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Nicole Zaworska^{a1}

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STRIKING OUT THE CUBAN TRADE EMBARGO: A CONTRACTUAL APPROACH TO THE TRANSFER OF CUBAN BASEBALL PLAYERS TO THE BIG LEAGUES

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***136 I. INTRODUCTION**

Today, the United States of America is changing its relationship with the people of Cuba. In the most significant changes in our policy in more than fifty years, we will end an outdated approach that, for decades, has failed to advance our interests, and instead we will begin to normalize relations between our two countries. Through these changes, we intend to create more opportunities for the American and Cuban people, and begin a new chapter among the nations of the Americas.¹

As President Obama insinuated in his statement above, the potential end of the Cuban embargo comes with tremendous opportunities for both the American and Cuban people, particularly in the areas of trade and business.² Since President Obama's policy changes in 2014, chambers of commerce across the United States have been traveling to Cuba to get a better understanding of the island's potential business opportunities.³ One company standing to benefit from the lifting of the embargo is Major League Baseball (MLB).⁴ If the embargo is lifted, MLB could negotiate with Cuba for the transfer of Cuban baseball players.⁵ This benefits the Cuban people because Cuban baseball players could work in the

United States, making a similar salary to other professional athletes around the world without renouncing their Cuban citizenship.⁶ For the chance to play in the big leagues, Cuban baseball players put their lives at risk through illegal human smuggling.⁷ As a beneficiary of this illegal practice, MLB is significantly invested in lifting the Cuban embargo to eliminate human smuggling.⁸ In December 2015, MLB's Chief Legal *137 Officer traveled to Cuba with four former Cuban baseball defectors, who were welcomed by Antonio Castro, son of Fidel Castro, and vice president of the Cuban Baseball Federation.⁹ Some MLB members see baseball as a "universal language" between the United States and Cuba that can be used to lift the Cuban embargo and combat human smuggling.¹⁰

This Article argues that the Cuban trade embargo should be completely lifted to end the dangerous and inhumane practice of human smuggling, specifically of Cuban baseball players, into the United States. Cuban baseball players are a prime target for human smuggling because smugglers extort them for their potential multi-million dollar contracts with MLB.¹¹ However, simply ending the Cuban embargo would leave Cuban baseball players surrendering a portion of their contracts to the Cuban government in exchange for permission to play abroad.¹²

As a solution, this Article proposes that the Cuban Baseball Federation and MLB contract to trade players for a one-time, flat fee paid by MLB and modeled after the Posting System Agreement between MLB and Japan's Nippon Professional Baseball.¹³ Part II of this Article discusses the history between the United States and Cuba and the regulations that led to the Cuban embargo. Part III explains the embargo's impact on Cuban baseball players and MLB, as well as the consequences of the industry's changing regulations. Part IV compares Cuban defection to the defection of Soviet Union athletes under communist rule. Because of the similarities between Cuba and the Soviet Union, and the similar political steps taken by each country's leader, the Soviet Union is a comparative tool for analyzing Cuba's future in relation to the United States.¹⁴ This leads to Part V's discussion of the steps necessary for lifting the Cuban embargo and overcoming the current complex regulations. Finally, Part VI proposes that MLB and the Cuban Baseball Federation enter into a contract for the free transfer of baseball players, in accordance with the Declaration of Human Rights, to ultimately stop the illegal smuggling of Cuban baseball players into the United States.

*138 II. BRIEF HISTORY OF THE CUBAN TRADE EMBARGO

In January of 1959, Fidel Castro overthrew the government of President Fulgencio Batista and took command of Cuba.¹⁵ At first, the United States supported the new Castro government.¹⁶ However, over time relations eroded as Castro began illegally seizing private land from U.S. corporations.¹⁷

Over the years, the United States retaliated with numerous restrictions on the country's trade with Cuba. For instance, in response to Cuba strengthening ties with the Soviet Union, Congress passed the Foreign Assistance Act of 1961 (FAA).¹⁸ The FAA authorizes the President to impose "a total embargo upon all trade between the United States and Cuba."¹⁹ In addition, the Treasury Department enacted the Cuban Assets Control Regulations (CACR),²⁰ with the goal of "isolat[ing] the Cuban government economically and depriv[ing] it of U.S. dollars."²¹ In 1992, Congress passed the Cuban Democracy Act (CDA) "forbidding subsidiaries of US companies from trading with Cuba, US nationals from travelling to Cuba and remittances being sent to [Cuba]."²² The goal of the Act "was to 'seek a peaceful transition to democracy and a resumption of economic growth in Cuba through the careful application of sanctions directed at the Castro government and support for the Cuban people.'"²³ Further, the Helms-Burton Act of 1996 is the most comprehensive and recent regulation enforcing the embargo.²⁴ The primary goal of the Helms-Burton Act is to recover the U.S. property *139 Castro confiscated,²⁵ but the Act severely limits the President's power to unilaterally ease trade restrictions.²⁶

In contrast, the Trading with the Enemy Act of 1917 (TWEA) gives the President executive authority to effectuate regulatory changes.²⁷ The authority granted under the TWEA is what President Obama used to begin the process of renewing ties with Cuba.²⁸ In March of 2016, President Obama became “the first sitting U.S. President to visit Cuba” in eighty-eight years, continuing his mission to improve relations between the two countries before the end of his term.²⁹ Prior to his visit, the Obama administration enacted new guidelines permitting “Cuban citizens to work in the United States and receive salaries from American companies.”³⁰ These new guidelines will profoundly affect the way Cuban baseball players' contract with MLB.³¹

III. IMPACT OF THE EMBARGO IN RELATION TO MLB AND CUBAN BASEBALL PLAYERS

Prior to the recent regulation changes under the Obama administration, the Cuban embargo prohibited U.S. companies from having business relations with Cuba.³² This encompassed the scouting and signing of Cuban baseball players by MLB.³³ How did Cuban baseball players appear on ESPN in the homes of millions of Americans? The answer: human smuggling.³⁴ Human smuggling is an estimated \$35 *140 billion worldwide industry.³⁵ Every year, thousands of Cubans illegally enter the United States.³⁶ To have a better chance of arriving, most Cubans pay smugglers and put their lives in jeopardy.³⁷ Illegal immigrants are put at risk of “kidnapping, robbery, extortion, sexual violence, and [even] death.”³⁸

Cuban immigrants also risk dying while at sea, as their journey many times requires them to travel ninety miles by boat to escape the island of Cuba.³⁹ Although there are no definite statistics, it is estimated that during the mass exodus in 1994, 25% to 75% of Cubans who attempted to escape by boat died at sea.⁴⁰ Despite this sobering statistic, Cubans take this risk for the chance to live out the “American Dream.”⁴¹ *141 Moreover, the Cuban Adjustment Act (CAA) encourages the illegal immigration of Cubans;⁴² it allows Cubans to become permanent residents within one year of legally arriving in the United States.⁴³ In 1995 the wet foot, dry foot policy was added to the CAA, making it possible for Cubans who arrived by boat and touched dry soil to stay in the United States legally, thereby “circumventing the elaborate system of quotas and visa application procedures applicable for nationals from every other country in the world.”⁴⁴ The potential for citizenship incentivized Cuban migrants to risk travelling by boat.⁴⁵ However, on January 12, 2017, President Obama repealed the wet foot, dry foot policy leaving many Cubans without a path to residency.⁴⁶ Although it is uncertain whether his successor, President Donald J. Trump, will reinstate the policy, it is unlikely in light of President Trump's statements that the policy was unfair.⁴⁷

