

6-1-2020

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Suggested Citation

Cole Burton, Comment, America's Pastime: Human Trafficking, Cuba, and the Road to the Show, 40 N. Ill. U. L. Rev. 286 (2020).

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America's Pastime: Human Trafficking, Cuba, and the Road to the Show

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Cuban athletes face a treacherous journey in venturing from Cuba to the United States in order to pursue their dreams of becoming professional athletes. The MLB-FCB Agreement of 2018 sought to ease this journey by alleviating the smuggling of Cuban athletes by violent gangs and criminal organizations. However, the Agreement was declared unconstitutional by the Trump administration months later. This Comment analyzes the MLB-FCB Agreement, including the benefits and risks associated with it, and presents potential alternate solutions to cut down on the trafficking of Cuban athletes.

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I. INTRODUCTION

The United States of America is the home of Major League Baseball (MLB), where player salaries range from \$550,000 to \$35,000,000 per year.¹ As such, it should come as no surprise that talented athletes from all over the world, including many from Cuba, flock to the United States with the dream of signing a professional contract. However, the road to becoming a professional baseball player in America is not only difficult, but also dangerous for professional Cuban athletes. While many Cuban athletes have successfully ventured from Cuba to America, “others have lost their lives or found themselves in debt to smugglers and human traffickers, violent gangs and narco-traffickers.”²

Perhaps the most famous tale of human trafficking in the realm of Major League Baseball belongs to free agent outfielder Yasiel Puig. Puig had made multiple attempts to flee Cuba, only to be apprehended by Cuban

1. Scott Boeck, *MLB: Salaries: The All-Near-League Minimum Team*, USA TODAY (Mar. 29, 2019, 10:29 AM), <https://www.usatoday.com/story/sports/mlb/2019/03/29/mlb-salaries-league-minimum-baseball/3306763002/> [https://perma.cc/BT32-MUX2].

2. Fernando Cutz, *Major League Baseball's Deal With Cuba Will Fight Human Trafficking*, MIAMI HERALD (Jan. 31, 2019, 4:22 PM), <https://www.miamiherald.com/opinion/op-ed/article225304760.html> [https://perma.cc/4ZYL-VX8F].

authorities or the U.S. Coast Guard each time.³ However, in 2012, Puig's journey was aided by "smugglers affiliated with a well-known Mexican crime syndicate."⁴ A citizen of Miami employed human smugglers, offering them \$250,000 in exchange for transporting Puig from Cuba to the United States.⁵ After Puig was safely on American soil, he would then owe the Miami citizen "[twenty] percent of his future earnings."⁶ The smugglers then transported Puig to Mexico, where he "was essentially held captive while his captors communicated with sports agents in the United States demanding immediate payment of money."⁷ The smugglers then threatened to "chop off an arm, a finger, whatever, and he would never play baseball again, not for anyone" unless they received their payment.⁸ This led the citizen of Miami, Raul Pacheco, to allegedly hire "a team of fixers to descend on Isla Mujeres" where they then "stormed the motel" and "staged a kidnapping."⁹ Within mere days, Yasiel Puig would find himself in Mexico City, where he would audition before professional scouts for his chance to be signed by an MLB team and begin his career as a budding star in professional baseball.¹⁰ Puig would ultimately sign a seven-year deal worth \$42,000,000, setting a record as a Cuban defector.¹¹ Despite paying his smugglers \$1.3 million, Puig would "continue to receive death threats from his smugglers."¹² Puig's tale is just one of many, including star-studded names such as New York Mets outfielder Yoenis Cespedes and Chicago White Sox first baseman Jose Abreu.¹³

In an effort to address the human trafficking of Cuban athletes, negotiations were launched, and an agreement would soon follow.

On December 20, 2018, Major League Baseball ("MLB"), Major League Baseball Players Association ("MLBPA"), and the Cuban Baseball Federation ("FCB") announced an

3. Jesse Katz, *Escape From Cuba: Yasiel Puig's Untold Journey to the Dodgers*, L.A. MAG. (Apr. 14, 2014), <https://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untold-journey-to-the-dodgers/> [<https://perma.cc/4B9S-W89S>].

4. Jason Browning, *Resolving (Then Un-Resolving) the Human Trafficking Issue for Cubans Joining America's National Pastime*, ARK. LAW., May 19, 2019, at 18.

5. *Id.*

6. *Id.*

7. *Id.* at 19.

8. Katz, *supra* note 3.

9. *Id.*

10. *Id.*

11. *Id.*

12. Browning, *supra* note 4, at 19.

13. Cesar Brioso, *Opinion: Trump's Scuttling of MLB-Cuba Deal Means Defections, Human Trafficking Will Continue*, USA TODAY (Apr. 9, 2019, 1:36 PM), <https://www.usatoday.com/story/sports/mlb/2019/04/09/mlb-cuba-defection-human-trafficking/3410593002/> [<https://perma.cc/NY9L-66YV>].

Agreement allowing Cuban-based baseball players to sign with MLB teams without first resorting to defection or having to travel to another country before seeking entry into the United States.¹⁴

This agreement (hereinafter “the Agreement”) was reached to alleviate “the human smuggling of Cuban baseball players by criminal organizations.”¹⁵ However, the Agreement was declared illegal by the Trump administration on April 8, 2019.¹⁶ The Trump administration cited fees that would be paid to the FCB as the reason for the termination of the Agreement, stating that “the payments were illegal under U.S. sanctions because the federation is part of the Cuban government.”¹⁷ Notably, the declaration came “just days after the federation released the names of [thirty-four] Cuban players it said were eligible to sign with Major League Baseball.”¹⁸ The termination of this historic agreement has forced and will continue to force Cuban athletes with a desire to play in Major League Baseball to continue taking extreme risks, such as subjecting themselves to human trafficking, rather than following “a safe, legal path to playing professionally in the United States.”¹⁹

This Comment, in Part II, discusses the history of Cuban immigration to the United States and the changes that have occurred in recent years as presidential administrations turned over. This history of Cuban immigration to the United States include the now extinct “wet foot, dry foot” policy of 1995, as well as the option for Cuban athletes to travel to a third country prior to arriving to the United States. Part III analyzes the Agreement, including its goals, as well as the potential dangers that it posed. Additionally, Part III delves into the reasoning of the Trump administration for cancelling the Agreement, while also comparing the Agreement to other foreign league deals, describing the classification of FCB athletes, and showing support the Agreement had garnered from both MLB and its past and present athletes. Finally, Part IV presents potential solutions to this human trafficking disaster that could be explored by both the U.S. government, as

14. Browning, *supra* note 4.

15. *Id.*

16. Karen DeYoung, *Trump Administration Cancels Major League Baseball Deal With Cuba*, WASH. POST (Apr. 8, 2019, 9:07 PM), https://www.washingtonpost.com/world/national-security/trump-administration-cancels-mlb-deal-with-cuba/2019/04/08/99c7d9be-5a2f-11e9-842d-7d3ed7eb3957_story.html [https://perma.cc/M7MJ-64WY].

17. *Id.*

18. *Id.*

19. Matt Spetalnick, *U.S. Nixes Deal for Major League Baseball to Sign Cuban Players*, REUTERS (Apr. 8, 2019, 2:07 PM), <https://www.reuters.com/article/us-cuba-usa-baseball/u-s-blocks-deal-for-major-league-baseball-to-sign-cuban-players-idUSKCN1RK27U> [https://perma.cc/NNA4-DSJ7].

well as Major League Baseball, to potentially remedy, or at the very least lessen, the human trafficking of Cuban athletes to the United States. Such potential solutions include allowing free negotiation of Cuban athletes with all MLB teams, the implementation of an international draft, and revisiting discussions with the Trump administration.

II. BACKGROUND AND HISTORY

The strained relationship of the United States and Cuba began during the Cold War. In this time of unrest, Fidel Castro came to power, overthrowing the U.S. allied government of Fulgencio Batista in the process.²⁰ The United States recognized Castro's rise to power and "began imposing economic penalties as the new regime increased its trade with the Soviet Union, nationalized American-owned properties, and hiked taxes on U.S. imports."²¹ The United States would ultimately sever diplomatic ties with Cuba and attempt to overthrow Castro, leading to further Cuban mistrust.²² Decades later, Presidents George H.W. Bush and Bill Clinton would sign laws "that strengthened U.S. sanctions and stated that the embargo would remain in place until Cuba transitions to a democratically elected government that excludes the Castros and upholds fundamental freedoms."²³

Due to the U.S. government's embargo against Cuba, coupled with its policies that supported Cuban defectors, the process for Cuban immigration to the United States was previously unlike the process of all other countries.²⁴ The "wet foot, dry foot" policy of 1995 held that if the Cuban immigrants were intercepted by the Coast Guard prior to their arrival to the United States, they would be handed off to the Department of Homeland Security as illegal immigrants.²⁵ However, if the Cuban immigrants were to successfully arrive to Florida and avoid detection by the Coast Guard, they would be "eligible for legal status and a fast track to a green card."²⁶ This policy was created by President Clinton and typically allowed Cuban citizens that reached the United States soil to stay in the country, while forcing

20. Brianna Lee & James McBride, *U.S.-Cuba Relations*, COUNCIL FOREIGN REL. (Mar. 7, 2019), [https://www.cfr.org/background/under/us-cuba-relations_\[https://perma.cc/7C55-FK5E\]](https://www.cfr.org/background/under/us-cuba-relations_[https://perma.cc/7C55-FK5E]).

