable, *supra* note 23 at 79-80.

²⁶ See Frankel, *supra* note 12, at 389; See Perez-Stable, *supra* note 23 at 80-81.

²⁷ See Frankel, *supra* note 12, at 389-90; See Jamail, *supra* note 20.

²⁸ See Frankel, *supra* note 12, at 389-90; See Jamail, *supra* note 20, at 129-30.

²⁹ See Frankel, *supra* note 12, at 390; See Echevarria *supra* note 16, at 355; Jamail, *supra* note 20, at 29.

³⁰ See Frankel, *supra* note 12, at 390; See Jamail *supra* note 20, at 29.

³¹ See Frankel, *supra* note 12; Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. §§ 6021-6091 (2003); see Jamail, *supra* note 20, at 129 (calling the embargo “the fundamental barrier impeding improved baseball relations between Cuba and the United States”).

³² See Frankel, *supra* note 12, at 390; See Peter Schwab, *Cuba: Confronting the U.S. Embargo* 15 (1999).

with the Soviet Union.³³ The Kennedy administration, and administrations that followed, broadened the embargo thereby ending nearly all relations between Cuba and the United States.³⁴ MLB teams were forced to end all recruiting, playing and communications in Cuba, and by the end of the 1980's the number of Cuban baseball players in the Major Leagues had fallen exponentially.³⁵

1. The Cuban Embargo

“The Cuban Government’s goals during the revolution were to implement land reform, develop the economy, obtain new international allies, and establish socialism as the new political authority.”³⁶ Cuba enacted the first Agrarian reform law in May 1959³⁷ with the Cuban government seizing all agricultural land over 165 acres, dividing the property and distributing it to the poor.³⁸ To lessen United States economic influence and presence, Cuba enacted Law No. 851, “confiscating all United States-owned businesses.”³⁹ “In response to the Cuban government’s nationalization of all American commercial property in Cuba, the development of a relationship with the Soviet Bloc, and the assistance to various anti-American organizations

³³See Frankel, *supra* note 12, at 390; See Digna B. French, *Economic Sanctions Imposed by the United States Against Cuba: The Thirty-Nine Year Embargo Culminating with the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* 7 U. MIAMI INT’L & COMP. L. REV. 1, 1 (1998-99).

³⁴ See Frankel, *supra* note 12, at 390; See French, *supra* note 33, at 2-3.

³⁵ See Frankel, *supra* note 12, at 390; See PETER C. BJARRMAN, *Baseball With a Latin Beat* 365-73, 394 (1994); Jamail, *supra* note 20, at 129.

³⁶ See Solomon, *supra* note 3, at 168; See Perez-Stable, *supra* note 23 at 10; Crystal Jamison, Comment, *Family Tradition: Cuban Policy Reform as Raul Castro Takes the Reigns*, 15 L. & Bus. Rev. Am. 891, 892 (2009).

³⁷ See Solomon, *supra* note 3; See Library of Congress, Fed. Research Div., *Cuba: A Country Study* 4-5 (Rex A. Hudson ed. 4th ed. 2002) [hereinafter *Country Study*]; see also Echevarria *supra* note 16 at 52-60.

³⁸ See Solomon, *supra* note 3, at 168; See MARK P. SULLIVAN, *Cuba: Issues for the 111th Congress* 15 (Cong. Research Serv., CRS Report for Congress, Order Code R 40193, Mar. 25, 2010).

³⁹ See Solomon, *supra* note 3, at 168-69; See Jamison, *supra* note 36 at 892; Jose A. Ortiz, *The Illegal Expropriation of Property in Cuba: A Historical and Legal Analysis of the Takings and a Survey of Restitution Scheme for a Post-Socialist Cuba*, 22 LOY L.A. INT’L COMP. L. REV. 321, 322 (2000).

during the Cold War, the Eisenhower administration placed the first limitation on Cuban exports.”⁴⁰

The United States activated the beginning stages of the Cuban embargo in 1962.⁴¹ As the embargo stands today,

“persons subject to the jurisdiction of the United States’,” meaning not only persons in the United States and American citizens, but also entities anywhere that are controlled by American persons, are prohibited from engaging in virtually all types of transactions with Cuba unless they have received a specific license from the U.S. Treasury Department’s Office of the Foreign Assets Control.”⁴²

The United States’ embargo against Cuba finds its roots in the 1917 Trading With the Enemy Act (TWEA)⁴³ which “bans transfers of property between United States citizens and enemy nations, unless authorized by the President.”⁴⁴ The TWEA maintains that during wartime, the President may:

Investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transaction involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States.⁴⁵

⁴⁰ See Solomon, *supra* note 3, at 169; See William Ratliff & Roger Fontaine, *A strategic Flip-Flop in the Caribbean: Lift the Embargo on Cuba* 9 (2000).

⁴¹ Cwiertny, *supra* note 1, at 395; See Proclamation No. 3447, 3 C.F.R. 26 (Supp. 1962), reprinted in 22 U.S.C. § 2370 (1994). President Kennedy stated the purpose of the embargo was to ensure safety in the western hemisphere by “isolating the present Government of Cuba and thereby reducing the threat posed by its alignment with the communist powers.” *Id.*

⁴² Cwiertny, *supra* note 1, at 395; Lynn R. Coleman & Thomas R. Graham, *The Stars and Stripes Wherever: The Impact of Unilateral U.S. Economic Sanctions on the International Petroleum Industry*, 35 ALTA L. REV. 334, 338 (1996).

⁴³ See Solomon, *supra* note 3, at 169; Trading With the Enemy Act, 12 U.S.C. § 95a, 50 U.S.C. app. § 1-44 (2009).

⁴⁴ See Solomon, *supra* note 3, at 169; John O’Brien, Comment, *Political Balk: Opening the Door for U.S.-Cuba Policy Reform Via Diplomatic Blunder at the World Baseball Classic*, 15 VILL. SPORTS & ENT. L. J. 135, 140 (2008).

⁴⁵ See Solomon, *supra* note 3, at 169; 50 U.S.C. app. § 5(b)(1)(B) (2009).

In 1933, the government expanded TWEA to include circumstances of “existing national emergency.”⁴⁶ Section 5(b) of the TWEA, is “intended to be exercised in peacetime to enable the President to engage in extensive regulation of international economic transactions when a national emergency so required.”⁴⁷ Essentially, Section 5(b) gave the President the “power to enforce the embargoes upon foreign countries irrespective of a wartime emergency.”⁴⁸

The embargo became law in 1963 with the enactment of the Cuban Assets Control Regulations (“CACR”),⁴⁹ which prohibits “transactions incident to travel to, from, and within Cuba and ‘payment’ or ‘transfer’ to Cuban nationals.”⁵⁰ The main objectives of the TWEA and the CACR are:

(1) To deny Cuba and its citizens currency which might be used to promote activities adverse to the interests of the United States; (2) to preserve blocked funds for potential use to settle claims against the Cuban government, or to vest to the United States if need be; and (3) to use blocked funds in order to enter into negotiation talks with the Cuban government.⁵¹

The CACR has a significant impact on baseball, which “means no U.S. baseball organization is allowed to engage in any transactions with Cuba unless it requests a specific license.”⁵² No club may enter into contractual relations with Cuba or Cuban nationals,⁵³ and if a

⁴⁶ See Solomon, *supra* note 3, at 169; See Act of Mar. 9, 1933, ch. 1, 48 Stat.1, 1; see also *Regan v. Wald*, 468 U.S. 222, 225-226 (1984); O’Brien *supra* note 44, at 141. In 1977 Congress amended the TWEA an additional time so that it only pertains to times of war. See Trading With the Enemy Act, Pub. L. No. 95-223, § 101, 91 Stat. 1625 (1977) (codified as amended to 50 U.S.C. app. § 5(b)(1) (1994); Cwiertyny, *supra* note 1, at 397.

⁴⁷ See Solomon, *supra* note 3, at 169; *Cornet Stores v. Morton*, 632 F. 2d 96, 97 (9th Cir. 1980) (referring to Act of Mar. 9, 1933, ch. 1, § 2, 48 Stat. 1).