To facilitate the immigration process, Cubans pay thousands of dollars to human smugglers, usually around \$10,000.⁴⁸ For most Cubans it is a one-time fee, but for baseball players, the price is much steeper.⁴⁹ *142 Smugglers cash in on the opportunity to bring a talented Cuban baseball player to the United States and keep the athlete under their control after arriving in the country.⁵⁰ Oftentimes, smugglers require Cuban baseball players to relinquish a percentage of any future contract with MLB.⁵¹

Yasiel Puig is a prime example of the inhumane practices Cuban baseball defectors are subjected to through human smuggling.⁵² Raul Pacheco, a man with a history of criminal activity, offered Puig a way out of Cuba—for a price.⁵³ In exchange for his escape from Cuba, Puig had to give Pacheco 20% of any contract with a MLB team.⁵⁴ He attempted to escape four times, and each time was thwarted.⁵⁵ On the fifth attempt, Puig set out for Mexico with a group of smugglers

hired by Pacheco.⁵⁶ When Pacheco refused to pay, the smugglers held Puig hostage.⁵⁷ The smugglers, who were linked to a drug cartel, threatened to dismember Puig unless someone paid for his release.⁵⁸ Pacheco staged a kidnapping of Puig from the motel where the smugglers held him captive.⁵⁹ Sadly, Yasiel Puig is only one of over 200 Cuban baseball defectors who have experienced similar dangerous scenarios for the chance to play in MLB.⁶⁰

In addition to the tremendous barriers associated with arriving in the United States, Cuban baseball players also face barriers to qualify for legal employment with a MLB team.⁶¹ The Office of Foreign Assets Control (OFAC) regulates MLB's transactions with Cuba through the CACR.⁶² Before amendments in March 2016, the Act prohibited MLB from engaging in any transactions with Cuban nationals, which prevented it from signing Cuban baseball players.⁶³ However, two ***143** loopholes were created to circumvent this restriction.⁶⁴ First, Cuban baseball players could defect from Cuba and go directly into the United States under the wet foot, dry foot rule and acquire permanent residency.⁶⁵ The second way was for the player to establish residency in a third country and become an unblocked national under OFAC, which allowed him to work legally in the United States.⁶⁶

MLB Rule 3 lays the foundation for players to be eligible to play in MLB.⁶⁷ Essentially, MLB Rule 3(a)(1)(B) states that a player who is a resident of another country can negotiate a contract with *any* MLB team, while legal U.S. residents and citizens must participate in the amateur draft per MLB Rule 3(a)(1)(A).⁶⁸ Thus, if the Cuban baseball player used the first loophole--the wet foot, dry foot rule and became a permanent resident, Rule 3(a)(1)(A) required him to "participate in the main MLB ***144** draft, along with thousands of other baseball players."⁶⁹ Once drafted, the player could negotiate a contract but only with the team that drafted him.⁷⁰ However, the second loophole allows Cuban baseball players to become unblocked nationals by establishing residency in a third country; this exempts them from the draft, allowing them to negotiate with any MLB team.⁷¹ In this scenario, multiple MLB teams could contact a player and negotiate with him directly, which could start a bidding war and give the Cuban baseball player the best possible contract deal.⁷² The unblocked national had a better negotiating position as he was not stuck with only one MLB team--the one that drafted him.⁷³

Nevertheless, with the recent amendments to the CACR on employing Cuban citizens, human smuggling of Cuban athletes may become a thing of the past. In March 2016, the Obama administration amended the CACR to permit Cuban citizens in the United States to receive a salary from U.S. companies,⁷⁴ so long as the Cuban national "is not subject to any special tax assessments by the Cuban government in connection with the receipt of the salary."⁷⁵ Now, MLB can directly contract with Cuban baseball players and pay them a salary. The athletes no longer have to defect to a third country and become an unblocked national,⁷⁶ which theoretically eliminates the demand for human smuggling.

***145** Nevertheless, the CACR is not the only barrier Cuban baseball players face; they must apply for a passport from the Cuban government before going abroad.⁷⁷ The Cuban government requires that citizens with certain jobs get authorization before obtaining a passport, including Communist Party leaders, vital professionals, and athletes.⁷⁸ It is uncertain whether the Cuban government will grant its athletes permission to work abroad. In 2013, under Raul Castro, the Cuban government began permitting Cuban athletes "to sign contracts to compete in foreign leagues."⁷⁹ The Cuban government asserted that the reform "promises to increase the amount of money baseball players and others are able to earn, and seems geared toward stemming a continuing wave of defections by athletes who are lured abroad by the possibility of lucrative contracts, sapping talent from national squads."⁸⁰ Even so, in exchange for permitting them to play abroad, Cuba requires the athletes give up a percent of their contract to the Cuban government, which violates the amended CACR regulation.⁸¹ It is unlikely Cuba will let its best baseball players leave without some remuneration in

return. Furthermore, if the Cuban government did not grant a baseball player a passport, the player could still defect and subject himself to the dangers of human smuggling. By defecting, the Cuban baseball player renounces his Cuban citizenship and must seek residency in the United States or a third country. Thus, he either subjects himself to the amateur draft or free agency if he wants to play in MLB.⁸² Although the recent changes may eliminate the dangers associated with smuggling, MLB and Cuba have much to negotiate before Cuban baseball players are free.⁸³

***146 IV. WHEN DEFECTION BECOMES THE ONLY OPTION**

A. Why Do Cuban Athletes Defect?

Minimizing the number of Cubans smuggled into the United States requires a general understanding of why Cubans defect. Defection is defined as a “conscious abandonment of allegiance or duty.”⁸⁴ Cubans began defecting in significant numbers to escape the poor standard of living after Cuba's relationship with the Soviet Union ended in 1990.⁸⁵ Others left because the government denied them basic fundamental rights and freedoms.⁸⁶ Many athletes choose to defect to pursue a larger sporting market and the opportunity to make millions of dollars.⁸⁷ Defecting Cuban athletes commit to cutting all ties with Cuba, including their family, friends, and home.⁸⁸ Because of the low pay, coupled with the low standard of living, Cuban baseball players are willing to leave their whole lives behind for a chance to play professional baseball.⁸⁹

Before the rise of communism in Cuba, the flow of baseball players was reversed.⁹⁰ American athletes went to Cuba during the American offseason to make extra money and practice.⁹¹ However, once in power, Fidel Castro eliminated professional baseball in Cuba.⁹² Castro turned all professional sports “into a highly regulated amateur league” to tout the ideals of socialism.⁹³ As of 2013, Cuban baseball players made around \$17 a month.⁹⁴ Comparing this to the combined \$330 million made by Cuban defectors who signed with MLB teams since 2009, it is evident ***147** why a Cuban baseball player considers defection--risking his life and leaving his family--as an option.⁹⁵