21. *Id.*

22. *Id.*

23. *Id.*

24. Dara Lind, *Major League Baseball's Human-Trafficking Problem*, VOX (Sep. 15, 2014, 11:00 AM), <https://www.vox.com/2014/9/15/6147663/baseball-players-trafficking-cuba-puig-cartels-smuggling> [https://perma.cc/T6ZD-CSKH].

25. *Id.*

26. *Id.*

those who were apprehended at sea to be returned to Cuba.²⁷ Prior to President Clinton's wet foot, dry foot policy, President Lyndon Johnson's "open door" policy towards Cuban refugees was in effect.²⁸ Accordingly, under President Johnson, Cuban citizens were free to flee their country in favor of a new life in the United States. The goal of the wet foot, dry foot policy was to allow Cuban immigrants the opportunity to remain in the United States after fleeing from Cuba.²⁹ One notable player to take advantage of the wet foot, dry foot policy was the late Miami Marlins ace³⁰ starting pitcher Jose Fernandez.³¹ Fernandez, after reaching Florida at the age of fifteen, would later be selected in the MLB amateur draft³² by the Miami Marlins.³³ Had the policy not been in place at the time, Major League Baseball and its fans would have been deprived of an overpowering young talent of Fernandez in the sport, as well as countless others.

However, this wet foot, dry foot policy, which was in place for more than twenty years, was terminated by President Barack Obama in January of 2017.³⁴ This move served as "one of the final foreign policy decisions of Obama's term."³⁵ Rather than giving preferential treatment to Cuban immigrants, the U.S. government now "consider[s] residency requests from these Cubans in the same way other migrants are processed when they arrive into the country."³⁶ However, this decision does not have an impact on the Cuban citizens that previously entered the United States via the wet foot, dry

27. Alan Gomez, *Obama Ends 'Wet Foot, Dry Foot' Policy for Cubans*, USA TODAY (Jan. 12, 2017, 4:31 PM), <https://www.usatoday.com/story/news/world/2017/01/12/obama-ends-wet-foot-dry-foot-policy-cubans/96505172/> [<https://perma.cc/ET7K-JEMN>].

28. Elise Labott et al., *US Ending 'Wet Foot, Dry Foot' Policy for Cubans*, CNN (Jan. 13, 2017, 8:25 AM), <https://www.cnn.com/2017/01/12/politics/us-to-end-wet-foot-dry-foot-policy-for-cubans/index.html> [<https://perma.cc/AUF7-B4B9>].

29. Scott Simon, *What the end of 'Wet-Foot, Dry-Foot' Means for Cubans*, NPR (Jan. 14, 2017, 8:02 AM), <https://www.npr.org/2017/01/14/509807177/what-the-end-of-wet-foot-dry-foot-means-for-cubans> [<https://perma.cc/MR6S-BSMG>].

30. An "ace" in major league baseball refers to the best starting pitcher on the team. The ace almost always fronts his team's starting rotation. See *Ace*, MLB, <http://m.mlb.com/glossary/idioms/ace> [<https://perma.cc/EZ47-R2KS>].

31. Eric Gomez, *'Wet Foot, Dry Foot' Policy Benefitted Many Cuban MLB Stars*, ESPN (Jan. 18, 2017), https://www.espn.com/blog/onenacion/post/_id/6712/wet-foot-dry-foot-policy-benefitted-many-cuban-mlb-stars [<https://perma.cc/VA42-73WX>].

32. MLB's amateur draft, also known as the Rule 4 Draft, is an annual event in which all thirty major league teams select prospects to join their minor league teams, with the goal of developing their selected prospects into major league contributors. See *Rule 4 Draft*, MLB, <http://m.mlb.com/glossary/transactions/rule-4-draft> [<https://perma.cc/8NGU-CHKM>].

33. Gomez, *supra* note 31.

34. Labott et al., *supra* note 28.

35. *Id.*

36. *Id.*

foot policy, it merely prevents future immigrants from utilizing it.³⁷ This decision by President Obama was achieved as he attempted to open diplomatic relations with Cuba and was made just one week prior to President Trump taking office.³⁸ In exchange for the termination of the wet foot, dry foot policy, “Cuba has agreed to start accepting Cubans who were issued a deportation order in the United States, something the communist nation has refused to do for decades.”³⁹

The alternative to the wet foot, dry foot policy for Cuban immigrants is to instead travel to a third country prior to arriving in the United States. “If they manage to stay in a third country for several months beforehand, like Mexico or the Dominican Republic, they’re eligible for a much bigger MLB contract.”⁴⁰ Cuban immigrants that traveled straight to the United States were required to participate in the MLB draft, meaning that they could only negotiate with the one team that drafted the player.⁴¹ Meanwhile, a player that instead travels to a third country prior to arriving in the United States is able to negotiate with all thirty MLB teams, forcing the teams to compete against each other for the player’s services.⁴² This competition and increased payout is what attracts human smugglers and gangs, thus leading to their involvement with the Cuban athletes.⁴³

The Obama administration and the Trump administration took opposite stances regarding the MLB-FCB deal, as well as the principles, risks, and benefits that the landmark deal stood for.

A. THE OBAMA ADMINISTRATION

Major League Baseball and the Cuban Baseball Federation “commenced talks after the United States and Cuba began a thaw in relations under the Obama administration in 2014.”⁴⁴ Soon thereafter, Major League Baseball’s Commissioner’s Office “secured a license from the Treasury Department to legally begin negotiations with the Cubans.”⁴⁵ In 2016, the Obama administration granted MLB a license to conduct business with the

37. *Id.*

38. Gomez, *supra* note 27.

39. *Id.*

40. Lind, *supra* note 24.

41. *Id.*

42. *Id.*

43. *Id.*

44. David Waldstein & Michael Tackett, *Trump Ends Deal Between M.L.B. and Cuban Baseball Federation*, N.Y. TIMES (Apr. 8, 2019), <https://www.nytimes.com/2019/04/08/sports/mlb-cuba-donald-trump.html> [<https://perma.cc/KTW9-9YXY>].

45. *Id.*

FCB.⁴⁶ In addition, the Obama administration “[turned] a ban on U.S. tourism to Cuba into an unenforceable honor system”⁴⁷ and “eliminated a ban on Cuban access to the international banking system.”⁴⁸ The goal behind loosening these prior restrictions, as stated by the Deputy National Security Advisor Ben Rhodes, was to better the engagement “with the Cuban people, to support them and to build bridges between our two countries,” noting the deep belief that “this is in America’s national interest.”⁴⁹

The stance of the Obama administration, in granting Major League Baseball a license to negotiate with the Cuban Baseball Federation, was not out of line with “America’s long history of sports diplomacy.”⁵⁰ Take, for example, the story of “ping-pong diplomacy” between the United States and China.⁵¹ In the 1970s, tensions between the United States and China had reached new heights.⁵² It was at this time that the Winter Olympics were underway, and an American player had missed his bus.⁵³ This American table tennis player, Glenn Cowan, then decided to board a Chinese team bus.⁵⁴ It was because of this unlikely event that Chinese table tennis player Zhuang Zedong met Cowan.⁵⁵ The two exchanged gifts and “[p]ictures of their encounter spread around the world,” which ultimately led to Chinese leader Mao Zedong inviting the U.S. table tennis team to China for an exhibition match in 1971.⁵⁶ This match led to President Nixon visiting China the following year and “ultimately paved the way for the establishment of diplomatic ties in 1979, ending China’s isolation from the outside world.”⁵⁷ Thus, “ping-pong diplomacy” was born.

Ultimately, however, the efforts made under the Obama administration with regard to the Agreement would regress rather than progress following

46. *Id.*

47. *Looser Restrictions Allow Cuban MLB Players to Legally Earn in U.S.*, ESPN (Mar. 15, 2016), https://www.espn.com/mlb/story/_/id/14977450/looser-us-cuba-embargo-restrictions-allow-cuban-mlb-players-legally-earn-us-income [https://perma.cc/U8PE-4LJP].