⁴⁸ See Solomon, *supra* note 3, at 169; Cwiertyny, *supra* note 1, at 396 (citing *United States v. Fernandez-Pertierra*, 523 F. Supp. 1135, 1137 (S.D. Fla. 1981)).

⁴⁹ See Solomon, *supra* note 3, at 169; Cuban Assets Control Regulations, 31 C.F.R. §§ 515.101-.901 (2009); see Cwiertyny, *supra* note 1, at 396.

⁵⁰ See Solomon, *supra* note 3, at 169; 31 C.F.R. §§ 515.305, 515.309(a), 515.415(a)(1); see Frankel, *supra* note 12, at 393.

⁵¹ Cwiertyny, *supra* note 1, at 396; *Miranda v. Secretary of the Treasury*, 766 F. 2d 1, 4 (1st Cir. 1985) (citing *Real v. Simon*, 510 F. 2d 557, 563 (5th Cir. 1975), *reh’g denied*, 514 F.2d 738 (5th Cir. 1975)).

⁵² See Solomon, *supra* note 3, at 169; See Jamail, *supra* note 20, at 129.

⁵³ *Id.*

Cuban ballplayer signed a multimillion-dollar contract with a U.S. team, he would be “prohibited from sending money home to Cuba without a Treasury Department License.”⁵⁴

The United States passed the Cuban Democracy Act (“CDA”) of 1992⁵⁵ further changing the embargo.⁵⁶ The CDA expanded the ban on conducting business in Cuba to all “United States-owned or controlled business located in other countries.”⁵⁷ The Cuban Liberty and Democratic Solidarity Act of 1996,⁵⁸ also known as the Helms-Burton Act,⁵⁹ “further broadened the reach of the Cuban embargo.”⁶⁰ The Helms-Burton Act requires that the President retain Congressional approval to lift the embargo.⁶¹ The purpose of the Helms-Burton Act is “to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.”⁶² Cubans considering coming to America to play major league baseball are also subject to these restrictions.⁶³

⁵⁴ See Solomon, *supra* note 3, at 169; See Jamail, *supra* note 20, at 129.

⁵⁵ Cwiertny, *supra* note 1, at 398; Cuban Democracy Act of 1992, Pub. L. No. 102-484, Title XVII, §§ 1701-1712 [H.R. 5006], 106 Stat 2315 (codified as amended at 22 U.S.C. §§ 6001-6010 (2009)) [hereinafter CDA].

⁵⁶ Cwiertny, *supra* note 1, at 398; See CACR, 58 Fed. Reg. 34, 709 (1993) (codified at 31 C.F.R. § 515 (1999)).

⁵⁷ Solomon, *supra* note 3, at 170; See CDA, *supra* note 62, at § 1706; see also Cwiertny, *supra* note 1, at 398.

⁵⁸ Solomon, *supra* note 3, at 170; Cwiertny, *supra* note 1; 22 U.S.C. §§ 6021-6024, 6031-6046, 6061-6067, 6081-6085, 6091 (Supp. III 1998).

⁵⁹ Cwiertny, *supra* note 1, at 398; See Coleman & Graham, *supra* note 42, at 338. The act is often referred to by the names of its two sponsors, Senator Jesse Helms (R-N.C.) and Representative Dan Burton (R-Ind.). See *id.*

⁶⁰ Cwiertny, *supra* note 1, at 398; See 22 U.S.C. § 6032(h) (Supp. III 1998).

⁶¹ Cwiertny, *supra* note 1, at 398; See generally 22 U.S.C. §§ 6061-6066.

⁶² See Solomon, *supra* note 3; Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, Pub. L. No. 104-114 [H.R. 927], 110 Stat. 785 (codified as amended at 22 U.S.C. §§ 6021-6091 (2009)) [hereinafter Helms-Burton Act]

⁶³ See Solomon, *supra* note 3, at 170.

III. AMATEUR DRAFT v. FREE AGENCY

The Cuban embargo restricts nearly all commerce between the United States and Cuba.⁶⁴ The embargo is the main reason for the Cuban nationals defecting from Cuba in order to play major league baseball.⁶⁵ The embargo prohibits MLB teams from scouting or recruiting players in Cuba, thus ballplayers must not only leave Cuba but also defect and renounce their Cuban citizenship before they can ever play in MLB.⁶⁶

A. Major League Baseball Rules

Because of the embargo, many Cuban baseball players have chosen to defect from their homeland. The defections began on July 10, 1991, when Cuban pitching star Rene Arocha simply had to “find an exit sign” at Miami International Airport.⁶⁷ Arocha, a member of the Cuban National team, walked out of the airport,⁶⁸ “leaving behind his family, his homeland, and over 125 years of Cuban baseball history.”⁶⁹ Since Rene Arocha’s “trendsetting” 1991 defection, more and more Cubans have come to America to play baseball.⁷⁰ Yet, despite Fidel Castro stepping down from power, and the end of the Cold War, “the embargo is as strong and wide-ranging as ever and continues to undermine baseball relations between Cuba and the United States.”⁷¹

⁶⁴ 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, 224 (2010); See Helms Burton Act, *supra* note 62.

⁶⁵ See Norris, *supra* note 64, at 224.

⁶⁶ *See Id.*

⁶⁷ See Frankel, *supra* note 12, at 385; Sharon Robb, *Cuban Pitcher Defects to Chase Major League Dream*, Chi. Trib., Aug. 7, 1991, §4, at 4; Steve Wulf, *Sports People: Rene Arocha*, SPORTS ILLUSTRATED, Apr. 19, 1993, at 60.

⁶⁸ See Frankel, *supra* note 12, at 385; See Wulf, *supra* note 37, at 67.

⁶⁹ See Frankel, *supra* note 12, at 385; See Robb, *supra* note 67.

⁷⁰ See Frankel, *supra* note 12, at 390; See Echevarria, *supra* note 16, at 388-391 (listing players who have defected after Arocha and played in MLB).

⁷¹ See Frankel, *supra* note 12, at 392; See Jamail, *supra* note 20, at 129.

Because of the Rene Arocha incident, “MLB [now] subjects Cuban players to a more complex set of rules than other foreign ballplayers.”⁷² Players living in the United States and Canada must enter the amateur draft if they wish to play professional ball.⁷³ “Once a MLB team drafts a player, that team holds exclusive negotiating rights to that player for a contract at the minor league level where the player has the opportunity to prove himself, through his performance on the field, capable of moving up to a major league team.”⁷⁴ Once a player has been in the Major Leagues for more than six years, he becomes eligible for free agency.⁷⁵ However, “foreign players are not drafted; their entrance into the league is governed instead by a simple minimum age requirement.”⁷⁶ As long as this requirement is met, foreign ballplayers are free agents who can sign with any team willing to pay.⁷⁷ Free agency tends to produce more

⁷² See *Id.*

⁷³ See Norris, *supra* note 64; Major League Baseball, The Official Rules Book, R. 4 (2003) (hereinafter MLB Rules Book).

⁷⁴ See Norris, *supra* note 64, at 225; MLB Rules Book at R.4(d)-(f).

⁷⁵ See Norris, *supra* note 64; See Basic Agreement Between The American League of Professional Baseball Clubs and The National League of Professional Baseball Clubs and the Major League Baseball Players Association 44 (effective Jan. 1, 1977).

⁷⁶ MLB Rules Book at R.3. Rule 3(a)(1)(A)-(B), in pertinent part, provides:

(a) ELIGIBILITY TO SIGN PROFESSIONAL BASEBALL CONTRACTS.

(1) General Rules. Subject to the High School, College, Junior College and American Legion Rules listed in this Rule 3(a), a Major or Minor League Club may contract with a player under the conditions and restrictions set forth in this Rule 3. . . . For purposes of this Rule 3, the term “United States” shall mean the 50 States of the United States of America, the District of Columbia, Puerto Rico, and any other Commonwealth, Territory or Possession of the United States of America.

(A) A player who has not previously contracted with a Major or Minor League Club, and who is a resident of the United States or Canada, may be signed to a contract only after having been eligible for selection in the Rule 4 draft. A player shall be considered a “resident of the United States” if the player enrolls in a United States high school or college or establishes a legal residence in the United States on the date of the player's contract or within one year prior to that date.