To curb defection, the Cuban Baseball Federation more than doubled the \$17-a-month wages to \$40 in 2014.⁹⁶ Cuba also became more accommodating of athletes playing abroad.⁹⁷ However, the Cuban government still requires that Cuban athletes represent Cuba in international competitions, like the Olympics, and national leagues on the island.⁹⁸ Additionally, the Cuban government demands Cuban baseball players abroad return to Cuba for the domestic baseball league from November to April.⁹⁹

B. A Comparison: Soviet Union Athlete Defection and Reform Under Gorbachev to Cuban Athlete Defection and Reform Under Castro

To understand Cuban athlete defection, it is helpful to compare it to Soviet Union athlete defection during the Cold War. To curb defection, the Soviet Union permitted its athletes to play abroad to limit defection,¹⁰⁰ and other social and economic reform--uncharacteristic of the communist country-- followed, leading to the Soviet Union's and communism's collapse.¹⁰¹ The similarities between the two countries beg the question: will Cuba suffer the same fate as the Soviet Union?

After World War II, the Soviet Union had one goal: “to catch up and overtake the most advanced industrial powers,” including sports.¹⁰² The government awarded monetary prizes to athletes who placed in sporting events or for outstanding results.¹⁰³ At this point, most international governing bodies required an athlete be an amateur to ***148**

compete.¹⁰⁴ These governing bodies also forbade monetary awards for performance.¹⁰⁵ Thus, the Soviet Union swiftly renounced professional sports to conform to the international rules.¹⁰⁶

In the USSR, propaganda fueled the whole country.¹⁰⁷ The Soviet sports establishment could be described as “an arm of the Government [that] keeps the lion's share of all the money generated by its athletes in endorsements, appearance fees, prize money and salaries.”¹⁰⁸ In 1976, Sogomin Kepekyan, a seventeen-year-old cyclist, who had enough, defected from the USSR to participate in the World Junior Championship in Belgium.¹⁰⁹ Due to the difficult process of legally emigrating from the Soviet Union, “[T]he young athlete felt it was safer to seize liberty where he found it rather than to ask the Soviet authorities for it.”¹¹⁰ The defection of Russian athletes gave the Soviet Union a bad reputation.¹¹¹ However, when Mikhail S. Gorbachev came to power, the Soviet Union became accepting of athletes playing abroad to repair its reputation.¹¹²

By 1989, becoming a professional athlete abroad without defecting from the Soviet Union became achievable.¹¹³ The Soviet Union permitted athletes participating in various sports to play professionally in the *149 United States.¹¹⁴ Most notably, tennis player Natalya Zvereva hired a U.S. agent while at a tournament in Florida and announced she was keeping more of her prize money,¹¹⁵ openly challenging the Soviet Union's practice of confiscating money its athletes earned internationally.¹¹⁶ Therefore, as with Cuba, money was the driving force behind most Soviet Union athletes' defection.¹¹⁷

It is notable that both Cuba and the Soviet Union did away with professional sports but for different reasons.¹¹⁸ The Soviet Union's interest in competing internationally forced it to abandon professional sports to meet the requirements of the International Olympic Committee.¹¹⁹ In contrast, Fidel Castro did away with Cuban professional sports to support his ideals.¹²⁰ Cuban athletes were expected to play for the love of their country and were treated like employees of the state.¹²¹ Like the Soviet Regime, Castro forbade Cuban athletes from using their athletic skills abroad.¹²² Moreover, although each country banned professional sports for different reasons, the ultimate effect was the same--minimal wages for athletes.¹²³ The wage discrepancy between playing sports in a non-communist country versus a communist country made defection a worthwhile option for many athletes. Athletes defected in hopes of gaining professional status in another country that recognized professional athleticism.¹²⁴

Following a long string of defections, both the Soviet Union and Cuba became open to allowing athletes to contract abroad, but only when *150 a new leader came to power.¹²⁵ For example, in the Soviet Union, Gorbachev used the perestroika and glasnost policies to fix a variety of social and economic problems.¹²⁶ In the 1980s, the Soviet Union “lacked technological advancements and used inefficient factories, all while consumers were buying low-quality products and suffered from a shortage of social freedoms.”¹²⁷

Similarly, in response to social and economic issues in Cuba, Raul Castro implemented more open policies¹²⁸ and began economic and social reform.¹²⁹ Both Raul Castro's change to Cuba's migration law for Cuban citizens and permitting Cuban baseball players to play abroad without defecting are reforms affecting foreign policies.¹³⁰ However, despite the reestablishment of diplomatic relations between the United States and Cuba and Castro allowing Cuban athletes to play abroad, Cuban baseball players still find it beneficial to defect to the United States in hopes of being free from Cuban control.¹³¹

Moreover, the fall of the Soviet Union is credited to Gorbachev's glasnost and perestroika policies.¹³² With the similarities between the Soviet Union and Cuba, particularly in the world of sports, there is the possibility that Raul Castro's reforms could lead Cuban people to speak ***151** out against the socialist regime in Cuba.¹³³ Like the Soviet Union, by opening more doors and allowing the Cuban people to get a glimpse of life in a democratic country, Cuba may be paving the way for the end of socialism and the end of the trade embargo.

V. LIFTING THE EMBARGO TO ALLOW UNRESTRICTED BUSINESS DEVELOPMENT

Due to the many executive and legislative regulations, Congress and the President must both take action before businesses, like MLB, can conduct business with Cuba.¹³⁴ Although since 2014 many companies have begun exploring opportunities in Cuba, the lingering effects of the embargo prohibits most from investing in Cuba.¹³⁵ Lifting the embargo is an essential step to facilitate unrestricted business transactions between the United States and Cuba. Nevertheless, any action taken by the President to normalize relations is futile due to the Helms-Burton Act.¹³⁶

A. How the Embargo Can Be Lifted

The President has unilateral power with respect to two laws: the TWEA and the FAA.¹³⁷ The first step the President could take to lift the embargo is to abstain from labeling Cuba as an enemy of the United States under the TWEA.¹³⁸ The President could also issue an executive order specifically “ending the state of emergency with” respect to Cuba, essentially repealing the enemy label previously attached to Cuba.¹³⁹ In the TWEA, the term “enemy” is defined as “the government of any nation with which the United States is at war.”¹⁴⁰ The United States and Cuba are not at war, so this could, in theory, be simple for the President to do. At the same time though, choosing to remove Cuba from the list of “enemies” strips the President of his executive authority under TWEA and implicates the Helms-Burton Act, which leaves the power to effect ***152** any change within its strict, probably impossible, requirements that Cuba must meet.¹⁴¹ Ergo this course of action may not be wise.