48. *Id.*

49. *Id.*

50. Carlos Gutierrez, *Major League Baseball Leads the Way on Preventing Human Trafficking*, WASH. EXAMINER (Feb. 7, 2019, 12:00 AM), <https://www.washingtonexaminer.com/opinion/op-eds/major-league-baseball-leads-the-way-on-preventing-human-trafficking> [https://perma.cc/9EMA-WQS5].

51. Katie Hunt, *Chinese ‘Ping-Pong Diplomacy’ Player Dies*, CNN (Feb. 11, 2013, 2:17 AM), <https://www.cnn.com/2013/02/11/world/asia/pingpong-diplomacy-death/index.html> [https://perma.cc/HFJ8-B38K].

52. Gutierrez, *supra* note 50.

53. *Id.*

54. Hunt, *supra* note 51.

55. *Id.*

56. *Id.*

57. *Id.*

the election of President Donald Trump and the stance that his administration would ultimately take towards the Agreement.

B. THE TRUMP ADMINISTRATION

After taking office, President Trump instituted several crackdowns as a part of his “efforts to roll back his predecessor’s opening to Cuba.”⁵⁸ President Trump’s administration has included former National Security Advisor John Bolton⁵⁹ and Mauricio Claver-Carone,⁶⁰ both of whom have a history of favoring stricter restrictions with Cuba.⁶¹ The December Agreement between MLB, MLBPA, and the FCB was immediately opposed by the Trump administration.⁶² A senior administration official went so far as to state that “the agreement itself was a form of ‘human trafficking’ by the Cuban government and that the Cuban Baseball Federation is a subsidiary of the Cuban government.”⁶³ The concern over whether or not the Cuban Baseball Federation is a subsidiary of the Cuban government stems from the release fees that any and all Cuban players would be required to pay to the Cuban Baseball Federation, which just as in other foreign league deals, such as those reached with Japan, Korea, and China,⁶⁴ would total twenty-five percent of any player’s signing bonus.⁶⁵ If the Cuban Baseball Federation is a subsidiary of the Cuban government, then the Agreement “would allow payments to the Cuban government”⁶⁶ and would result in a violation.

As Major League Baseball and the Cuban Baseball Federation negotiated a functional agreement following the procurement of a license from the Treasury Department,⁶⁷ they did so knowing that any agreement must comply with the Cuban Assets Control Regulations (CACR) set out by the Department of the Treasury’s Office of Foreign Assets Control (OFAC).⁶⁸

58. DeYoung, *supra* note 16.

59. John Bolton served as President Trump’s National Security Advisor in 2018 and part of 2019, before the two parted ways. *See* DeYoung, *supra* note 16.

60. Mauricio Claver-Carone currently serves as senior director for Latin America on the National Security Council. *See* DeYoung, *supra* note 16.

61. DeYoung, *supra* note 16.

62. Richard Gonzales, *Trump Administration Kills Baseball Deal With Cuba*, NPR (Apr. 8, 2019, 7:35 PM), <https://www.npr.org/2019/04/08/711234347/trump-administration-kills-baseball-deal-with-cuba> [<https://perma.cc/YWX3-Y4LP>].

63. *Id.*

64. Gutierrez, *supra* note 50.

65. Gonzales, *supra* note 62.

66. Franco Ordoñez, *Cuban Baseball Players Strike out in New Trump Administration Decision*, MIAMI HERALD (Apr. 8, 2019, 5:31 PM), <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article228986169.html>? [<https://perma.cc/35WW-TLX6>].

67. Waldstein & Tackett, *supra* note 44.

68. Browning, *supra* note 4, at 19.

However, “[s]ection 515.571(a)(5)(i) of the CACR was amended to authorize the receipt of salary or other compensation by a Cuban national provided that the national of Cuba is not subject to any special tax assessments by the Cuban government in connection with the receipt of the salary or compensation.”⁶⁹ As such, Major League teams could pay Cuban athletes so long as no “payment of such salary or compensation, directly or indirectly,” reaches the Cuban government.⁷⁰

The problem this created was simple; Cuban athletes needed a passport from the Cuban government in order to travel to the United States, and the Cuban government required such athletes to pay an income tax in order to receive a passport.⁷¹ Accordingly, section 515.571(a)(5)(i) of the CACR would be violated due to this income tax. To avoid this issue, the Treasury Department found “that the FCB was not affiliated with the communist regime – the Cuban government.”⁷² This finding allowed MLB and the FCB to be in full compliance with section 515.571(a)(5)(i) of the CACR, as no payment would be received by the Cuban government.⁷³ It has been reasoned that this finding is similar to that of the U.S. Olympic Committee, which is independent from the U.S. government.⁷⁴ However, this finding by the Treasury Department was ultimately overturned by the Trump administration, which views the FCB as “an entity of the Cuban government.”⁷⁵ The Trump administration bases its stance primarily on the determination that the FCB belongs to Cuba’s National Sports Institute, and is thus an entity of the Cuban government.⁷⁶

Despite this determination, Cuba maintains that the FCB belongs to the Cuban Olympic Committee, which reports to the International Olympic Committee rather than to Cuba.⁷⁷ Accordingly, Cuba claims “that its baseball federation is not part of the state.”⁷⁸ Although the Office of Foreign Assets Control is generally responsible for the enforcement of the embargo with Cuban nationals or entities, including the Cuban government, the President, via the Trading with the Enemy Act of 1917,⁷⁹ has “unilateral author-

69. *Id.* at 20.

70. *Id.*

71. *Id.*

72. *Id.*

73. Browning, *supra* note 4, at 20.

74. Mimi Whitefield, *Rubio Calls Deal to Allow Cuban Players to Sign With MLB ‘a Farce,’ Vows to Overturn it*, MIAMI HERALD (Dec. 28, 2018, 12:00 AM), <https://www.miamiherald.com/news/nationworld/world/americas/cuba/article223673300.html> [https://perma.cc/MS5Q-LRN3].

75. Ordoñez, *supra* note 66.

76. Spetalnick, *supra* note 19.

77. *Id.*

78. *Id.*

79. Trading with the Enemy Act, 50 U.S.C. §§ 4301-4341 (1917).

ity to make changes to the regulations.”⁸⁰ Thus, President Trump and his administration were well within their authority to void the Agreement.

After the announcement that the Agreement was now prohibited, Secretary of State Mike Pompeo participated in an interview with Fox News.⁸¹ Pompeo was asked “whether the move was ‘more effort to pinch Cuba.’”⁸² Pompeo replied with an affirmative “Yep,” going so far as to state that “the administration was ‘going to do everything we can to pull [Cuba] out’ of Venezuela.”⁸³ Pompeo was a key player in the nullification of the Agreement, as he had previously made a request for a finding that the FCB was under the control of the Cuban government.⁸⁴

In the months following the blocking of the Agreement, President Trump and the MLB owners reengaged in discussions.⁸⁵ However, the Trump administration “made clear that in exchange for revisiting any decision, it wants MLB, like other groups with ties to the island, to urge Cuba to reduce its long-standing cooperation with Venezuela’s socialist government.”⁸⁶ Unfortunately for MLB and Cuban athletes, experts in the field find it rather unlikely that Cuba would turn on Venezuela, a longtime ally, just to save the Agreement.⁸⁷ After hearing MLB’s concerns about the safety of Cuban athletes that employ human smugglers to transport them to the United States, the White House countered by stating that “[t]he administration will continue to hold the Cuban regime accountable for its direct role in the trafficking of its citizens from the island.”⁸⁸ However, the President, in meeting with the commissioner of MLB soon after the ruling against the Agreement, may provide hope for an eventual reversal of the decision in the future.⁸⁹

III. ANALYSIS OF THE CUBAN BASEBALL FEDERATION AGREEMENT

The Agreement was an attempt by the parties involved to reduce the human trafficking of Cuban athletes. While the Agreement had several ob-

80. Browning, *supra* note 4, at 19.

81. DeYoung, *supra* note 16.

82. *Id.*

83. *Id.* (brackets in original).

84. Browning, *supra* note 4, at 21.

85. Franco Ordoñez, *Trump Will Play Ball with MLB on Cuban Players if League Helps with Venezuela*, NPR (Jun. 12, 2019, 1:22 PM), <https://www.npr.org/2019/06/12/731966442/trump-will-play-ball-with-mlb-on-cuban-players-if-league-helps-with-venezuela> [<https://perma.cc/V5MJ-G8XU>].