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

- (i) is at least 17 years old at the time of signing, or
- (ii) is 16 at the time of signing, but will attain age 17 prior to either the end of the effective season for which the player has signed or September 1 of such effective season, whichever is later.

⁷⁷ Frankel, *supra* note 12, at 396.

substantial contracts as a result of “bidding wars between teams vying for their services.”⁷⁸

“Agents advise players to remain outside the United States until they are signed, as establishing U.S. residency would subject them to the amateur draft and generate less lucrative contracts.”⁷⁹

Cubans wishing to play baseball in the United States are not treated the same as other foreign ballplayers. Under the Cuban Adjustment Act (CAA), commonly referred to as the “wet foot/dry foot policy,” Cuban nationals who enter the United States do not have to fear being deported if they cannot demonstrate that they have suffered persecution nor prove refugee status.⁸⁰ This benefit is not automatic however. The CAA only protects Cubans who actually reach United States soil (those with “dry feet”), while those intercepted by authorities at sea (those with “wet feet”) face possible repatriation to Cuba.⁸¹ Those who reach U.S. soil are initially deemed illegal aliens, but under the CAA, after 2 years their status can be adjusted to that of an” alien lawfully admitted for permanent residence if the alien applies for such an adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.”⁸²

Major League Baseball policy provides additional complications for Cuban baseball players.⁸³ In April 1977, then-Commissioner Bowie Kuhn wrote a letter to all MLB organizations, later known as the Kuhn Directive, which set forth MLB’s policy regarding Cuban ballplayers.⁸⁴ “The Directive forbids any MLB club from recruiting or negotiating with any

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See Cuban Adjustment Act, Pub. L. No. 89-732, § 1, 80 Stat. 1161 (1966) (codified as amended at 8 U.S.C. § 1255 (2006)).

⁸³ See Frankel, *supra* note 12, at 397; See Greller, *supra* note 11, at 1664.

⁸⁴ See Frankel, *supra* note 12, at 398; See Greller, *supra* note 11, at 1664-1655.

player in Cuba.”⁸⁵ Like other Communist countries, Cubans cannot legally leave the country without getting permission from the Cuban government.⁸⁶ Typically, the only people who have permission to leave the country are high-ranking government officials who have proven their allegiance and loyalty to Cuba and the Castro regime.⁸⁷ Because of the CAA as well as the rules set forth in the Kuhn Directive, Cuban players wishing to pursue a career in the major leagues must leave their country and establish residency in another country.⁸⁸ “Thus, MLB rules work with the political and legal considerations discussed above to effectively compel Cuban players to defect if they want to play Major League Baseball.”⁸⁹

B. Loophole in the Rules

Baseball players who defected from Cuba to play Major League Baseball in the United States have the luxury of evading the amateur draft.⁹⁰ A loophole in the draft rules allow players from Cuba to enter the Major Leagues as free agents, thereby giving them the ability to enter into contracts that are more lucrative.⁹¹ This loophole places foreign citizens in a better economic position than that of Americans.⁹² Cuban players, however are not treated the same as other foreign players. If a Cuban player is a resident of the United States, he must enter the amateur draft.⁹³ The way Cuban citizens can enter as free agents (like all other foreign players) is to

⁸⁵See Frankel, *supra* note 12, at 398; See Greller, *supra* note 11, at 1664-1655; Baxter & Dominguez, *supra* note 1. A 1990 memo updated the Kuhn Directive, and forbade “the discussion or negotiation with anyone in Cuba regarding the signing of any player in Cuba.” Baxter & Dominguez, *supra* note 1; See Frankel, *supra* note 12.

⁸⁶ Jason S. Weiss, *The Changing Face of Baseball: In an Age of Globalization, Is Baseball Still As American As Apple Pie and Chevrolet?*, 8 U. MIAMI INT’L & COMP. L. REV. 123, 136 (2000).

⁸⁷See Weiss, *supra* note 86, at 136.

⁸⁸See Frankel, *supra* note 12, at 398; See Greller, *supra* note 11, at 1665.

⁸⁹See *Id.*

⁹⁰See *Id.*

⁹¹See Frankel, *supra* note 12, at 398; See Greller, *supra* note 11, at 1655; See Weiss, *supra* note 86, at 140.

⁹²See Weiss, *supra* note 86, at 140.

⁹³Andrea K. Schneider, *Baseball Diplomacy*, 12 MARQ. SPORTS L. REV. 473, 480 (2001).

establish residency in a third country.⁹⁴ “Furthermore, in order to establish this residency according to MLB rules, the players must leave the United States if they have already arrived here.”⁹⁵ If a player enters the country illegally, Major League Baseball declared that those players who entered the country illegally be treated as immigrants arriving without proper documentation, thus forcing them to enter the draft rather than be granted free agency.⁹⁶

However, if players defect to another country first and later come to the United States, they are free agents.⁹⁷

In 1995, Cuban pitching star Livan Hernandez defected from Cuba when the Cuban National Team was playing an exhibition game in Mexico.⁹⁸ Hernandez was advised by his agent to fly to Venezuela and then to the Dominican Republic so that he would gain political asylum.⁹⁹ “Because of these geographic and legal maneuvers, Hernandez was not considered a legal resident of the United States and was therefore permitted to enter MLB as a free agent since he did not defect from Cuba directly to the United States.”¹⁰⁰ The financial benefits of free agency quickly became apparent as Hernandez signed a \$4.5 million contract with the Florida Marlins.¹⁰¹

⁹⁴ *Id.*

⁹⁵ See Schneider, *supra* note 93; Memorandum of Points and Authorities in Support of Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction at Exhibit C, *Viera v. Major League Baseball Enter’s*, (M.D. Fla. 2001) (No. 8:01-CV-1037-T-27MAP) [hereinafter Memorandum].

⁹⁶ See Schneider, *supra* note 93; Weiss, *supra* note 86, at 138.

⁹⁷ See Schneider, *supra* note 93, at 481.

⁹⁸ *Supra* note 93, at 481.

⁹⁹ See Schneider, *supra* note 93; Weiss, *supra* note 86, at 143.

¹⁰⁰ See Schneider, *supra* note 93.

¹⁰¹ See Schneider, *supra* note 93; Ira Berkow, *Fulfilling Dreams of Freedom and Dollars: Joe Cubas helps Cuban Ballplayers Defect*, N.Y. TIMES, Aug. 15, 1996, at B11.

“Two years later, Livan Hernandez’s half-brother, Orlando ‘El Duque’ Hernandez, was able to enter MLB as a free agent through similar maneuvering.”¹⁰² One year after Livan Hernandez defected from Cuba, ‘El Duque’ was removed from the Cuban National team and was banned from the sport as punishment and deterrence for his half-brother’s actions.¹⁰³ ‘El Duque’ left Cuba for the United States in a boat with seven of his friends.¹⁰⁴ Four days after they departed Cuba, the badly damaged boat forced them to land in the Bahamas.¹⁰⁵ The Bahamian authorities placed ‘El Duque’ in custody in the Carmichael Road Detention Center, while deciding whether to send him back to Cuba.¹⁰⁶ As a cautionary measure and in an effort to avoid violating already established rules, MLB Commissioner Bud Selig ordered that no MLB team could meet with El Duque.¹⁰⁷ Upon learning this, Cuban sports agent Joe Cubas, tried to help his client to go to another county where he could seek refuge in case the Bahamian authorities sent him back to Cuba.¹⁰⁸ Cubas facilitated this immigration into Costa Rica when he spoke with the Costa Rican President and arranged for ‘El Duques’ grant for an “indefinite, temporary visa.”¹⁰⁹ Cubas then flew ‘El Duque’ to Costa Rica where he began training for tryouts with Major League teams before the 1998 spring training.¹¹⁰ Cubas successfully helped ‘El Duque’ defect

¹⁰² See Schneider, *supra* note 93; See Berkow, *supra* note 101 at B11; Cwiertny, *supra* note 1; See Norris, *supra* note 64.

¹⁰³ See Norris, *supra* note 64, at 225; Brendan Farrington, ‘El Duque’ Agrees to \$6.6 Million, Four Year Deal With Yankees, (Mar. 7, 1998) <http://www.web4.nando.net/newsroom/ap/b...y/feat/archive/030798/nyy72184.html>.