Under the FAA, “[T]he President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.”¹⁴² President Kennedy acted under the power of the FAA in enacting the trade embargo through his executive order of [Proclamation 3447](#) on February 3, 1962.¹⁴³ The current President could also issue an executive order repealing [Proclamation 3447](#) to lift the embargo.¹⁴⁴ Furthermore, the FAA uses unilateral language in the regulation; giving the President unilateral power to enact the trade embargo should also allow the President unilateral power in lifting it.¹⁴⁵ However, the FAA further states that under the present government of Cuba, the United States cannot furnish economic assistance.¹⁴⁶ For the United States to give assistance, the Cuban government must change, and any subsequent government needs to take “appropriate steps” to compensate U.S. citizens for the land confiscated by Fidel Castro.¹⁴⁷ With this language, it appears impossible for the United States to do business with Cuba under any Castro regime. However, reading the statute liberally, it can be construed that “the present government of Cuba” refers to the government that confiscated land in 1959.¹⁴⁸ Thus, with Raul Castro as the current leader, it is arguable that there is a different government in Cuba.

As discussed previously, Raul Castro implemented various economic and social policies that are progressively changing the economic, and possibly political, structure of Cuba.¹⁴⁹ Furthermore, the ***153** FAA gives the President discretion to determine what constitutes the necessary “appropriate steps” the Cuban government must take to make reparations.¹⁵⁰ Thus, the President could unilaterally determine that Raul Castro is taking the necessary “appropriate steps” to repay U.S. citizens and corporations for their lost property.¹⁵¹ However, the Helms-Burton Act codified the embargo; it

divests the unilateral power from the President and puts it in Cuba's hands, and it requires stringent political and social standards, agreed upon by both the President and Congress, before granting U.S. assistance.¹⁵²

Both the CDA and the Helms-Burton Act require action and agreement by the President and Congress.¹⁵³ The CDA sets out two conditions that must be met for the President to lift the trade embargo.¹⁵⁴ First, the President must “determine and report to Congress that the government of Cuba” has carried out five specific actions identified in the Act.¹⁵⁵ These five actions include:

holding free and fair elections conducted under international supervision, permitting opposition parties ample time to organize and campaign for such elections, showing respect for the basic civil liberties and human rights of the citizens of Cuba, moving toward establishing a free market economic system, and committing itself to constitutional change that would ensure regular free and fair elections.¹⁵⁶

The second condition is that the new Cuban government must be composed of officials elected through a “free and fair election[.]”¹⁵⁷

Title II of the Helms-Burton Act, entitled “Assistance to a free and independent Cuba,” specifically outlines the steps necessary to lift the embargo.¹⁵⁸ It requires a joint presidential and congressional determination for the suspension of section 620(a) of the FAA, the CDA, and other “regulations prohibiting transactions with Cuba,” like the *154 CACR.¹⁵⁹ Moreover, the Helms-Burton Act (Titles III and IV) can only be suspended once Cuba is governed by a democratically elected government and pays reparations to U.S. nationals who had property confiscated during the Castro revolution.¹⁶⁰ As discussed above, with Raul Castro in power, it seems as though the Cuban government is taking steps to become different, both economically and politically.¹⁶¹

Although the requirements expressed in the Helms-Burton Act are advantageous for a free and democratic Cuba in the future, it is doubtful Cuba can meet them. With so many countries openly opposing the Helms-Burton Act,¹⁶² along with specific poll numbers among Americans showing strong support for a change in the U.S.-Cuban relationship,¹⁶³ the U.S. Congress needs to amend the Act. Complete debt forgiveness for the property taken from U.S. nationals is unfeasible, but it may be possible to forgive part of that debt. Also, the United States could tax Cuba on any goods exported or imported once the embargo is lifted and use those funds to repay U.S. nationals for their property. As the current embargo stands, the U.S. approach to Cuba has been labeled “economic strangulation.”¹⁶⁴ The United States should ease the restrictions and take a more encouraging approach in helping Cuba become democratic.¹⁶⁵ This “would better serve the livelihood of the Cuban people,”¹⁶⁶ as compared to the current system, which isolates the Cuban people. These proposals could satisfy the requirements of the Helms-Burton Act, while being more responsive to the concerns of the international community, the wants of the American people, and the well-being of the Cuban population.

President Obama used his executive authority under the TWEA to open U.S.-Cuba relations in the areas of “trade, investment, banking, telecommunications, pharmaceuticals, agriculture, and travel.”¹⁶⁷ These slight changes could lead to “a political dynamic that would ultimately shift opinion inside Congress to eventually repeal, or no longer enforce, *155 Helms-Burton.”¹⁶⁸ Once Helms-Burton is repealed, lifting the Cuban embargo is feasible.

B. Impact on Cuban Baseball Players and MLB and the Continuing Setbacks Once the Embargo Is Lifted

Lifting the embargo is the most fundamental step before Cuban baseball players can play in the United States without being subject to the dangers of human smuggling. The embargo is the root of the human smuggling of Cuban baseball players.¹⁶⁹ Even so, removing the embargo will not entirely end human smuggling.¹⁷⁰ If the embargo were lifted, MLB would likely enter into contracts with individual Cuban baseball players, who would be subject to any commission requirements determined by the Cuban government.¹⁷¹ The Cuban government would require the Cuban baseball players to return a percentage of their contracts.¹⁷² Without a percentage of the contracts, Cuba would have no incentive to allow its most talented baseball players to leave the country.¹⁷³ Cuban baseball players would still be stuck in the same scenario--giving up a portion of their contracts to a smuggler or giving up that same amount of money to the Cuban government.¹⁷⁴

To deter Cuban players from turning to smuggling, MLB and the Cuban Baseball Federation should enter into a contract. MLB could pay a fee for players working abroad, conditional on Cuba complying with the Universal Declaration of Human Rights, which identifies “the right to free choice of employment,” “the right to equal pay for equal work,” and “the right to leave any country, including [your] own.”¹⁷⁵ The Universal Declaration of Human Rights will be discussed as applied to the proposed contractual agreement between Cuba and MLB.

***156 VI. CONTRACTUAL AGREEMENT**

A contractual agreement between MLB and the Cuban Baseball Federation, rather than each player, would be more efficient. It would be a one-time contract between each organization, spanning a predetermined amount of years, rather than hundreds of contracts with each player. Also, it would give more certainty regarding specific provisions. In addition, an agreement would prevent the Cuban government from charging Cuban players a fee for leaving Cuba and playing professional sports abroad by shifting the burden of the fee from the Cuban baseball player to MLB, which is in a much better position to negotiate player and MLB friendly rates and contract terms.¹⁷⁶ By shifting the burden, the fee can be considered less of a “freedom” fee and more of a release fee from one baseball organization to another.