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

jectives in place to reach this goal, it also had concerns, primarily related to the release fees that may result in payments to the Cuban government.

A. OBJECTIVES OF THE AGREEMENT

Prior to the Agreement being reached between MLB, MLBPA, and the FCB, President Trump's administration was hard at work to establish an effective Cuban Policy with specific goals in mind. In 2017, Fernando Cutz served as the acting senior director for Western Hemisphere Affairs and senior advisor to the National Security Advisor on President Trump's National Security Council.⁹⁰ Prior to Trump's presidency, Cutz had worked on Latin America policy at the White House under President Obama.⁹¹ When tasked with drafting President Trump's Cuba Policy in 2017, Cutz and his colleagues were to keep four primary objectives in mind: "improve human rights; encourage the rule of law; foster free markets and free enterprise; and promote democracy in Cuba."⁹² Cutz further stated that the ultimate objective of the new policy, as determined by President Trump, was one that he believed was shared by all prior Cuba policies set out by the various administrations over the years: "to try to improve the lives of the Cuban people."⁹³ Unfortunately, President Trump's abrupt cancellation of the Agreement meant that the thirty-four players authorized by the FCB to sign contracts with MLB teams would be unable to do so,⁹⁴ leading them and future players like them to make the difficult choice of staying put in Cuba or defecting to the United States, likely with the assistance of human traffickers and smugglers.⁹⁵

With regard to the policy goal of improving human rights, Cutz argues that the Agreement would have achieved said goal.⁹⁶ However, opponents of the Agreement argue that the release fees contained within would ultimately fuel human rights violations.⁹⁷ A senior Trump administration official went so far as to state that "[p]arties seeking to benefit from business opportunities in Cuba are on notice that the [a]dministration will continue to take actions to support human rights and restrict the Cuban regime's ability to profit from U.S. business."⁹⁸ The official went on to state that "[w]e

90. Cutz, *supra* note 2.

91. *Id.*

92. *Id.*

93. *Id.*

94. Spetalnick, *supra* note 19.

95. Briosio, *supra* note 13.

96. Cutz, *supra* note 2.

97. *Id.*

98. Dave Sheinin & Karen DeYoung, *MLB, Cuban Baseball Federation Reach Agreement; Trump Administration Signals It Has Issues with Deal*, WASH. POST (Dec. 19, 2018, 8:59 PM), <https://www.washingtonpost.com/sports/2018/12/19/mlb-cuban-baseball->

do not condone the actions of any person or entity that contribute to the violation of human rights of Cuban citizens and the Cuban regime's schemes to profit from the labor of its people abroad while keeping them in thrall to an oppressive political system."⁹⁹ However, these release fees amount to very little when compared to the annual budget of Cuba.¹⁰⁰ Furthermore, the Agreement itself held that the income generated as a result of release fees would be utilized for "baseball purposes," and was estimated at under \$2 million annually.¹⁰¹

Regardless of the Agreement and its outcome, it has been argued that the economic embargo that the United States has placed on Cuba has failed to improve human rights.¹⁰² Rather, quite the opposite has occurred, as the embargo "continues to impose indiscriminate hardship on the Cuban people."¹⁰³ As such, 187 out of the 192 member countries of the United Nations General Assembly in 2010 voted in favor of a resolution against the U.S. embargo on Cuba.¹⁰⁴ Those numbers hold true today, as the 2019 United Nations General Assembly also tallied 187 votes in favor of the United States ending its embargo, with Brazil, Israel, and the United States voting against terminating the embargo and Colombia, along with Ukraine, abstaining from the vote.¹⁰⁵ Despite this overwhelming number of votes in favor of the United States ending its economic embargo against Cuba, U.S. Ambassador to the UN Kelly Kraft stated, "[I]ike all nations, we get to choose which countries we trade with. This is our sovereign right . . ."¹⁰⁶ Kraft went so far as to state her concern that "the international community, in the name of protecting sovereignty, continues to challenge this right."¹⁰⁷ While President Trump may have considered the policy of improving human rights within the Agreement, it cannot be ignored that the United States has failed to pursue this policy consideration with regard to its ongoing economic embargo with Cuba.

federation-reach-agreement-that-will-eliminate-need-players-defect/ [https://perma.cc/SR3P-R93T].

99. *Id.*

100. Cutz, *supra* note 2.

101. *Id.*

102. Human Rights Watch, *World Report: 2011*, HRW.ORG, 237 (2011), https://www.hrw.org/sites/default/files/world_report_download/wr2011_book_complete.pdf [https://perma.cc/S9JV-WVVV].

103. *Id.*

104. *Id.*

105. *Cuba: UN Members Overwhelmingly Support End of US Embargo, as Brazil Backs Washington*, UN NEWS (Nov. 7, 2019), <https://news.un.org/en/story/2019/11/1050891> [https://perma.cc/4W54-NWL2].

106. *Id.*

107. *Id.*

As to the objective of encouraging the rule of law, the Agreement would have combatted human trafficking and prevented millions of dollars each year from reaching criminals and criminal organizations, including “violent gangs, smugglers, and narco-traffickers.”¹⁰⁸ Indeed, there is virtually no arguing that the Agreement would have, by its very nature, eliminated the need to enlist human traffickers or gangs. Accordingly, the threat of violence to Cuban athletes seeking passage to America could have been minimized or avoided altogether. In response to the abrupt cancellation of the Agreement by the Trump administration on April 8, 2019, the FCB stated on social media that “[t]he agreement with #MLB seeks to stop the trafficking of human beings, encourage cooperation and raise the level of baseball. Any contrary idea is false news. Attacks with political motivation against the agreement achieved harm the athletes, their families and the fans.”¹⁰⁹

Additionally, Cutz argues that the Agreement in and of itself would have allowed Cuban athletes “to benefit from a free market in the United States, and to keep the money that they make.”¹¹⁰ Of course, the release fees would have applied to each of the athlete’s salary, and a portion of their salary would have been returned to the FCB. The Trump administration takes an alternate stance, stating that the Agreement reached “would institutionalize a system by which a Cuban body garnishes the wages of hard-working athletes who simply seek to live and compete in a free society.”¹¹¹ The administration also declared that it “looks forward [to] identify ways for Cuban players to have the individual freedom to benefit from their talents, and not as property of the Cuban State.”¹¹² However, this is no different than the release fees that apply to other foreign baseball leagues, such as Japan’s Nippon Professional Baseball (NPB) and the Korea Baseball Organization (KBO).¹¹³ Thus, the third objective of fostering free markets and free enterprise would also have arguably been achieved through the Agreement.

The United States has taken steps over the years to promote free enterprise to Cuba. “Since 1996, the United States has provided assistance –

108. Cutz, *supra* note 2.

109. @CubanaBeisbol, TWITTER (Apr. 8, 2019, 12:33 PM), <https://twitter.com/CubanaBeisbol/status/1115306769641873408> [<https://perma.cc/65WC-Z8CR>].

110. Cutz, *supra* note 2.

111. Sheinin & DeYoung, *supra* note 98.

112. Ryan Lake, *Trump Administration Scuttles MLB Deal that Would Stop Trafficking of Cuban Players*, FORBES (Apr. 10, 2019, 9:00 AM), <https://www.forbes.com/sites/ryanlake/2019/04/10/trump-administration-scuttles-mlb-deal-that-would-stop-human-trafficking-of-cuban-players/#7d68e92d6b2f> [<https://perma.cc/L3ZV-2ZTZ>] (brackets in original).

113. *Id.*

through the U.S. Agency for International Development (USAID), the State Department, and the National Endowment for Democracy (NED) – to increase the flow of information on democracy, human rights, and free enterprise to Cuba.”¹¹⁴ Assistance of this kind has been provided in order to “[promote] a rapid, peaceful transition to democracy, [help] develop civil society, and [build] solidarity with Cuba’s human rights activists.”¹¹⁵ Such assistance is ultimately beneficial to the United States, as respect for the rule of law and the spread of democracy helps to advance our security and prosperity interests.¹¹⁶

Lastly, Cutz concedes that “the MLB-FCB agreement [would] not restore democracy in Havana.”¹¹⁷ However, he noted that the Agreement would have taken “a small positive step that is in alignment with the objectives we have tried to follow in crafting Cuba policy over the past several years.”¹¹⁸ For example, Cuban athletes, as well as their families, would have been able to legally and permanently move from Cuba to the United States pursuant to the Agreement.¹¹⁹ Moreover, it has been argued that “nurturing economic, political, and educational ties” is the superior method to promote democracy in Cuba,¹²⁰ as opposed to forcing democracy upon the country and its citizens.