¹⁰⁴ Cwiertny, *supra* note 1, at 415; See Nancy San Martin, “El Duque” Balks, Puts U.S. Decision on Hold, SUN SENTINEL (Fort Lauderdale), Jan. 2, 1998, at 1A.

¹⁰⁵ Cwiertny, *supra* note 1, at 415; See David Beard, “El Duque,” Friends Get Visas, Sun Sentinel (Fort Lauderdale), Jan. 7, 1998, at 12A.

¹⁰⁶ Cwiertny, *supra* note 1, at 415; See Beard, *supra* note 105 at 12A.

¹⁰⁷ Cwiertny, *supra* note 1, at 415; See Hernandez Not Ready to Leave Friends, TAMPA TRIB., Jan. 2, 1998, at 3.

¹⁰⁸ *Id.*

¹⁰⁹ Cwiertny, *supra* note 1, at 416; See Friends Get Visas, *supra* note 105.

¹¹⁰ Cwiertny, *supra* note 1, at 416; David Beard, *For Hernandez, A Win-Win Call*, SUN SENTINEL (Fort Lauderdale), Jan. 8, 1998, at A1.

and go on to sign a \$6.6 million dollar contract with the New York Yankees.¹¹¹ Had ‘El Duque’ bypassed Costa Rica and come straight to the United States, he would have been subject to the amateur draft costing him upwards of \$2 million in his contract.¹¹²

By using this “loophole,” Cuban nationals seeking to play Major League baseball are able to obtain free agent status by traveling directly to the Bahamas or other countries.¹¹³ Defectors seized by the U.S. Coast Guard during their escape risk repatriation back to Cuba.¹¹⁴ If this happens, the unfortunate consequence would be the potential end to their baseball careers, as the Cuban government would no longer allow them to play baseball.¹¹⁵

IV. IMPLICATIONS OF DEFECTION

A. Dangers of Defection by Sea

Cubans seeking to play Major League Baseball, either defect to the United States, or utilize the loophole and pursue free agency.¹¹⁶ The choice to defect is very troublesome, requiring that players weigh the costs and benefits of abandoning one’s friends, family and one’s country in order to pursue what some may believe to be a selfish purpose.¹¹⁷ Because the Cuban government fears that players may abandon their teams during exhibition games outside of the country (like Rene Arocha), the selection of Cuban players depends on their political views instead of performance.¹¹⁸ “Since the Cuban government selects the players on the Cuban

¹¹¹ Cwiertny, *supra* note 1, at 416; See Kevin Baxter, *Throwing Cuban Players a Lifeline*, SPORTING NEWS, Aug. 10, 1998, at 18, 20.

¹¹² See Norris, *supra* note 64; Cuban Players Change Plans. The Baseball Players Want Asylum in the Bahamas so They Can Negotiate with U.S. Teams, ORLANDO SENTINEL, Jan. 2, 1998, at D2.

¹¹³ See Norris, *supra* note 64, at 229.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See Solomon, *supra* note 3, at 160; See Memorandum, *supra* note 95.

¹¹⁷ See Solomon, *supra* note 3, at 160; See Cwiertny, *supra* note 1, at 412-416.

¹¹⁸ See Solomon, *supra* note 3, at 162; See Baird, *supra* note 15, at 169 (explaining that “[b]ecause international play outside Cuba gives players an opportunity to defect, players with so-called political loyalty may not be selected.”).

National Team, they refrain from choosing players that they consider to be a flight risk.”¹¹⁹

Therefore, Cubans who wish to leave Cuban resort to by defecting by sea, which poses many dangers.¹²⁰

Cuba is only about 90 miles from the coast of Florida, and many Cubans wishing to defect do so by boat.¹²¹ These are poorly constructed boats, packed with too many people wishing to escape Cuba, thus making them inherently unsafe.¹²² “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 encourage Cuban refugees to take the short yet treacherous journey to America.”¹²³

When Yunel Escobar was denied a spot the Cuban National team roster, he decided to leave Cuba and pursue his dreams of a professional baseball career.¹²⁴ On October 6, 2004, he and five of his fellow baseball players boarded an undersized boat with thirty other people.¹²⁵ They began their journey in stormy weather and eighteen foot waves.¹²⁶ The surf was so rough that a crashing wave broke one of the motors, resulting in an additional day at sea.¹²⁷ Conditions were so dismal that “[e]veryone around the players vomited. If the waves did not make the passengers throw up, if the people around them throwing up did not make them throw up, the

¹¹⁹ See Solomon, *supra* note 3, at 162; Michael Lewis, *Commie Ball: A Journey to the End of the Revolution*, VANITY FAIR, July 2008, available at http://www.vanityfair.com/politics/features/2008/07/cuban_baseball200807.

¹²⁰ See Solomon, *supra* note 3; See Frankel, *supra* note 12, at 394-395.

¹²¹ See Solomon, *supra* note 3; Donald L. Brown, Comment, *Crooked Starights: Maritime Smuggling of Humans from Cuba to the United States*, 33 U. Miami Inter-Am. L. Rev. 273, 274 (2002).

¹²² See Solomon, *supra* note 3; See Frankel, *supra* note 12, at 408-410.

¹²³ See Solomon, *supra* note 3, at 162; Cwiertny, *supra* note 1, at 419. (Explaining that the MLB loophole directly undermines safety and instead encourages players to leave).

¹²⁴ See Solomon, *supra* note 3; Matt Crossman & Bob Parajon, *An Incredible Journey: The Story of Six Cuban Baseball Defectors*, SPORTING NEWS, July 4, 2008, <http://www.sportingnews.com/mlb/article/2008-07-04/an-incredible-journey-the-story-of-six-cuban-baseball-defectors>.

¹²⁵ See Solomon, *supra* note 3; See Crossman & Parajon, *supra* note 123.

¹²⁶ See *Id.*

¹²⁷ See Solomon, *supra* note 3; See Crossman & Parajon, *supra* note 123. (Noting that Escobar revealed that he did not think they were going to make it to their destination alive).

overpowering smell of gasoline did. Escobar, a proud man, admits he vomited.”¹²⁸ Sharks frequently surrounded their boat as well.¹²⁹ They were without any food or water and stranded at sea for two days.¹³⁰ Escobar and his friends arrived in Florida on October 9th.¹³¹

B. Humanitarian Violations

There are compelling reasons to deter dangerous sea defections in order to promulgate important humanitarian principles.¹³² Players choosing to defect forfeit protections granted to them by international human rights law as codified in the Universal Declaration of Human Rights (Declaration).¹³³ Moreover, the current defection system damages immigration agreements between Cuba and the United States, which “seek to address safety and humanitarian concerns to ensure that migration between the countries is safe, legal, and orderly.”¹³⁴

Despite the Declaration’s promise that “[e]veryone has the right to leave ... and to return to his country,” Cuban players pursuing a career in Major League Baseball in the United States must defect from their country resulting with them giving up this right.¹³⁵ The Declaration also maintains that the “family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹³⁶ Every Cuban defector however, must abandon their family without knowing when or if they will reunite.¹³⁷

¹²⁸ See Solomon, *supra* note 3; See Crossman & Parajon, *supra* note 123.

¹²⁹ See *Id.*

¹³⁰ See *Id.*

¹³¹ See *Id.*

¹³² See Frankel, *supra* note 12, at 400; Cwiertny, *supra* note 1; Greller *supra* note 11; Schneider *supra* note 93; Weiss, *supra* note 86.

¹³³ See Frankel, *supra* note 12, at 400; See Universal Declaration of Human Rights, Dec. 10, 1948, arts. 13 § 2, 16 § 3, U.N. G.A. Res. 217A (III), U.N. Doc. A/810, 71 [hereinafter UDHR].

¹³⁴ See Frankel, *supra* note 12; See 8 U.S.C. § 1324; Cuba-U.S.: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, May 2, 1995, 35 I.L.M. [hereinafter Joint Statement].

¹³⁵ See Frankel, *supra* note 12, at 400; UDHR *supra* note 133, at art. 13 § 2.

¹³⁶ See Frankel, *supra* note 12, at 401; UDHR *supra* note 133, at art. 13 § 3.