A. Setbacks of a Contractual Agreement

One concern with a contract with Cuba for the free trade of baseball players is that Cuba will want a provision requiring Cuban baseball players to return a percentage of their contracts to the government.¹⁷⁷ Currently, Cuba has brokered several contracts to lease baseball players to the Japanese baseball league, Nippon Professional Baseball.¹⁷⁸ In exchange, Cuba requires players to give 20% of their contract and pay additional income tax.¹⁷⁹ Furthermore, Cuba demands Cuban baseball players who play in Japan return to Cuba for the domestic baseball league, the *Serie Nacional*.¹⁸⁰ Similar to the concept of brain drain,¹⁸¹ Cuba is conscious of the threat of “baseball drain,” which could cost it talented baseball players.¹⁸² Cuba wants to keep baseball talent on the island for local entertainment.¹⁸³

***157** Cuba could require similar provisions in a contract between MLB and the Cuban Baseball Federation. Cuba strategically placed these provisions in the contracts with Japan because it knows how much it is losing when a player leaves to play abroad: national pride, talent, and baseball fans.¹⁸⁴ Furthermore, Cuba will probably want its star players to return to Cuba for the National Series. Although the MLB season runs from April to September, which works well with the Cuban National Series season, MLB has practices and exhibition games during spring training that allow players to practice before the official season.¹⁸⁵ This would overlap with a Cuban baseball player's return to Cuba for the National Series. However, playing in the National Series could be a substitute for spring training. Even so, it seems unlikely MLB would accommodate this type of provision due to the risk of overplaying and injuries associated with competitive year-round play for baseball players.¹⁸⁶ Instead, MLB and the Cuban Baseball Federation should distance themselves from

conflicting provisions like this and model a contractual agreement on the Posting System used between MLB and the Japanese Nippon Professional Baseball Organization (NPB).

B. The MLB-NPB Posting System

Similar to Cuba, Japan experienced the defection of notable baseball players.¹⁸⁷ In response, MLB and the NPB entered into a contract called the Posting System.¹⁸⁸ “The Posting System allows reserved NPB players to transfer to MLB before serving the nine years required to qualify as an international free agent.”¹⁸⁹ In the Posting System, “a player requests to be posted by his club during the posting period,” which is between November 1 and March 1.¹⁹⁰ If the club agrees, the NPB sets a release fee and the player's information is posted by the Commissioner of the NPB to the MLB Commissioner, who then relays the information to all MLB clubs.¹⁹¹ Release fees are capped at \$20 million.¹⁹² After a release fee is set and communicated to MLB's Commissioner, it cannot be changed.¹⁹³ Any MLB club willing to pay the release fee can negotiate with that player.¹⁹⁴ The MLB team has thirty days to reach an agreement with the player.¹⁹⁵ If an agreement is not reached, then the player must return to the NPB club and the posting fee is refunded.¹⁹⁶ That player cannot enter the Posting System again until the following November 1, the start of a new posting season.¹⁹⁷ The agreement states that MLB and the NPB are prohibited from contacting or communicating with any players from the other country's club unless they are compliant with the Posting System Agreement.¹⁹⁸ The agreement had a term of three years and was subject to termination on October 31, 2016.¹⁹⁹ MLB and the NPB had to notify the other party of an intent to modify or terminate the contract 180 days before the termination date.²⁰⁰ Now, the agreement continues year to year unless either party decides to modify or terminate it six months before the anniversary of the original termination date.²⁰¹

Japan was concerned that all of its best baseball players would request to be posted and the amount of talented athletes in Japan would dwindle. Some NPB club owners choose not to “recognize the Posting System and refuse to [participate in] it.”²⁰² However, it is beneficial for the NPB club to participate in the Posting System because Japanese players become international free agents after they play for nine years.²⁰³ If an NPB club does not participate in the Posting System, it risks losing its best players after nine years and getting nothing in return.²⁰⁴ If it participates, it gets paid in exchange for the release of the baseball player, and it decides the fee.²⁰⁵ Typically, “players who receive consent are either one or two years from becoming an international free agent who have completed a minimum of seven years of service required to become a free agent.”²⁰⁶

C. Potential Provisions of the Contractual Agreement Between Cuba and MLB Modeled on the MLB-NPB Posting System

If the Cuban embargo is lifted, MLB and the Cuban Baseball Federation should enter into a contractual agreement like MLB-NPB's Posting Agreement. MLB should negotiate around any potential setbacks of a contract by offering to directly pay the Cuban Baseball Federation a one-time fee for each player they acquire, similar to the Posting System.²⁰⁷ Although Cuba does not have club baseball teams, as it did away with professional sports in 1961, it can develop a similar system with the amateur league.²⁰⁸ Cuba “currently has a national provincial championship, the *Serie Nacional*,” which is composed of sixteen teams.²⁰⁹ Cuba would have to implement a sports commissioner, or someone to manage the Posting System. Currently, the Cuban National League has both a technical advisor and a national team manager.²¹⁰ The Cuban Baseball Federation also has a president and a vice president.²¹¹ Any of these four positions could serve as the sports commissioner in the Cuban Posting System. Moreover, the vice president of the Cuban Baseball

Federation, Antonio Castro, is an ideal candidate due to his recent involvement with MLB and interest in changing the Cuban baseball system.²¹²

Cuban baseball players would request to be posted by directly contacting the commissioner. The contract could restrict posting to a specific period, as in the NPB Posting System, and to limit the amount of Cuban players leaving the Cuban Baseball Federation each year.²¹³ Because Cuba's domestic baseball league is between November and April, the Posting System request period could begin at the end of the season on May 1 and run through August 1.²¹⁴ This benefits Cuban baseball because the limited transfer window allows Cuba to keep any players not offered a contract with a MLB team, and the players can play in the domestic league the following year. Players would also have ample time to practice with their current team in preparation for the *Serie Nacional*.

Once a player requests to be posted, the Cuban commissioner could accept or deny the request. If the Cuban commissioner agreed, he or she would calculate a release fee. The release fee could be calculated by considering factors like the following: (1) the Cuban Baseball Federation's damage from losing a player, (2) any investments made in training the player, and (3) potential use of the player within the Cuban Baseball Federation. Similar to the NPB Posting System, the agreement with the Cuban Baseball Federation could put a cap on release fees to avoid Cuba's extortion and abuse of the requested release fee.²¹⁵ The cap could be \$20 million, like the NPB Posting System, or it could start much lower and increase depending on Cuba's willingness to participate.²¹⁶

After determining a release fee, the Cuban commissioner would convey an individual player's desire to be posted and the requested release fee to the MLB Commissioner, who would relay the information to all MLB teams. Any MLB team willing to pay the release fee could negotiate with the player for a period of thirteen days. By allowing any *161 MLB team willing to pay the release fee to negotiate with the player, the contract supports Article 23 of the Declaration of Human Rights, which gives everyone the right to free choice of employment.²¹⁷ If the player accepts, he would be transferred to that MLB team. If the player does not accept, he would remain with the Cuban Baseball Federation until the next Posting System period began.

Similar to the MLB-NPB Posting System, the MLB-Cuba Posting System would necessitate a clause prohibiting each league from communicating with baseball players from the other country, outside of the Posting System, to encourage compliance with the agreement.²¹⁸

Moreover, to limit the amount of Cuban baseball players leaving the Cuban Baseball Federation and enhance Cuba's participation in the proposed agreement, the Posting System should only permit Cuban players to request to be posted a limited number of times. However, Cuba could abuse this type of provision. For example, Cuba could turn down a player every time he requests posting and therefore keep that player out of MLB reach after the player makes the maximum number of permitted requests.