As for the overarching goal of improving the lives of the Cuban people, it is hard to argue that the Agreement would have failed in any aspect. After all, Cuban athletes would be able to negotiate a contract and sign with a Major League team,¹²¹ freely travel between Cuba and the United States,¹²² and avoid falling into the hands of human traffickers and other criminal organizations.¹²³ Even the Trump administration, while arguing that the Cuban government is attempting to exploit its citizens by garnishing their wages,¹²⁴ fails to reference the increased pay that Cuban athletes

114. MARK P. SULLIVAN, CONG. RESEARCH SERV., R41617, CUBA: ISSUES FOR THE 112TH CONGRESS 57 (2012), <http://fas.org/sgp/crs/row/R41617.pdf> [<https://perma.cc/LAGE-6ZJF>].

115. *Id.*

116. Arthur Rizer & Sheri R. Glaser, *Breach: The National Security Implications of Human Trafficking*, 17 WIDENER L. REV. 69, 79 (2011).

117. Cutz, *supra* note 2.

118. *Id.*

119. *Id.*

120. David M. Shamberger, *The Helms-Burton Act: A Legal and Effective Vehicle for Redressing U.S. Property Claims in Cuba and Accelerating the Demise of the Castro Regime*, 21 B.C. INT’L & COMP. L. REV. 497, 512 (1998).

121. Cutz, *supra* note 2.

122. *Id.*

123. *Id.*

124. Ordoñez, *supra* note 66.

would receive thanks to the Agreement, as well as the freedom to spend as they see fit.

While not official goals of the Trump administration, other important benefits also exist behind the Agreement. For example, Tennessee Democratic Representative Steve Cohen has stated that “[t]hroughout our fraught history, baseball has brought us together. People-to-people contact is a tremendous step toward understanding each other’s cultures, and sports serve as a universal language bridging cultural, racial and political divides.”¹²⁵ Rep. Cohen went on to detail an experience he had as a child in which White Sox legend Minnie Minoso, also known as the Cuban Comet, spotted him on crutches and had a white teammate of his bring Cohen a baseball on his behalf.¹²⁶ Minnie did not feel comfortable approaching Cohen due to the time’s racial segregation,¹²⁷ but he still felt compelled to make an impact on a child’s life. Rep. Cohen shared that this experience not only spawned his “fondness for Cuba and the Cuban people,”¹²⁸ but also taught him a valuable lesson with regards to civil rights and ultimately “influenced [his] life and career as a public servant.”¹²⁹ Rep. Cohen has expressed that similar experiences will be prevented due to the cancellation of the Agreement.¹³⁰ He has further stated that “[i]f we want Cuba to become more democratic, we need to create opportunities for cultural exchange between our two countries.”¹³¹

Ultimately, the Agreement provided for more than simply the combating of human trafficking. The Agreement also would have prevented millions of dollars from reaching gangs, smugglers, and traffickers annually.¹³² Furthermore, it would have allowed Cuban athletes to benefit from the free market of the United States and allow the players, as well as their families, to legally move from Cuba to the United States.¹³³ Not to mention, it would have improved the relations between Cuban citizens and the United States.¹³⁴ However, the Trump administration identified dangers that the Agreement presented, and ultimately determined that the Agreement could not stand in its current state. As a result, the Trump administration has been

125. Steve Cohen, *President Trump Needs to Reconsider Rejected Deal Between MLB and Cuban Baseball Federation*, SPORTS ILLUSTRATED (Apr. 18, 2019), <https://www.si.com/mlb/2019/04/18/donald-trump-cuba-baseball-deal> [<https://perma.cc/UR6V-CTMG>].

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Cohen, *supra* note 125.

131. *Id.*

132. Cutz, *supra* note 2.

133. *Id.*

134. *Id.*

criticized for “using these players as pawns to demonstrate their toughness against Cuba and reverse Obama policies,”¹³⁵ as well as “prioritiz[ing] political posturing over the safety of Cubans seeking opportunity.”¹³⁶

B. DANGERS POSED BY THE AGREEMENT

The primary reason for the Trump administration’s cancellation of the Agreement was the determination that “the Cuban federation was a part of the government in Havana – a departure from the previous administration’s stance.”¹³⁷ The terms of the Agreement would have provided the FCB with “[twenty-five] percent of a player’s signing bonus for a minor league player and between [fifteen] and [twenty-five] percent for a major league player.”¹³⁸ Thus, these percentages would constitute payments to the Cuban government.¹³⁹ A senior administration official went so far as to call Cuban athletes “pawns of the Cuban dictatorship”¹⁴⁰ under the Agreement. National Security Council spokesperson Garrett Marquis echoed the same sentiment, stating “[t]he [United States] does not support actions that would institutionalize a system by which a Cuban government entity garnishes the wages of hard-working athletes who simply seek to live and compete in a free society.”¹⁴¹ Marquis added that the current administration “looks forward to working with MLB to identify ways for Cuban players to have the individual freedom to benefit from their talents, and not as property of the Cuban State.”¹⁴²

Proponents of the Agreement have argued that “the money generated . . . estimated to be less than \$2 million a year, will be used for baseball purposes, including improving baseball stadiums and fields, and purchasing equipment for youth leagues.”¹⁴³ Furthermore, the estimate of \$2 million is little more than “a drop in the bucket from Cuba’s \$62.11 billion annual budget, or the \$3 billion annual revenue generated from tourism to the island.”¹⁴⁴ Indeed, the estimated \$2 million pales in comparison to Cuba’s annual budget and annual revenue. However, the estimated \$2 million that

135. Will Fischer, *Cuban Players Helped Build the Modern MLB. America Doesn't Want to Help Them.*, INTELLIGENCER (Apr. 19, 2019), <http://nymag.com/intelligencer/2019/04/trump-administration-cancels-mlb-agreement-with-cuba.html> [https://perma.cc/NQ9Z-P7UC].

136. *Id.*

137. Waldstein & Tackett, *supra* note 44.

138. *Id.*

139. Ordoñez, *supra* note 66.

140. *Id.*

141. *Id.*

142. *Id.*

143. Cutz, *supra* note 2.

144. *Id.*

would have been generated as a result of the Agreement stems from Cuban athlete salaries that would far exceed the typical Cuban income. According to Cuba's National Office of Statistics, the average Cuban citizen earned approximately \$25.00 per month, which was up from the approximate monthly income of \$18.66 from 2008 to 2015.¹⁴⁵ The survey, which approximates a margin of error at plus or minus 3%, reports that approximately 27% of Cubans earned less than \$50 per month, 34% earned \$50–\$100 per month, and 20% earned \$101–\$200.¹⁴⁶ Another 12% claimed earnings of \$201–\$500 per month, with an additional 4% claiming to earn more than \$500 per month.¹⁴⁷ The remaining 3% of Cubans declined to share their income for the survey.¹⁴⁸ In 2019, Cuba announced that it would be raising its minimum wage to \$17 per month, and that the average state salary would increase to \$44 per month.¹⁴⁹ While we cannot pinpoint the exact average income of Cuban citizens, it can be reasonably estimated that the average Cuban citizen earned more than Cuba's National Office of Statistics reported in 2015. In addition, even these estimations, as well as the updated 2019 estimations, fall significantly short of the income a professional Cuban athlete would have earned pursuant to the Agreement, had it been allowed to remain in place by the Trump administration.

Moreover, Cuba maintains that its baseball federation is separate from the state, noting that the FCB “falls under the Cuban Olympic Committee, which in turn reports to the International Olympic Committee, not the Cuban government.”¹⁵⁰ Indeed, Cuban sports entities, including the FCB, as well as the International Olympic Committee, have echoed the sentiments of Cuba, claiming that the FCB is indeed independent from the Cuban government.¹⁵¹ The position of Cuba, the FCB, and the International Olympic Committee support the previous determination of the Obama administration, which found that the FCB was an independent entity from Cuba and thus allowed MLB to obtain a license from the Office of Foreign Assets Control of the Treasury Department to negotiate and ultimately reach an agreement with the FCB.¹⁵²

145. Mimi Whitefield, *Study: Cubans Don't Make Much, but It's More than State Salaries Indicate*, MIAMI HERALD (July 12, 2016, 3:31 PM), <https://www.miamiherald.com/article89133407.html> [<https://perma.cc/WN67-3R2G>].

146. *Id.*

147. *Id.*

148. *Id.*

149. *Cuba Announces Increase in Wages as Part of Economic Reform*, NBC NEWS (Jun. 28, 2019, 8:36 AM), <https://www.nbcnews.com/news/latino/cuba-announces-increase-wages-part-economic-reform-n1024451> [<https://perma.cc/6PNE-BXBF>].