¹³⁷ See *Id.*

As mentioned above, many defectors have no choice but to escape by sea and “risk serious injury or even death as well as the possibility of repatriation to Cuba.”¹³⁸ In promoting these dangerous sea defections, the system contradicts the interest of both Cuba and the United States in “preventing unsafe departures from Cuba which risk loss of human life.”¹³⁹ Cubans who choose to defect by sea are more likely to participate in dangerous human smuggling operations from Cuba.¹⁴⁰ The way things stand now, players are encouraged to participate in human trafficking, which is directly opposed to both nations’ “pledge . . . to take prompt and effective action to prevent the transport of persons to the United States illegally.”¹⁴¹

Another factor weighing on the minds of those who are considering defection is the guilt of rejecting their homeland.¹⁴² “Defection automatically implies a rejection of patria, or homeland.”¹⁴³ The current system essentially forces Cuban ballplayers with aspirations of playing Major League Baseball to leave Cuba forever, thus causing enormous anguish to men considering defecting.¹⁴⁴

“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.”¹⁴⁵ After labeling the defectors as “traitors,” the government acts as if the players no longer exist and never mention their name again in any form of media publications.¹⁴⁶ In all

¹³⁸ See Frankel, *supra* note 12, at 401.

¹³⁹ See Frankel, *supra* note 12, at 401; Joint Statement, *supra* note 134.

¹⁴⁰ See Frankel, *supra* note 12, at 401.

¹⁴¹ See Frankel, *supra* note 12, at 401; Joint Statement, *supra* note 134.

¹⁴² See Frankel, *supra* note 12, at 401.

¹⁴³ See Frankel, *supra* note 12, at 401; Jamail, *supra* note 20, at 78.

¹⁴⁴ See Frankel, *supra* note 12, at 401; Jamail, *supra* note 20, 73-78.

¹⁴⁵ See Frankel, *supra* note 12, at 401; see e.g., Fainaru & Sanchez, *supra* note 2, at 115 (describing how Castro denounced defector Rolando Arrojo as “a Judas who sold himself for twelve gold coins”); Jamail, *supra* note 20, at 78 (noting that government officials dubbed Arocha a traitor after his defection).

¹⁴⁶ See Frankel, *supra* note 12, at 402; See Jamail, *supra* note 20, at 88.

types of Cuban record books, players who have defected have an asterisk with the explanation “abandon el pais” or “left the country.”¹⁴⁷

Despite the government’s efforts to demonize defectors, much of the Cuban public resists these efforts and continues to appreciate their countries heroes.¹⁴⁸ “Almost any Cuban citizen understands how depriving these players of their dreams could drive a ballplayer to seek a better life in America, and very few people hold a grudge against those who decide to leave.”¹⁴⁹ The word “defect” is not used by many Cuban citizens to describe those ballplayers who left because that word is more appropriately attributed to its “negative military connotation.”¹⁵⁰ Many ballplayers who have chosen to leave Cuba to pursue a career in the Major Leagues have since become heroes to Cuban citizens who follow their careers even though the Cuban government has labeled them as defectors and/or traitors.¹⁵¹ Despite the large following of Cuban players in America, some Cuban fans and players feel animosity because of the defections.¹⁵² Cuban players face being subject to contempt and disdain if they defect while representing Cuba in foreign competitions¹⁵³

¹⁴⁷ See Frankel, *supra* note 12, at 402; See Jamail, *supra* note 20, at 77.

¹⁴⁸ See Frankel, *supra* note 12, at 402; See Jamail, *supra* note 20, at 47 (noting that Cubans followed defector Livan Hernandez during the 1997 World Series despite a media blackout).

¹⁴⁹ See Frankel, *supra* note 12, at 402; See Jamail, *supra* note 20, at 55.

¹⁵⁰ See Frankel, *supra* note 12, at 402; See Jamail, *supra* note 20, at 77.

¹⁵¹ See Frankel, *supra* note 12, at 402; See Jamail, *supra* note 20, at 47-48.

¹⁵² See Frankel, *supra* note 12, at 403; See, e.g., Fainaru & Sanchez, *supra* note 2, at 115 (quoting Cuban national team pitcher Lazaro Valle, criticizing Rolando Arrojo for defecting on the eve of the Olympics: “It was the way he did it.... He betrayed everyone...Even if he makes a hundred million dollars, he’ll never be a hero in Cuba because he was like Judas. He sold everybody out.”); Jamail, *supra* note 20, at 55 (quoting Aurelio Alonzo, a member of an officially registered baseball fan organization in Cuba: “We do not question [Livan Hernandez’s] decision to leave... That is his personal choice. We only question the method by which he chose to leave: while representing his country abroad.”).

¹⁵³ See Frankel, *supra* note 12, at 403; See, e.g., Fainaru & Sanchez, *supra* note 2, at 115.

Defecting from Cuba and leaving their homeland forever can also have psychological effects on those choosing to leave.¹⁵⁴ As Rene Arocha put it: “[Defecting] is a very difficult decision, . . . You have an inner strength, it’s incredible the strength you have to have to leave behind not only your family-although leaving your family is difficult-but to leave your roots, something that is yours, and to understand that you don’t know when you will be able to return.”¹⁵⁵

“The idea of never being able to return to their homeland is something that Cuban defectors . . . don’t ever get over.”¹⁵⁶ Only a small percentage of defectors ever reunite with their families.¹⁵⁷ The separation tends to go on indefinitely, with no way of knowing if, or when, it will end.¹⁵⁸ Thus, “the system terribly violates the principle of family unity, a principle that requires countries to keep from implementing procedures that lead to the separation of families.”¹⁵⁹

In 2002, Cuban pitcher Jose Contreras defected to the United States and signed a \$32 million contract with the New York Yankees.¹⁶⁰ This large contract did not mean much to Contreras however. Contreras’ concern of reuniting with his wife, two daughters, ages ten and two, and an extended family stranded in Cuba overshadowed what should have been a moment

¹⁵⁴ See Frankel, *supra* note 12, at 403; See Jamail, *supra* note 20, at 73-89.

¹⁵⁵ See Frankel, *supra* note 12, at 403; See Jamail, *supra* note 20, at 78.

¹⁵⁶ See Frankel, *supra* note 12, at 404; Letta Tayler, *Price of Defection: Contreras’ Daughters, Wife Battle Loneliness*, NEWSDAY, July 29, 2003, at A76.

¹⁵⁷ See Frankel, *supra* note 12, at 404; See Farinau & Sanchez, *supra* note 2, at 113-114.

¹⁵⁸ See Frankel, *supra* note 13; See e.g., *Yankees Pitcher Contreras Can’t Get Family Out of Cuba*, KAN. CITY STAR, Jan. 20, 2004, at C2 [hereinafter *Contreras Can’t Get Family*].

¹⁵⁹ See Frankel, *supra* note 12, 404; See Gerassimos Fournalos, *Sovereignty and the Ingress of Aliens*, 87-117 (1986). This internationally recognized principle of family unity, as it is commonly known, may not technically be an individual right; rather, as the principle is generally understood, individuals benefit from the State’s duty to refrain from undertaking measures causing dispersion of families, and to facilitate reunification of already separated families. Fournalos, *supra*, at 109-11. However, the defection system clearly violates the underlying policy of family unity. See *id.*

¹⁶⁰ See Frankel, *supra* note 12, at 404.

of celebration over his successful defection and subsequent baseball contract.¹⁶¹ Throughout the negotiations with the Yankee organization, Contreras “stressed the importance of his family” and “asked teams for help in getting [them] out of Cuba.”¹⁶² Major League teams, such as the Yankees, did not have the power to bring Contreras’ wife and daughters to the United States, thus, the fate of his relationship with his family remained uncertain.¹⁶³ Contreras did not consult with his wife about his plans on defecting prior to him leaving Cuba, in fact, she had no idea until after he was in the United States, this when she found out she was understandably upset.¹⁶⁴ Contreras said that the separation from his family had been “very difficult . . . [T]he only time I don’t think about my family is when I’m on the mound.”¹⁶⁵ Later that year, Contreras learned that his father was sick and in the hospital.¹⁶⁶ His response was, “I can’t do anything about it, and I can only wait.”¹⁶⁷ Contreras kept in contact with his family via letter and phone calls when he was able to get through, but his youngest daughter did not understand what was going on and this added even more agony to the already bitter situation.¹⁶⁸ Contreras continually wired money home to Cuba for his family so his wife could afford to buy “luxury items such as soap and meat.”¹⁶⁹ These so-called “luxuries” were little consolation to his wife, who said, “I have plenty of money, but I pay the price with loneliness.”¹⁷⁰ Displeased with Contreras’ defection, the Cuban government took out their frustration on Contreras’ family, repeatedly denying their

¹⁶¹ See Frankel, *supra* note 12, at 404; See Tyler Kepner, *Mining for Riches on the Farm*, N.Y. TIMES, Feb. 5, 2003, at D1.