Another proposed provision that would encourage Cuba's participation would be to set a restriction on the length of time the Cuban baseball player is permitted to play in MLB. Once that time is up, MLB could immediately offer to pay an additional release fee. Or, once the Cuban baseball player made a significant income working abroad, the player could pay Cuba for his unconditional release to MLB. Although this system does not directly comply with the ideals of the Declaration of Human Rights, which guarantees a free choice to employment and a choice to leave any country, these are concessions MLB should consider making during initial negotiations.²¹⁹

Ideally, Cuba would reinstate the concept of professional sports and pay its baseball players a salary competitive with the world market. This would encourage more players to stay and play baseball in Cuba. As a participant in the professional sports arena, Cuba could also establish a length of time that baseball players must serve in their home country before

becoming international free agents. Then, Cuba would have an incentive to participate in the Posting System before a player became an international free agent because Cuba would acquire a release fee, rather *162 than the player freely becoming an international agent with no benefit to Cuba.²²⁰

D. Benefits of an MLB-Cuba Agreement like the MLB-NPB Posting System

A contract between MLB and the Cuban Baseball Federation would support the objective of the Declaration of Human Rights by giving each Cuban baseball player the free choice of employment and the right to equal pay for equal work.²²¹ Under this system, Cuban baseball players could make the same amount of money as other professional athletes around the world. Although Cuban baseball players are currently permitted to sign contracts with other countries, they must relinquish 20% of the money to the Cuban government.²²² If the trade embargo were lifted, but MLB and Cuba did not have an agreement for a Posting System, Cuban baseball players could play in the United States but Cuba would require them to relinquish a portion of their contract, like the money they relinquish to smugglers.²²³

The Posting System could require the MLB team signing a player to pay a release fee to the Cuban government, rather than the player directly paying the Cuban government. The burden of payment shifts to the party in the best position to negotiate, the multi-billion dollar MLB team. A one-time fee agreement provides Cuba with the necessary consideration for the release of its most talented baseball players. Cuba would also have sole discretion to determine the amount this player is worth to its national team. Also, this system favors Cuba because there would be a narrow window of time for Cuban baseball players to be posted. Currently, Cuba is losing its talented athletes surprisingly and without warning.²²⁴ Since 1991, more than 300 Cuban baseball players defected from Cuba and in just the past 3.5 years, 5 of those players “signed contracts worth a combined \$287 million.”²²⁵ Cuba does not receive any of that money.²²⁶ The Posting System would prepare Cuba to lose a player and know that players who did not contract with MLB would stay with the Cuban Baseball Federation for the upcoming year. And, Cuba *163 would receive a considerable amount of money for the legal exchange of its players.

The Posting System would also prevent Cuban baseball players from considering defection to the United States. It would be in a Cuban baseball player's best interest to request to be posted and see if any MLB team is interested in his talents. If no team is willing to pay the release fee, then the player would know his skills are not up to par with MLB standards and defecting would be futile.²²⁷ However, there remains the risk that if the Cuban commissioner does not allow a particularly talented player to be posted, that player may defect. This problem is minimized by the discretion the agreement gives Cuba to choose a release fee. The most talented players would have a higher release fee, while players of average talent would have a lower release fee.

Most significantly, lifting the Cuban trade embargo and establishing a contract between MLB and the Cuban Baseball Federation would eliminate the human trafficking industry for Cuban baseball players. With an agreement already in place, there would be no benefit for a Cuban baseball player to acquire a smuggler to help enter the United States. Using the Posting System would benefit the Cuban athletes more because they would avoid the risk that comes with human smuggling and the uncertainty of acquiring an MLB contract.

VII. CONCLUSION

With Cuba's new stance allowing baseball players to play abroad and the reestablishment of diplomatic relations between the United States and Cuba, it seems unlikely that Cuba would be opposed to releasing its players to the United States once the embargo is lifted.²²⁸ Developing a system for allowing Cuban baseball players to play in the United States helps to eliminate the issues of defection and human smuggling, because MLB could not contact or contract with any Cuban player who did not participate in the Posting System. Also, a Posting System reduces the issue of defection because the

risks associated with defection are considerably higher, compared to the risks and benefits of a Posting System. When a player defects, he leaves his home, his family, and his ^{*164} culture behind. The proposed U.S.-Cuban Posting System removes the need for defection in accordance with the Declaration of Human Rights, which states that everyone has the right to leave any country and return to that country.²²⁹ With this proposed Posting System, Cuban players could freely migrate to the United States, bring their families with them, and return to Cuba whenever they choose, without the dangers associated with human smuggling and defection.

Footnotes

- ^{a1} © 2017 Nicole Zaworska. J.D. candidate 2017, Stetson University College of Law, B.A. 2014, cum laude, University of Florida. I would like to thank Eric E. Page, Olga M. Pina, and Professor Candace Zierdt for reviewing my Article and providing valuable feedback. I would also like to thank the members of *The Sports Lawyers Journal* for their dedication to the publishing of this Article. Finally, I would like to thank my parents, my sister, the Bujalski family, and John for their endless support.
- ¹ President Barrack Obama, Statement by the President on Cuba Policy Changes (Dec. 17, 2014) (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes>).
- ² Richard Danielson, *Tampa Chamber's Third Trip to Cuba Looks To Lay the Foundation for Future Business*, TAMPA BAY TIMES (May 18, 2015, 1:05 PM), <http://www.tampabay.com/news/business/tampa-chambers-third-trip-to-cuba-looks-to-lay-the-foundation-for-future/2230108>.
- ³ *Id.*; JC Kreidel, *Hampton Roads Chamber of Commerce Hosts Trip to Cuba*, HAMPTON ROADS CHAMBER (Jan. 27, 2015), <http://www.hamptonroadschamber.com/news/article/january/27/2015/hampton-roads-chamber-of-commerce-hosts-trip-to-cuba>; Heather Norris, *Carroll Chamber To Return to Cuba in November*, CARROLL COUNTY TIMES (Feb. 16, 2016, 8:05 PM), <http://www.carrollcountytimes.com/news/government/ph-cc-chamber-cuba-0217-20160216-story.html>; Charlotte Twine, *KL Chamber Planning Fall Trip to Cuba*, KEYSNEWS.COM (Feb. 10, 2016), <http://keysnews.com/node/72945>.
- ⁴ Kevin Baxter, *With Castro as an Ally, MLB Focuses on the High-Stakes Smuggling of Cuban Ballplayers*, L.A. TIMES (Dec. 20, 2015, 4:00 AM), <http://www.latimes.com/sports/dodgers/la-sp-usa-cuba-puig-20151220-story.html>.
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² See *infra* Section VI.A (explaining that Cuba has leased players to other countries, such as Japan, and in exchange requires players to give up 20% of their contracts).
- ¹³ See *infra* Section VI.B.
- ¹⁴ See *infra* Part IV.
- ¹⁵ Claire Suddath, *A Brief History of U.S.-Cuba Relations*, TIME (Apr. 15, 2009), <http://content.time.com/time/nation/article/0,8599,1891359,00.html>.
- ¹⁶ *Id.*