150. Spetalnick, *supra* note 19.

151. Waldstein & Tackett, *supra* note 44.

152. Ordoñez, *supra* note 66.

An additional consideration that cannot be ignored is the financial impact that the Agreement would have on the Cuban athletes individually. Although the Agreement would have helped to prevent human trafficking, the athletes would “likely [have] end[ed] up worse off financially.”¹⁵³ According to sports consultant and former baseball agent Joe Kehoskie, this is due to the percentage of their contract that would have gone to the FCB, which is “roughly the same percentage Cuban players are currently paying to smugglers,” coupled with the fact that their contracts would hold less value, due to the restriction of negotiating with only one team rather than freely negotiating with all thirty teams.¹⁵⁴ Ultimately, the tradeoff comes down to the elimination or minimization of human trafficking at a modest financial cut to the initial earnings of a Cuban athlete.

Florida Republican Senator Marco Rubio adamantly opposed the Agreement reached by the MLB and the FCB, going so far as to state on social media that the Obama era finding that the FCB is not controlled by the government is “not just factually incorrect, it is a farce [and] I am working to get it overruled as soon as possible.”¹⁵⁵ Like the Trump administration, Senator Rubio also objects to the Agreement on the grounds of fees to be paid to the Cuban government, stating that “the regime will impose a new income tax on the players [sic] earnings, even though the income is being earned by playing in the U[nited] S[tates].”¹⁵⁶ On December 27, 2018, at 9:00 a.m., Senator Rubio shared an article on social media written by Elliott Abrams,¹⁵⁷ expressing that the article “is an excellent piece that describes why the deal between regime in #Cuba & MLB is both illegal & immoral,” and went so far as to call the Agreement a “terrible one-sided deal.”¹⁵⁸ In the article, Abrams states that “[t]he deal rewards and perpetuates Cuba’s Communist-style system in which players are the property of the state, not free individuals who can sell their talents on the open market.”¹⁵⁹

After the cancellation of the Agreement by the Trump administration, Major League Baseball stated “[w]e stand by the goal of the agreement, which is to end the human trafficking of baseball players from Cuba.”¹⁶⁰

153. Sheinin & DeYoung, *supra* note 98.

154. *Id.*

155. Whitefield, *supra* note 74.

156. *Id.*

157. Elliott Abrams served in the administrations of former presidents Ronald Reagan and George H.W. Bush as a deputy national-security adviser.

158. Louis Casiano, *Marco Rubio Calls MLB Deal with Cuba ‘a Farce’ that Needs to Be ‘Overruled.’*, FOX NEWS (Dec. 29, 2018), <https://www.foxnews.com/politics/sen-marco-rubio-vows-to-stop-deal-allowing-cuban-players-to-sign-with-mlb> [https://perma.cc/8HPS-3T2T].

159. *Id.*

160. Ordoñez, *supra* note 66.

Likewise, the Cuban Baseball Federation had previously stated on social media that the intent of the Agreement was to end human trafficking and to enhance the sport of baseball, and that the disruption of the Agreement is only harming people, rather than helping them.¹⁶¹ Various other entities echoed their support of the Agreement, and their displeasure with the Trump administration's finding. Ricardo Herrero, the Cuba Study Group's Executive Director, stated that the decision of the Trump administration was "a win for human smugglers in the Caribbean basin and a loss for just about everyone else impacted by this policy."¹⁶² Herrero argued that "[c]anceling this deal is just the latest heavy-handed blow by an administration bent on depriving the Cuban government of all resources without any regard whatsoever for the well-being or support of the Cuban people."¹⁶³ In response to the negative responses, the Trump administration issued a statement that accused Major League Baseball of agreeing to a deal that would "institutionalize human trafficking" with the Cuban government due to the percentage of fees that the Cuban government would receive from the contracts of future Cuban athletes.¹⁶⁴

C. SIMILARITY TO OTHER FOREIGN LEAGUE DEALS

The Agreement reached between Major League Baseball and the Cuban Baseball Federation was "very similar" in nature to the agreements that MLB reached with other foreign entities, including Japan's Nippon Professional Baseball (NPB) and the Korea Baseball Organization (KBO).¹⁶⁵ Carlos Gutierrez, former U.S. Secretary of Commerce from 2005–2009 under President George W. Bush, stated that in "promoting engagement with other cultures and governments, the U[nited] S[tates] can more effectively attain our goals on the international stage."¹⁶⁶ Perhaps it is this line of thinking, along with considerations of sports diplomacy, that would lead Major League Baseball to reach these strikingly similar deals with other foreign leagues, including those with the countries of Japan, Korea, and China.¹⁶⁷

In 1967, the United States-Japanese Player Contract Agreement was entered into by Major League Baseball and Nippon Professional Baseball.¹⁶⁸ This agreement would be amended in 2000,¹⁶⁹ 2013,¹⁷⁰ and again in

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. Lake, *supra* note 112.

166. Gutierrez, *supra* note 50.

167. *Id.*

168. Keiji Kawai & Matt Nichol, *Labor in Nippon Professional Baseball and the Future of Player Transfers to Major League Baseball*, 25 MARQ. SPORTS L. REV. 491, 492 (2015).

2017.¹⁷¹ As the agreement currently stands, a Major League Baseball team seeking to sign an athlete away from a Japanese team must pay the team 20% of any contract signed up to \$25 million.¹⁷² If the contract is between \$25 million and \$50 million, an additional 17.5% of that amount will also go to the Japanese team.¹⁷³ Should the contract go beyond \$50 million in guaranteed money, there will be an additional 15% fee on the amount exceeding the \$50 million, on top of the preceding tiers of fees.¹⁷⁴ This agreement is not unique, as the same posting agreement and release fees apply to the Korea Baseball Organization.¹⁷⁵

Several high-profile stars have ventured from Japan's NPB to MLB. Just in the past decade, talented pitchers such as Yu Darvish, Hisashi Iwakuma, Masahiro Tanaka, and Kenta Maeda have made their way to various big league pitching staffs.¹⁷⁶ Darvish, under an outdated posting system in 2012, received a six-year, \$56 million contract from the Texas Rangers in which his previous NPB team would receive \$51.7 million in posting/release fees.¹⁷⁷ Just one year later, Major League Baseball would announce revisions to the posting system with NPB, which would result in a cap of release fees at \$20 million.¹⁷⁸ Needless to say, NPB teams were less than thrilled with such amendments. Masahiro Tanaka was a twenty-five year old sensation at the time of the amendment, fresh off of a season in which he would win twenty-four games and receive zero losses with the Rakuten Golden Eagles, helping his team to win the Japan Series title.¹⁷⁹ If not for the amended posting system, the Rakuten Golden eagles reportedly

169. *Id.*

170. *Id.*

171. *MLB, NPB Have New Agreement*, ESPN (Dec. 16, 2013), https://www.espn.com/mlb/story/_/id/10148379/mlb-announces-new-agreement-nippon-professional-baseball [<https://perma.cc/GM4A-2YJQ>].

172. AP Sports, *Pair of Japan Players Made Available to Major League Teams*, USA TODAY (Dec. 3, 2019, 11:33 AM), <https://www.usatoday.com/story/sports/mlb/2019/12/03/pair-of-japan-players-made-available-to-major-league-teams/40749963/> [<https://perma.cc/4VQA-J4ZR>].

173. *Id.*

174. *Id.*

175. Mike Axisa, *MLB Hot Stove: Korean Lefty Kwang-Hyun Kim will be Posted for MLB Teams this Offseason*, CBS SPORTS (Nov. 23, 2019, 11:27 AM), <https://www.cbssports.com/mlb/news/mlb-hot-stove-korean-lefty-kwang-hyun-kim-will-be-posted-for-mlb-teams-this-offseason/> [<https://perma.cc/4LP9-3KQR>].

176. Jon Morosi, *These Nippon and KBO Players are on MLB's Radar*, MLB (Oct. 30, 2019), <https://www.mlb.com/news/npb-kbo-players-to-watch-in-2019-20-offseason> [<https://perma.cc/AQF3-Z38H>].

177. David Lennon, *Posting Fee for Players from Japan Capped at \$20 Million*, NEWSDAY (Dec. 16, 2013), <https://www.newsday.com/sports/baseball/posting-fee-for-players-from-japan-capped-at-20-million-1.6623372> [<https://perma.cc/MQF6-F3QP>].