¹⁶² See Frankel, *supra* note 12, at 404; See Kepner, *supra* note 161.

¹⁶³ See *Id.*

¹⁶⁴ See Frankel, *supra* note 12, at 404; See Wright Thompson, *The Long Road from Las Martinas*, KAN. CITY STAR, Mar. 30, 2003, at 165.

¹⁶⁵ See Frankel, *supra* note 12, at 404; Kepner, *supra* note 161.

¹⁶⁶ See Frankel, *supra* note 12, at 404; Gordon Edes, *For Contreras, a No-Decision*, BOSTON GLOBE, Mar. 4, 2003, at F1; see Thompson, *supra* note 165.

¹⁶⁷ See Frankel, *supra* note 12, at 404-05; Edes, *supra* note 166.

¹⁶⁸ See Frankel, *supra* note 12, at 405; See Thompson, *supra* note 164.

¹⁶⁹ See Frankel, *supra* note 12, at 405; Kepner, *supra* note 161.

¹⁷⁰ See *Id.*

requests to leave Cuba.¹⁷¹ Fed up with the separation from her husband, in 2004, Contreras' family boarded a boat that also included a number of other defectors and fled to the United States.¹⁷² The Contreras family reunited when the boat reached the coast of Florida on June 21, 2004.¹⁷³ "As Jose Contreras' story demonstrates, the separation of a Cuban defector from his family is perhaps the most egregious consequence of the current system."¹⁷⁴ Players choosing to defect usually must do so without telling their families of the plan and without having any plan for reuniting with them, or a means of contacting them when and if their defection is successful.¹⁷⁵

V. FUTURE IMPLICATIONS OF BASEBALL ON THE UNITED STATES-CUBA RELATIONSHIP

A. Strides Toward Improvement

The enactment of the embargo in 1960 was because "[t]he United States wanted to expedite change in the Cuban government while protecting its own national security because Cuban-Soviet relations were growing apace with the development of world Communism."¹⁷⁶ However, when the Cold War ended, those concerns were no longer necessary.¹⁷⁷ Since the end

¹⁷¹ See Frankel, *supra* note 12, at 405; See *Contreras Can't Get Family*, *supra* note 158.

¹⁷² See Frankel, *supra* note 12, at 406; See Kevin Baxter, *Worst is Over For Pitcher Comforted with His Family*, MIAMI HERALD, June 24, 2004, at A1.; Sam Borden, *A Happy Homecoming for Jose*, N.Y. DAILY NEWS, Aug. 24, 2004, at 30.

¹⁷³ See Frankel, *supra* note 12, at 406; See Baxter, *supra* note 172.

¹⁷⁴ See Frankel, *supra* note 12.

¹⁷⁵ See Frankel, *supra* note 12, at 406; See Farinau & Sanchez, *supra* note 2, at 194 ("El Duque betrayed his [defection] plans to no one, not even his mother.")

¹⁷⁶ See Solomon, *supra* note 3, at 171; See French, *supra* note 34; see also U.S.-Cuba Relations Time For a New Approach, CTR. OR NAT'L POLITICS 4 (Jan. 2003) [hereinafter U.S.-Cuba Relations] (explaining the initial justification for the embargo: "During the Cold War, the U.S. had reason to be concerned about the existence of a Soviet ally only 90 miles off our shores.... In that context, a policy of containment and isolation was understandable.")

¹⁷⁷ See Solomon, *supra* note 3, at 171; See U.S.-Cuba Relations, *supra* note 181 (stating that "Russia and many of the former Eastern Bloc countries have become U.S. allies, and the prospect of Communist revolution sweeping across Latin America is no longer credible.")

of the Cold War, U.S. foreign policy toward Cuba has focused on “bringing democracy to the island.”¹⁷⁸ President Bill Clinton and President George W. Bush took steps at “maintaining the U.S. dual track policy of isolating the Cuban government while providing support to the Cuban people.”¹⁷⁹

President Clinton’s administration faced “increased pressure through the Cuban Democracy Act and the Helms-Burton Act, in an attempt to end the Cuban Revolution.”¹⁸⁰ When these attempts failed, President Clinton took steps to try to alleviate the harsh restrictions imposed by the embargo in an attempt to “ease the plight of the Cuban people and help them prepare for a democratic future.”¹⁸¹ One step was allowing Americans to render help to Cubans more easily: U.S. residents could send more money to individual families and non-governmental groups than had been allowed in previous years;¹⁸² they could sell food and medicines to groups that could show that they were not associated with the Communist regime, e.g., religious groups; they could fly to Cuban cities, except for Havana; and establish a mail service in which lettered mail and packages could be delivered to and from the United States and Cuba; and participate in “people-to-people contacts through exchanges between academics, scientists and athletes.”¹⁸³

President Clinton sought to “help the citizens of Cuba without providing aid to the Castro government.”¹⁸⁴ Broadening the aid “demonstrated the United States’ compassion for the Cuban

¹⁷⁸ See Solomon, *supra* note 3, at 171; See Soraya M. Castro Marino, *U.S.-Cuba Relations During the Clinton Administration*, 29 LATIN AMERICAN PERSPECTIVES 47 (2002).

¹⁷⁹ See Solomon, *supra* note 3, at 171; Sullivan, *supra* note 38, at 17.

¹⁸⁰ See Solomon, *supra* note 3, at 171; See Marnio, *supra* note 178, at 48.

¹⁸¹ See Solomon, *supra* note 3, at 171; Statement on United States Policy Toward Cuba, 35 WEEKLY COMP. PRES.DOC. 7,7 (Jan. 5, 1999) [hereinafter Statement on U.S. Policy].

¹⁸² See Solomon, *supra* note 3, at 171; Statement on U.S. Policy, *supra* note 181.

¹⁸³ See Solomon, *supra* note 3, at 172; Statement on U.S. Policy, *supra* note 181; Greller, *supra* note 11, at 1650 n. 5; Weiss, *supra* note 86, at 155.

¹⁸⁴ See Solomon, *supra* note 3, at 172 ; See Statement on U.S. Policy, *supra* note 181, at 7. Clinton said, “They are consistent with our policy of keeping pressure on the regime for democratic change—through the embargo and

people, our interest in building bonds between the citizens of our nations, and our determination to provide the people of Cuba with hope in their struggle against a system that for four decades has denied them even basic human rights.”¹⁸⁵ President Clinton put his words into action when he allowed the Baltimore Orioles to compete against the Cuban National Team in two exhibition games, however any profits of these two games would go to Cuban charities instead of the Cuban government.¹⁸⁶ These policies improved United States and Cuban diplomatic relations.¹⁸⁷

These improved relations did not last as President Bush sought to keep the embargo in place.¹⁸⁸ In 2006, his administration tried to prevent Cuba from playing in the World Baseball Classic.¹⁸⁹ President Bush placed a “political barrier on the Caribbean dictatorship’s participation, only to be countered by an equally savvy political move from Castro.”¹⁹⁰ In response to President Bush’s attempted blockade, in exchange for permission to participate in the World Baseball Classic, Castro assured President Bush that any profits that Cuba made from the tournament would be set aside to aid the victims of Hurricane Katrina.¹⁹¹ Because of this charitable act by Castro, President Bush ultimately decided to allow Cuba to participate in the World Baseball Classic; President Bush’s actions however, reminded both nations how the deep-seeded opposition between the countries still existed.¹⁹² The Bush administration seemed to move backwards from the steps taken by the Clinton administration’s goals of improving

vigorous diplomatic initiatives—while finding way to reach out to the Cuban people through humanitarian efforts and help in developing civil society.” *Id.* at 7-8.