- 17 John W. Smagula, *Redirecting Focus: Justifying the U.S. Embargo Against Cuba and Resolving the Stalemate*, 21 N.C. J. INT'L L. & COM. REG. 65, 71 (1995).
- 18 Alberto R. Coll, *Harming Human Rights in the Name of Promoting Them: The Case of the Cuban Embargo*, 12 UCLA J. INT'L L. & FOREIGN AFF. 199, 203-04 (2007).
- 19 22 U.S.C.A. § 2370(a)(2) (West 2017).
- 20 Coll, *supra* note 18, at 205.
- 21 *The US Embargo Against Cuba: Its Impact on Economic and Social Rights*, AMNESTY INT'L 8 (Sept. 2009), <http://www.amnestyusa.org/pdfs/amr250072009eng.pdf> [hereinafter *The Embargo's Economic and Social Impact*]. It is important to note that TWEA was enacted in 1917, long before relations between the United States and Cuba eroded. *Id.* at 7.
- 22 *Id.* at 9.
- 23 *Id.*
- 24 *See id.* at 10.
- 25 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, 497 (1998).
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- 27 Serena Marshall, *President Obama Reauthorizes Cuba Listing on 'Trading with the Enemy Act'*, ABC NEWS (Sept. 11, 2015, 3:05 PM), <http://abcnews.go.com/Politics/presidentobamareauthorizes-cuba-listing-trading-enemy-act/story?id=33690036>.
- 28 *Id.*
- 29 Jim Acosta et al., *Obama Announces Cuba Visit*, CNN (Feb. 18, 2016, 5:14 PM), <http://www.cnn.com/2016/02/17/politics/obama-cuba-visit/>.
- 30 Ben Strauss, *New Work Rules Reshape M.L.B.'s Relationship with Cuban Prospects*, N.Y. TIMES (Mar. 15, 2016), http://www.nytimes.com/2016/03/16/sports/baseball/major-leaguebaseballcuba-obama-signings.html?_r=0.
- 31 *Id.*
- 32 *The Embargo's Economic and Social Impact*, *supra* note 21, at 5-6.
- 33 Strauss, *supra* note 30.
- 34 Human smuggling is defined as “a business transaction between two willing parties involving movement across borders, usually by illegal means.” *Human Trafficking and Migrant Smuggling*, GLOBAL AFF. CAN., <http://www.international.gc.ca/crime/human-traf-personne.aspx?lang=eng>. Human smuggling is consensual, while human trafficking is not. *Id.* Human smuggling can encompass human trafficking when the person being moved across borders is “deprived of the freedom of choice by using threats, force, coercion, deception or fraud for the purpose of exploitation.” *Id.* Although smuggling is one of the primary ways Cuban baseball players enter the United States, at times Cubans make the treacherous journey from Cuba to Florida without the help of another party. Carol J. Williams, *Cuban Smuggling Business Is Thriving*, L.A. TIMES (Sept. 17, 2007), <http://articles.latimes.com/2007/sep/17/nation/na-migrants17>.
- 35 *Human Smuggling*, HAVOCSCOPE, <http://www.havocscope.com/tag/human-smuggling> (last visited Apr. 9, 2017).
- 36 In the 2015 fiscal year, over 4400 Cubans defected to the United States by sea. *Fearing End of 'Wet Foot, Dry Foot Policy,' Cubans Fleeing to U.S. in Record Numbers*, FOX NEWS: LATINO (Apr. 21, 2016), <http://latino.foxnews.com/latino/news/2016/04/21/fearing-endwetfoot-dry-foot-cubans-fleeing-to-us-in-record-numbers/> [hereinafter *Fleeing in Record Numbers*].

- 37 *Id.*; Williams, *supra* note 34 (“A trend has emerged in recent months: More Cubans have been arriving in the U.S. via organized smuggling operations than by homemade rafts or other rickety craft”).
- 38 Ray Walser et al., *The Human Tragedy of Illegal Immigration: Greater Efforts Needed To Combat Smuggling and Violence*, BACKGROUNDER (The Heritage Found., Washington, D.C.), June 22, 2011, at 1, <http://www.heritage.org/research/reports/2011/06/thehumantragedy-of-illegal-immigration-greater-efforts-needed-to-combat-smuggling-and-violence> (click “Download Report” under title).
[S]mugglers have been known to leave behind people who fail to keep up with the group due to exhaustion, injury, dehydration, or age. Furthermore, immigrants seeking to cross the southern border illegally increasingly do so in desert regions where the extreme heat can lead to over-exhaustion and death Illegal immigrants may also be packed into trucks, hidden under seats, or smuggled in trunks to avoid detection. There they risk death and injury from suffocation or overturned vehicles.
Id. at 9-11.
Sexual violence is also rampant, with “as many as 60 percent of [] women and girls [] experience[ing] sexual assault during their journeys.” *Id.* at 26. Smugglers oftentimes have no interest in the safety of the people they are smuggling. *Id.* at 52, 53. For example, “In 2002, 17 Cubans were found on [] an uninhabited island in the Bahamas, without food or water.” *Id.* The smuggler informed the Cubans he had to get more fuel and would return for them, but he never came back. *Id.*
- 39 *Id.* at 54-57. In 1999, a five-year-old Cuban boy was found off the coast of Fort Lauderdale, Florida, floating in an inner tube. *Id.* The boat he was traveling on capsized and nine people on board, including the boy's mother, drowned. *Id.*
- 40 *Id.*; Jefferson Morley, *U.S.-Cuba Migration Policy*, WASH. POST (July 27, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/27/AR2007072701493.html>.
- 41 *See Fleeing in Record Numbers*, *supra* note 36.
- 42 *See* Dan Moffett, *U.S. Allows Cuban Migrants Different Treatment*, ABOUT.COM (Jan. 25, 2016), <http://immigration.about.com/od/immigrationlawandpolicy/a/U-S-Allows-CubanMigrants-Different-Treatment.htm>.
- 43 Jarrett Barrios, *People First: The Cuban Travel Ban, Wet Foot-Dry Foot and Why the Executive Branch Can and Should Begin Normalizing Cuba Policy*, 11 CONN. PUB. INT. L.J. 1, 5-6 (2011) (arguing that this “extraordinarily generous treatment is unfair to others, and cannot be justified as sound policy”).
- 44 *Id.* at 3. The CAA was amended in 1995 following the mass exodus of Cuban immigrants in the 1980s when Fidel Castro permitted any Cuban who did not want to stay in Cuba to leave by boat. Walser et al., *supra* note 38. In the 1980s, 125,000 Cubans went to the United States. *Id.* In 1994, the U.S. Coast Guard picked up 38,560 Cubans. *Id.* Prior to the wet foot, dry foot policy, Cuban immigrants would wait at sea for U.S. law enforcement to rescue them. *Id.* After such an immense influx of Cubans into the United States, the two nations entered into an agreement prohibiting U.S. law enforcement from picking up Cubans at sea. *Id.* This led to the amendment of the Cuban Adjustment Act, or what has now come to be known as the wet foot, dry foot policy. *Id.*
- 45 Moffett, *supra* note 42.
- 46 *Special No More: An End to Wet Foot, Dry Foot*, ECONOMIST: AM. (Jan. 21, 2017), <http://www.economist.com/news/americas/21714600-outgoing-american-president-makes-it-harder-donald-trump-undo-rapprochement>.
- 47 *See* Frances Robles, *Cubans Newly Blocked at U.S. Border Place Hopes in Trump*, N.Y. TIMES (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/world/americas/cubans-usborderpolicy-wet-foot-dry-foot-obama-trump.html>.
- 48 Dara Lind, *Major League Baseball's Human-Trafficking Problem*, VOX (Sept. 15, 2014, 11:00 AM), <http://www.vox.com/2014/9/15/6147663/baseball-players-trafficking-cubapugicartels-smuggling>. To put things in perspective, \$10,000 in the United States is worth 265,000 Cuban pesos. XE Currency Converter: USD to CUP, XE, <http://www.xe.com/currencyconverter/convert/?Amount=10000&From=USD&To=CUP> (last visited Apr. 9, 2017). The average Cuban male makes 466 Cuban Pesos a month. Isbel Díaz Torres, *The Mean Salary of Cubans*, HAVANA TIMES.ORG (Aug. 6, 2013), <http://www.havanatimes.org/?p=97506>.
- 49 Lind, *supra* note 48.