178. *Id.*

179. *Id.*

“could have made close to \$100 million in posting fees.”¹⁸⁰ Tanaka would go on to receive a seven-year, \$155 million contract from the New York Yankees, with the additional release fee, at the maximum amount of \$20 million, also going from the Yankees to the Golden Eagles.¹⁸¹

Likewise, MLB has also received talented players from Korea's KBO. Under the posting system of 2012, Toronto Blue Jays starting pitcher Hyun-Jin Ryu, former Pittsburgh Pirates infielder Jung-ho Kang, and former Minnesota Twins infielder Byung-ho Park had each come over to play on the MLB stage.¹⁸² Of the above mentioned athletes, Hyun-Jin Ryu has undoubtedly seen the most success, having pitched in seven postseason series, including a 2018 World Series game.¹⁸³ This success would lead to Ryu signing a four-year, \$80 million contract with the Toronto Blue Jays on December 22, 2019.¹⁸⁴ Prior to this recent signing, however, Ryu would enter the MLB in the same fashion as any other KBO athlete; by negotiating with the MLB team that offered the highest fee to his KBO team. The Los Angeles Dodgers won this bidding by paying Ryu's former team \$25.7 million in posting fees.¹⁸⁵ Afterwards, the Dodgers and Ryu would settle on a six year, \$36 million contract, which included a \$5 million signing bonus, an opt-out clause after the fifth year, and the potential for up to \$6 million in performance bonuses.¹⁸⁶ Such a deal would not be matched by the hyped southpaw ace Kwang-Hyun Kim under the current posting system. Rather, Kim signed a two-year, \$8 million contract with the St. Louis Cardinals on December 17, 2019.¹⁸⁷ Accordingly, Kim's former KBO team, the SK Wyverns, received a 20% posting fee, which amounted to \$1.6 million.¹⁸⁸

180. *Id.*

181. Bryan Hoch, *Tanaka Signs \$155 Million Contract with Yankees*, MLB (Jan. 23, 2014), <https://www.mlb.com/news/masahiro-tanaka-signs-seven-year-155-million-contract-with-new-york-yankees/c-66923096> [https://perma.cc/36CA-SEDJ].

182. Yoo Jee-ho, *Pitcher kim Kwang-Hyun to Become 1st KBO Player to go Through New Posting System*, YONHAP NEWS AGENCY (Nov. 22, 2019), <https://en.yna.co.kr/view/AEN20191122008600315> [https://perma.cc/XBR8-FNKT].

183. *Hyun-Jin Ryu*, BASEBALL REFERENCE, <https://www.baseball-reference.com/players/r/ryuhy01.shtml> [https://perma.cc/2QL8-K9BN].

184. Bill Baer, *Hyun-Jin Ryu Signs with Blue Jays on Four-Year, \$80 Million Contract*, NBC SPORTS (Dec. 22, 2019), <https://mlb.nbcsports.com/2019/12/22/hyun-jin-ryu-signs-with-blue-jays-on-four-year-80-million-contract/> [https://perma.cc/79PQ-PBD5].

185. Matt Snyder, *Dodgers Sign Hyun-Jin Ryu for Six Years, \$36 Million*, CBS SPORTS (Dec. 9, 2012), <https://www.cbssports.com/mlb/news/dodgers-sign-hyun-jin-ryu-for-six-years-36-million/> [https://perma.cc/3K98-67LN].

186. *Id.*

187. Anne Rogers, *Cardinals Sign Korean Lefty Kim to 2-Year Deal*, MLB (Dec. 18, 2019), <https://www.mlb.com/news/kwang-hyun-kim-has-suitor-in-cardinals> [https://perma.cc/KQS5-BYG2].

188. *Id.*

D. CLASSIFICATION OF FCB ATHLETES

The Agreement reached between Major League Baseball and the Cuban Baseball Federation also imposed classifications on professional athletes. “FCB Professionals included players who met the MLB definition of a ‘Foreign Professional’: any player over the age of [twenty-five] who has played six or more years of professional ball.”¹⁸⁹ Meanwhile, players who are between the ages of eighteen and twenty-five and/or have less than [six] years of professional baseball experience are classified as “FCB Amateurs.”¹⁹⁰ Such classifications assist professional sports entities, such as the FCB, in maintaining control over their players for set periods of time.

Each of the thirty-four players previously authorized by the FCB to sign contracts with MLB teams were classified as amateurs.¹⁹¹ Each of the players would thus have been eligible to sign minor league contracts, where salaries start at \$850 per month, but also allow for signing bonuses that can exceed \$1,000,000.¹⁹² In addition to the list of thirty-four amateurs, the FCB had also previously agreed to release each and every athlete that would have met the criteria to be classified as a professional.¹⁹³ However, the termination of the Agreement by the Trump administration made the classification of the thirty-four athletes irrelevant, and prevented the release of any professionals to negotiate with any of the thirty Major League Baseball organizations.

E. BACKING FROM MLB AND ITS PLAYERS

On February 5, 2019, Major League Baseball and the Major League Baseball Players Association committed \$500,000 “to nonprofits focused on efforts to stop human trafficking.”¹⁹⁴ Among the grantees were “Strike Out Slavery,” an organization led by Los Angeles Angels first baseman Albert Pujols.¹⁹⁵ In declaring MLB’s support, Commissioner Rob Manfred issued a statement: “Human trafficking is a devastating reality for far too many individuals and families around the world . . . Major League Baseball is proud to join players, many of who have already demonstrated their

189. Lake, *supra* note 112.

190. *Id.*

191. Associated Press, *Cuba Releases First Players Eligible to Sign in MLB*, ESPN (Apr. 2, 2019), https://www.espn.com/mlb/story/_/id/26426210/cuba-releases-first-players-eligible-sign-mlb [<https://perma.cc/9KYC-Y7MY>].

192. *Id.*

193. *Id.*

194. Alyson Footer, *MLB, Players Join in Fight Against Human Trafficking*, MLB (Feb. 5, 2019), <https://www.mlb.com/news/mlb-players-united-against-human-trafficking-c303561004> [<https://perma.cc/JZ2X-SS2Z>].

195. *Id.*

commitment to this cause, to use our sport's global platform to raise critical awareness of this worldwide issue."¹⁹⁶ Echoing Commissioner Manfred's statement, MLBPA executive director Tony Clark stated that "[l]ives and families around the world are being destroyed by human trafficking."¹⁹⁷

On the individual level, there are several other current and former MLB players that have taken a public stance against human trafficking. Former Giants pitcher Jeremy Affeldt, current Tigers pitcher Matthew Boyd, and current Dodgers pitcher Clayton Kershaw are a few key contributors to combating the issue.¹⁹⁸ Meanwhile, other players such as Cleveland Indians outfielder Yasiel Puig, Chicago White Sox first baseman Jose Abreu, and New York Mets outfielder Yoanis Cespedis form a partial list of players who have helped to spread awareness by sharing their backstories of human trafficking.¹⁹⁹

IV. POTENTIAL SOLUTIONS FOR CUBAN ATHLETES AND MAJOR LEAGUE BASEBALL

The trafficking of Cuban athletes is creating dangerous situations for the athletes while lining the pockets of criminal enterprises. Although there is currently no perfect solution, there are several options that could be considered to reduce the instances of human trafficking, thereby protecting the Cuban athletes while stripping smugglers and gangs of any financial benefit they would receive.

A. REINSTATE THE MLB-FCB AGREEMENT

The most obvious potential solution for Cuban athletes and MLB is to push for the reinstatement of the Agreement. This option may be a pipe dream given the Trump administration's current stance towards the Agreement, but the benefits to such a reinstatement are obvious. After all, it has been noted that the Agreement has the potential to reduce or even end the dangerous smuggling of Cuban athletes.²⁰⁰ In addition, the Agreement would provide Cuban athletes with work visas, allowing them and their families to travel back and forth between the United States and Cuba with no legal complications, let alone the need for defection.²⁰¹ Although it is

196. *Id.*

197. *Id.*

198. *Id.*

199. Brioso, *supra* note 13.

200. Michael McCann, *How the MLB-FCB Deal Could Face Legal Hurdles, Political Resistance*, SPORTS ILLUSTRATED (Dec. 22, 2018), <https://www.si.com/mlb/2018/12/22/legal-breakdown-mlb-cuba-fcb-deal> [https://perma.cc/49T6-CMFQ].

201. *Id.*

still possible that Cuban athletes would attempt to circumvent the Agreement altogether by defecting to a third country and then traveling to the United States for the potential of a greater payout, they would ultimately be delayed, as the Agreement requires that “players who defect from Cuba...[must] wait a couple of years before joining an MLB Organization.”²⁰²

Unfortunately for Cuban athletes and the MLB, the risks involved with the reinstatement of the Agreement are just as obvious. The Agreement “would also infuse the FCB, which has lost hundreds of players to defection, with needed funding.”²⁰³ The Trump administration has made its belief that the FCB is a part of the Cuban government clear,²⁰⁴ which is the very reason that the deal was ultimately rejected. While future administrations may take a different stance, just as the Obama administration did,²⁰⁵ it appears that other solutions may provide a better chance for reducing the trafficking of Cuban athletes.