¹⁸⁵ See Solomon, *supra* note 3, at 172 ; See Statement on U.S. Policy, *supra* note 181, at fn.177.

¹⁸⁶ See Solomon, *supra* note 3, at 173; See Greller, *supra* note 11, at 1650-52; Weiss, *supra* note 86, at 155-57.

¹⁸⁷ See Solomon, *supra* note 3, at 173.

¹⁸⁸ See Solomon, *supra* note 3, at 173; O’Brien, *supra* note 44, at 136.

¹⁸⁹ See Solomon, *supra* note 3, at 173; O’Brien, *supra* note 44, at 136.

¹⁹⁰ See Solomon, *supra* note 3, at; O’Brien, *supra* note 44, at 136-37.

¹⁹¹ See *Id.*

¹⁹² See Solomon, *supra* note 3, at; O’Brien, *supra* note 44, at 137.

relations between the two countries.¹⁹³ For example, the Bush administration “stressed greater execution of economic restraints and stronger sanctions on humanitarian aid, travel, and transactions.”¹⁹⁴ “President Bush also increased restrictions on Cuban Americans visiting family in Cuba and conditions for payment of United States agricultural exports to Cuba.”¹⁹⁵ While President Clinton allowed Americans to travel to and from Cuba for any sort of educational purpose, President Bush however, limited travel by Americans to Cuba to that only related to specifically structured educational programs.¹⁹⁶

Since President Barack Obama took office in 2008, he and Cuban President Raul Castro have commenced discussions aimed at improving United States-Cuba relations.¹⁹⁷ One effort at improvement was the enactment of the Omnibus Appropriations Act of 2009.¹⁹⁸ This act helped at reducing “restraints on travel, remittances, gifts, and agricultural exports to Cuba.”¹⁹⁹ In further efforts, Obama’s administration restored a policy that existed under Clinton, which granted families the permission to travel to Cuba.²⁰⁰ Another example of how President Obama tried to further improve relations with Cuba was the decision to continue with “the semi-annual migration talks which are aimed at improving relations between the two countries; talks the United States had ceased in 2004.”²⁰¹ Furthermore, there have been talks between both governments about setting up a direct postal service for the convenience of both American and

¹⁹³ See Solomon, *supra* note 3, at 173.

¹⁹⁴ See Solomon, *supra* note 3, at 173; See Sullivan, *supra* note 38, at 18.

¹⁹⁵ See *Id.*

¹⁹⁶ See *Id.*

¹⁹⁷ See Solomon, *supra* note 3, at 173.

¹⁹⁸ See Solomon, *supra* note 3, at 173-74; See generally Omnibus Appropriations Act, Pub. L. 111-8, 2009 H.R. 1105 (2009).

¹⁹⁹ See Solomon, *supra* note 3, at 174; See Sullivan, *supra* note 38, at 25, 28; U.S. Gov’t Accountability Office, GAO-09-951R, U.S. Embargo on Cuba: Recent Regulatory Changes and Potential Presidential or Congressional Action, (Sept. 17, 2009), available at <http://www.gao.gov/new.items/d09951r.pdf> [hereinafter U.S. GAO].

²⁰⁰ See Solomon, *supra* note 3, at 174; See Sullivan, *supra* note 38, at 28; U.S. GAO, *supra* note 199.

²⁰¹ See Solomon, *supra* note 3, at 174.

Cuban citizens.²⁰² If President Obama and Cuban President Raul Castro continue this progress of repairing the relationship between the two nations, it is not an unfounded prospect that the embargo will eventually be lifted, which would subsequently remove the need of defection by Cuban baseball players in order to pursue their dreams of playing major league baseball.²⁰³

B. Possible Solutions

1. Baseball Diplomacy Act

Before the Helms-Burton Act became law, U.S. Representative Jose Serrano proposed House Bill 2311 in 1995, which claimed to be “A Bill to Waive Certain Prohibitions with Respect to Nationals of Cuba Coming to the United States to Play Organized Baseball.”²⁰⁴ House Bill 2311, referred to as the “Baseball Diplomacy Act,” aimed to create a way around the embargo, which would “allow Cubans to enter the United States on a visa in order to play baseball.”²⁰⁵ “H.R. 187 gives a special work visa to Cuban baseball players, allows them to bring their salary back to Cuba, restricts the times they can stay in the United States to the length of the baseball season, and says that players do not need to renew their contract each year as long as it’s valid.”²⁰⁶ Despite Representative Serrano’s best efforts, the law has yet to be enacted and changes in the near future seem doubtful.²⁰⁷

²⁰² See Solomon, *supra* note 3, at 174; Sullivan, *supra* note 38, at 25, 23.

²⁰³ See Solomon, *supra* note 3, at 179.

²⁰⁴ See Solomon, *supra* note 3, at 179; See H.R. 2311, 104th Cong. § 1 (1994); Cwiertny *supra* note 1, at 422.

²⁰⁵ See Solomon, *supra* note 3, at 179; See Cwiertny *supra* note 1, at 422; see also Jamail, *supra* note 20, at 132.

²⁰⁶ See Solomon, *supra* note 3, 179; See Baseball Diplomacy Act, H.R. 187, 111th Cong. (2009) (referred to Subcomm. On Immig., Citizenship Refugees, Border Sec., & Int’l Law). It states in pertinent part:

Sec. 2. Removal of Certain Restrictions.

(a) Restriction on Embargo authority- The authority of section 620(a) of the Foreign Assistance Act of 1961, those authorities under section 5(b) of the Trading With the Enemy Act that were being exercised with respect to Cuba on July 1, 1977, as a result of a national emergency declared before that date, and are being exercised on the date of the enactment of this Act, and section 203 of the International Emergency Economic Powers Act may not be exercised to regulate or prohibit –

2. Worldwide Draft

With such an influx of international players into Major League Baseball, the game has become a global sport.²⁰⁸ Due to the increasing number of international players, many people have advocated for Major League Baseball to create a worldwide draft, and even current MLB Commissioner Bud Selig has supported such a proposal.²⁰⁹ Supporters of implementing a worldwide draft believe that it could remedy the issue of “competitive balance by providing small market baseball teams the opportunity to sign a top foreign prospect to their organization.”²¹⁰ Some people believe that implementing a worldwide draft would counteract the defection problem.²¹¹ Supporters argue, that a worldwide draft would “completely abolish free agency for foreign players, which would have considerable effects on Cuban defectors.”²¹² There are several positive outcomes of implementing a worldwide draft:

(1) those transactions permitted under § 515.571 of title 31, C.F.R., by or on behalf of a Cuban national who enters the U.S. from Cuba on a visa issued under § 101(a)(15)(H)(ii)(b) of the Immigration Nationality Act for the purpose of playing organized professional baseball; and

(2) a Cuban national described in paragraph (1) from returning to Cuba with the earnings made in playing organized professional baseball.

(b) Restriction on Immigration Authority- The authority contained in § 212(f) of the Immigration Nationality Act may not be used to deny a visa described in subsection(a)(1) to a Cuban national for the purpose of playing organized professional baseball.

(c) Inapplicability of other Restrictions- This section applies notwithstanding § 102(h) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996.

Sec. 3 Duration of Visa

A visa described in § 2(a)(1)—(1) shall permit the alien to whom the visa is issued to remain in the United States only for the duration of the baseball season; and (2) need not be renewed for subsequent entries into the United States for the duration of a valid contract entered into between the alien and the professional baseball team with which the alien played in the preceding baseball season.

Id.

²⁰⁷ See Solomon, *supra* note 3, 179; See Cwiertyny *supra* note 1, at 422.

²⁰⁸ See Solomon, *supra* note 3, at 179-80; See Frankel, *supra* note 12, at 418 (noting the “rapid influx of foreign ballplayers into the MLB ranks during the 1990s”).

²⁰⁹ See Solomon, *supra* note 3, at 180; See Baseball Commissioner Bud Selig Says Playoff Schedule will Have Fewer Days Off, HAMILTON SPECTATOR, Nov. 18, 2009.

²¹⁰ See Solomon, *supra* note 3; See Frankel, *supra* note 12, at 418-419.

²¹¹ See Solomon, *supra* note 3, at 180; See Cwiertyny *supra* note 1, at 421-28.

²¹² See Solomon, *supra* note 3, at 180; See Cwiertyny *supra* note 1, at 421-28; Frankel, *supra* note 12, at 419.

First, it would lower monetary incentives for agents and scouts to aggressively and unlawfully pursue players in Cuba.²¹³ Second, the end of free agency would remove bidding wars for Cuban free agents who live outside the U.S., consequently diminishing agents' motivation for inflating players' abilities in order to tempt them to defect.²¹⁴ Finally, it would lessen MLB scouts incentives to breach the Kuhn Directive, and thus the Cuban embargo."²¹⁵

The problem with implementing a worldwide draft is that Raul Castro would have to be on board, and thus be willing to allow his baseball players to come to America to play Major League Baseball.²¹⁶ Fidel Castro used baseball players as "propaganda;" his administration made sure that everyone knew when the amateur and national teams' were successful, Castro saw these wins as "victories for the revolution and the Cuban citizens."²¹⁷ Because of his brother's firm conviction about Cuban baseball, it is possible that Raul Castro will continue on this path and prevent players from playing in the major leagues, regardless of Commissioner Selig loosening of restrictions on Cuban players.²¹⁸

C. Cuban Participation in Major League Baseball Benefits Both the United States and Cuba

"Unrestricted Cuban participation in Major League Baseball will be beneficial to both the United States and Cuba for several reasons."²¹⁹ Now that baseball has become an international sport MLB teams are struggling to find American players of the caliber needed to compete

²¹³ See Solomon, *supra* note 3, at 180; See Cwiertny *supra* note 1, at 426; Frankel, *supra* note 12, at 419.

²¹⁴ See Solomon, *supra* note 3, at 180; See Cwiertny *supra* note 1, at 426; Frankel, *supra* note 12, at 419. The success rate of Cuban defectors is very low, agents will often tell players that their skill levels are better than they actually are in order to convince them to defect. See Kevin Baxter, *For Athletes Who Defect, Success in Sports is Elusive*, Miami Herald, June 2, 2002.

²¹⁵ See Solomon, *supra* note 3, at 180; See Cwiertny *supra* note 1, at 426; Frankel, *supra* note 12, at 419 (explaining that if every team has access to each international player, it's less likely that individual teams would profit from assisting in a Cuban player's defection).

²¹⁶ See Solomon, *supra* note 3, at 181.

²¹⁷ See Solomon, *supra* note 3 at 181; See Frankel, *supra* note 12, at 426.

²¹⁸ See Solomon, *supra* note 3 at 181; Baird, *supra* note 15, at 168.

²¹⁹ See Solomon, *supra* note 3, at 183.

successfully, forcing those teams to find competitive players from overseas.²²⁰ While the best athletes in America can choose from a variety of sports which sport they would like to excel in, the top athletes in Cuba choose baseball.²²¹ Additionally, the Cuban athletic system is far superior at finding and developing young players into high caliber baseball talent.²²² Another major benefit is that the Cuban health care and educational systems rank higher than those of other countries that produce a high number of international athletes, such as the Dominican Republic.²²³ “Hence, unrestricted access to the best, well-coached, well-educated, and healthiest international baseball players (Cubans) would certainly be advantageous to the United States” and Major League Baseball.²²⁴

The benefits of improved relations between the two countries would not just benefit the United States, Cuba would benefit as well.²²⁵ “Cuban baseball players who want to play professional ball would not be forced to defect from their homeland.”²²⁶ Cuban participation in the majors would be beneficial for two reasons: First, it would greatly influence the players because they would be able to make money playing the game they love and at the same time, they would receive recognition for their talents and hard work.²²⁷ The second reason is for the benefit of the Cuban fans.²²⁸ The fans would be able to see their country's sports idols playing in professional baseball in America, while also reuniting with their fellow citizens as they returned

²²⁰ See Solomon, *supra* note 3, at 183; See Jamail, *supra* note 20 (explaining that “[w]hile some U.S. major league teams go into Latin America, Asia, Australia, and Europe as a cost-cutting measure, the baseball industry also must recruit talent overseas because it suffers from a shortage of quality players at home”).

²²¹ See Solomon, *supra* note 3, at 183; See Jamail, *supra* note 20.

²²² See *id.*

²²³ See *id.*

²²⁴ See Solomon, *supra* note 3, at 183-84.

²²⁵ See *id.* at 184.

²²⁶ See *id.*

²²⁷ See Solomon, *supra* note 3, at 184; See Jamail, *supra* note 20.

²²⁸ See Solomon, *supra* note 3, at 185.

to Cuba for winter league.²²⁹ This would further boost morale and productivity of Cubans, which in turn would perhaps stimulate Cuba's economic situation.²³⁰

VI. CONCLUSION

Throughout American history, baseball has acted as more than just a game, and more than just casual entertainment for families on a Saturday afternoon.²³¹ Baseball has continually united this country throughout its most trying and difficult times. "Jackie Robinson, the first African-American Major League player, not only broke the color barrier on the field, but was also influential in bringing about a new relationship between blacks and whites off the field."²³² After the terrorist attacks on the United States on September 11, 2001, "President Bush and Commissioner Selig used baseball as a coping mechanism and a tool to unite Americans."²³³ In fact, "as baseball became a ritualistic performance of American faith and patriotism, it supported President Bush's declaration of war against evil and the subsequent invasion of Iraq."²³⁴ These are perfect examples of how baseball has in the past and most likely will continue in the future be a tool to "further political and social agendas."²³⁵

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *See id.*

²³² *See Solomon, supra note 3, at 185; See Greller, supra note 11, at 1683 (stating that "[o]ff the field [Jackie] Robinson's heroic struggle eventually changed the political landscape and sparked legislation that re-evaluated race relations in American society.")*

²³³ *See Solomon, supra note 3, at 185; See Michael L. Butterworth, Ritual in the "Church of Baseball": Suppressing the Discourse of Democracy After 9/11, 2COMM. & CRITICAL/CULTURAL STUD. 107, 115 (2005). Butterworth stated: [I]t is clear that the game was to be seen as an instrument of healing. Selig himself commented at the time that "we are a social institution. As such I hope that the game, and the games, will contribute to the nation moving forward, to helping people." Further, the attitude of the players, as expressed by Trot Nixon of the Boston Red Sox, was that they could "be part of the antidote for all of this stuff because the game can take some of the focus off all of the tragedy."
Id. (internal citations omitted).*

²³⁴ *See Solomon, supra note 3, at 185; See Butterworth, supra note 233, at 109.*

²³⁵ *See Solomon, supra note 3, at 185*

Changing the current baseball policy regarding Cubans has the potential of effecting United States-Cuba relations as a whole.²³⁶ Due to the Kuhn Directive and the current embargo with Cuba, Cubans wishing to pursue a career in the major league must defect. Defecting is harmful not only physically but also mentally and emotionally. Many Cubans resort to leaving by boat, facing dangerous seas and it requires that they leave their homeland indefinitely forcing them to denounce their citizenship and leave their families behind without knowing if they will reunite. Although there is no solution on how to handle Cuban baseball players who defect to the United States, the best course of action for the United States, Cuba and Major League Baseball is to continue to explore all possible opportunities and alternatives available.

Baseball purists might regret the interference of politics and baseball.²³⁷ Their main argument is that “We all just want to watch a good game of baseball played by the most talented players available,” regardless of their nationality.²³⁸ But it has been made clear by “the actors in the political drama and the players in the baseball drama regarding Cuba”²³⁹ that baseball is more than just a game and more than just entertainment.²⁴⁰ When one of the players on the field is Cuban, baseball then becomes a matter of political and social debate. The United States and Cuba should take advantage of their common baseball history as a means to improve their current strained relationship. Such actions would allow American baseball fans, Cuban baseball fans and fans of baseball all over the world to collectively cheer for the best baseball available and ultimately insure a true “World” Series each October.²⁴¹

²³⁶ *See id.* at 186.

²³⁷ *See Schneider, supra* note 93, at 486.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *See Greller, supra* note 11, at 1713.