B. ALLOW CUBAN PLAYERS TO FREELY NEGOTIATE WITH ALL MLB TEAMS

Another potential solution that Major League Baseball could explore is allowing all Cuban players to freely negotiate with all MLB teams.²⁰⁶ If such free negotiation were permitted, Cuban players would no longer be required to travel to a third country such as Mexico or Puerto Rico in order to be eligible for a larger payout by MLB teams.²⁰⁷ This would eliminate “the phase where traffickers have generally gotten involved.”²⁰⁸ However, it does not present a complete resolution. There is still the concern of players traveling from Cuba to the United States directly, as opposed to traveling to a third country first, which may still involve human trafficking in plenty of instances. Although the wet foot, dry foot policy is no longer in place, the United States “still accept[s] at least 20,000 Cubans each year through traditional immigration channels.”²⁰⁹ Additionally, this potential resolution would also allow Cuban players to earn more money initially than American players or players from other countries, such as NPB or KBO athletes.²¹⁰ Furthermore, this solution does not address any of the concerns of the Trump administration, including release fees that would be paid to the

202. *Id.*

203. *Id.*

204. DeYoung, *supra* note 16.

205. Waldstein & Tackett, *supra* note 44.

206. Lind, *supra* note 24.

207. *Id.*

208. *Id.*

209. Gomez, *supra* note 27.

210. Lind, *supra* note 24.

FCB for the athletes that belong to the organization,²¹¹ as well as the potential for these release fees to result in payments to the Cuban government.²¹²

As for the U.S. government, lifting its embargo with Cuba would resolve the issue in its entirety.²¹³ After all, “major league teams would be allowed to sign players who were living in Cuba, thus allowing them to come to the U[nited] S[tates] with a job (and a visa) in hand.”²¹⁴ Needless to say, such a resolution is far from imminent. However, it could be possible for the United States to “create a limited exception to the embargo that would apply solely to athletes.”²¹⁵ An exception was created for “artistic and literary materials” in the 1980s,²¹⁶ and while unlikely, it’s not unimaginable for a similar exception to be created for athletes in the modern day.

C. THE IMPLEMENTATION OF AN INTERNATIONAL DRAFT

In addition, MLB could explore the implementation of an international draft.²¹⁷ If an international draft were to be imposed, all Cuban athletes could be treated in the same manner as athletes from other countries.²¹⁸ Thus, Cuban athletes who travel to a third country would now have restrictions on the amount of money they could earn when signing with an MLB team.²¹⁹ Accordingly, Cuban athletes would no longer hold the same appeal that they currently possess in the eyes of human traffickers.²²⁰ Of course, just as MLB has eligibility requirements for its standard First-Year Player Draft for both American and Canadian players,²²¹ Cuban athletes, as well as all other foreign athletes, would be subject to eligibility requirements as well, which would have to be set out by MLB prior to the implementation of an International Draft. However, this is only a partial solution to the problem. While Cuban athletes would be restricted on the amount of money they could earn, thus harming their appeal to smugglers and gangs, they would still face the problem of reaching the United States, and would likely require assistance to do so.²²²

211. Ordoñez, *supra* note 66.

212. *Id.*

213. Lind, *supra* note 24.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. Lind, *supra* note 24.

219. *Id.*

220. *Id.*

221. *Draft FAQ*, MLB, <http://mlb.mlb.com/mlb/draftday/faq.jsp> [https://perma.cc/B9XC-M5EJ].

222. Lind, *supra* note 24.

While MLB officials are currently targeting an international draft for 2020 or 2021,²²³ they must first convince the players' union to agree to terms.²²⁴ Per MLB, "the most recent draft concept would be [twenty] rounds, with teams allowed to trade picks. Every pick would have a hard slot value, so if a team drafts a player and the slot value is \$1 million, that player would sign for \$1 million."²²⁵ MLB's owners are reportedly motivated "to further suppress the negotiating power of international amateurs."²²⁶ The implementation of an international draft would, in theory, accomplish this goal all while cutting out any interests that human traffickers and gangs would have in Cuban athletes.

D. LOBBY WITH THE TRUMP ADMINISTRATION

Another option that MLB is currently exploring is utilizing connections to President Trump in order to reach a fair agreement. Just one month after the Trump administration declared the Agreement illegal, MLB hired a lobbying firm with connections to President Trump.²²⁷ The goal behind MLB hiring this firm is "to help solve what it calls the 'trafficking' of Cuban baseball players."²²⁸ This firm, Ballard Partners,²²⁹ is presided over by Brian D. Ballard. Ballard was "one of Trump's top fundraisers in Florida during the 2016 presidential election."²³⁰ In addition to Brian Ballard and his firm, MLB has also acquired the assistance of Sylvester Lukis, a former director of the Cuban-Haitian Task Force at the State Department.²³¹

In hiring Ballard and his firm, MLB obtained the assistance of "one of the most powerful lobbyists in the county."²³² Ballard Partners brought in \$18.3 million in 2018,²³³ and boasts other major clients, such as Amazon,

223. R.J. Anderson, *MLB Officials Hope to Install an International Draft in 2020 or 2021*, *Report Says*, CBS SPORTS (Jul. 17, 2019, 7:51 PM), <https://www.cbssports.com/mlb/news/mlb-officials-hope-to-install-an-international-draft-in-2020-or-2021-report-says/> [<https://perma.cc/7CZS-TPHE>].

224. *Id.*

225. *Id.*

226. *Id.*

227. Brian Schwartz, *MLB Hires Trump-Allied Lobbying for Guidance on 'Trafficking' of Cuban Baseball Players*, CNBC (May 13, 2019, 6:49 PM), <https://www.cnbc.com/2019/05/13/mlb-hires-trump-allied-lobbying-firm-over-cuban-baseball.html> [<https://perma.cc/8CMW-2CU6>].

228. *Id.*

229. *The Dream Team*, BALLARD PARTNERS, <http://ballardpartners.com/the-team/brian-d-ballard/> [<https://perma.cc/84RT-ZE72>].

230. Schwartz, *supra* note 221.

231. *Id.*

232. *Id.*

233. *Id.*

Dish Network, and Boeing.²³⁴ Moreover, Ballard's close ties to President Trump has led to "a booming business helping clients get their way with the Trump administration."²³⁵ Ballard and President Trump have known each other for nearly three decades,²³⁶ a relationship that spawned from Ballard writing a letter to Trump after reading *The Art of the Deal*.²³⁷ Fast-forward to the present day, where Ballard is raising millions for President Trump's reelection campaign.²³⁸

It remains to be seen just how great of an impact Ballard Partners will have on President Trump in lobbying for an authorized agreement between MLB and the FCB. However, the MLB was well aware of the major ties between President Trump and Brian Ballard when hiring Ballard Partners to lobby on its behalf with regard to the human trafficking of Cuban athletes. At the very least, the MLB will now have a friend in the room, so to speak, when Ballard Partners and the Trump administration engage in discussions.

V. CONCLUSION

Cuban athletes defecting from Cuba and making their way to the United States is far from a new occurrence—the earning potential of professional athletes in America is simply too alluring for most talented players to ignore. While the Trump administration's objective of preventing any part of the athlete's salary from reaching the Cuban government was achieved in overturning the MLB-FCB Agreement, the very issues the Agreement was enacted to resolve now remain. So long as Cuban athletes are unable to legally reach American soil, they will seek the assistance of dangerous human traffickers and gangs to achieve their goal. In scuttling this Agreement, the Trump administration has prevented any amount of money from reaching the Cuban government directly, but has also aided in placing larger sums of money in criminal hands, all while creating great danger for the citizens that the Agreement was intended to protect. Unless the Trump administration lightens its stance towards the MLB-FCB Agreement in the future, human trafficking will continue to be rewarded with large payouts until an international draft is in place for Major League Baseball, which to this point in time is little more than hopes and speculation for the future. It is in the best interests of the United States, Cuba, Major League Baseball, the Major League Baseball Players Association, and, of course, Cuban ath-

234. *Id.*

235. Theodor Meyer, *The Most Powerful Lobbyist in Trump's Washington*, POLITICO (April 2, 2018), <https://www.politico.com/magazine/story/2018/04/02/most-powerful-lobbyist-in-trump-washington-217759> [<https://perma.cc/9A3W-N8TQ>].

236. *Id.*

237. *Id.*

238. *Id.*

letes, for preventative steps to be taken towards the elimination of human trafficking and enhancing the lives of foreign athletes.