- 50 *Id.*
- 51 *Id.*
- 52 Jesse Katz, *Escape from Cuba: Yasiel Puig's Untold Journey to the Dodgers*, L.A. MAG. (Apr. 14, 2014), <http://www.lamag.com/longform/escape-from-cuba-yasiel-puigs-untoldjourneyto-the-dodgers/>.
- 53 *Id.*
- 54 *Id.*
- 55 *Id.*
- 56 *Id.*
- 57 *Id.*
- 58 Gregory J. Wallace, *Shield Cuba's Baseball Players' Rights: Column*, USA TODAY (Jan. 12, 2015), <http://www.usatoday.com/story/opinion/2015/01/12/cuba-baseballplayersmlb-rights-government-salary-column/21655555/>.
- 59 Lind, *supra* note 48.
- 60 Wallace, *supra* note 58.
- 61 Scott Ware, *In Baseball and Business, Don't Run Afoul of OFAC*, TRUSTEDPEER (Oct. 15, 2013), <http://www.trustedpeer.com/blog/baseball-and-business-don-t-run-afoul-ofac>.
- 62 31 C.F.R. § 515.505 (2016).
- 63 John Walters, *Cuba's Been Losing Its Best Baseball Players to America*, NEWSWEEK (May 2, 2015, 11:01 AM), <http://www.newsweek.com/cubas-been-losing-its-best-baseballplayersamerica-327650>.
- 64 *Id.*; Lind, *supra* note 48.
- 65 Lind, *supra* note 48.
- 66 *Id.*
- 67 MLB, THE OFFICIAL PROFESSIONAL BASEBALL RULES BOOK, R. 3(a) (2000), <https://pennstatelaw.psu.edu/sites/default/files/Doc%20Supp%20League%20Constitutions%20and%20Rules.pdf>. Rule 3(a)(1)(A)-(B) states:
 (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.
 Rachel D. Solomon, *Cuban Baseball Players, the Unlucky Ones: United States-Cuban Professional Baseball Relations Should Be an Integral Part of the United States-Cuba Relationship*, 10 J. INT'L BUS. & L. 153, 158 (2011).

- 68 Solomon, *supra* note 67, at 158-59. These rules only apply to players who have never contracted with the MLB. *Id.*
- 69 Lind, *supra* note 48. As was explained in Part III, the wet foot, dry foot rule was recently repealed, meaning players who come to the United States signing with a team will have to follow the CACR's other policies before becoming residents. *See supra* Part III.
- 70 Lind, *supra* note 48. After the baseball player has played on an MLB team for six years, he can become a free agent and may contract with other MLB teams. Scott Kendrick, *Free Agency Primer: A Rundown of the Rules About Free Agency in Major League Baseball*, ABOUT.COM (Feb. 9, 2016), <http://baseball.about.com/od/majorleaguebasics/a/freeagentprimer.htm>.
- 71 Lind, *supra* note 48 (explaining that some Cuban players defect to a third country, rather than to the United States, due to the higher payout).
- 72 *Id.*
- 73 *Id.* From twenty Cuban baseball players who have signed contracts with an MLB team as residents of third countries, the average worth of those contracts is \$14.5 million. *Id.* On the other hand, the number one draft pick in the 2013 baseball draft, Kris Bryant, signed a contract with the Cubs for \$6.7 million. *Id.* Bryant was ranked as the number one player out of thousands of baseball players. *Id.* Granted, not all Cuban baseball players will come close to ranking that high in the draft. *Id.* Signing a contract as a third country resident basically guarantees a Cuban baseball player double the salary.
- 74 Maria del Carmen Ramos, *Recent Changes to the Trade Embargo May Facilitate Cuban Baseball Players Being Able To Legally Play for MLB Teams*, SHUMAKER SPORTS REP. (Mar. 22, 2016), <https://shumakersportsreport.com/2016/03/22/recent-changes-to-the-tradeembargomay-facilitate-cuban-baseball-players-being-able-to-legally-play-for-mlb-teams/>.
- 75 31 C.F.R. § 515.571(a)(5)(i) (2016).
- 76 Strauss, *supra* note 30.
- 77 Sarah Rainsford, *Cubans Set for Foreign Travel as Exit Permits Abolished*, BBC NEWS (Jan. 14, 2013), <http://www.bbc.com/news/world-latin-america-21008571>.
- 78 *Id.*
- 79 *Cuba: Athletes Can Sign Overseas*, ESPN (Sept. 27, 2013), http://espn.go.com/mlb/story/_/id/9730211/cuba-says-athletes-now-sign-foreign-leagues%20.
- 80 *Id.*; *Cuba Lets Athletes Compete in Foreign Leagues, but with a Catch*, N.Y. DAILY NEWS (Sept. 27, 2013, 10:51 AM), <http://www.nydailynews.com/sports/cuba-lets-athletescompeteforeign-leagues-catch-article-1.1469452> [hereinafter *Cuba Lets Athletes Compete in Foreign Leagues*] (explaining that baseball players who play in 70% of games in the Cuban National League are awarded an additional \$208 and the team that wins the league gets \$2700 to split).
- 81 Jack Erwin & Russell Simon, *What You Need To Know (and a Lot You Don't) To Follow the Rest of the 2014 Baseball Season*, COMPLEX (July 16, 2014), <http://www.complex.com/sports/2014/07/2014-mid-year-baseball-report/cuban-revolution>.
- 82 del Carmen Ramos, *supra* note 74.
- 83 *See* Strauss, *supra* note 30; Mimi Whitefield, *U.S. Continues To Chip at Embargo by Easing Cuban Travel and Banking Restrictions*, MIAMI HERALD (Mar. 15, 2016, 9:51 AM), <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article66116447.html> (stating MLB is currently in negotiations with Cuba over allowing Cuban players to sign directly with MLB teams).
- 84 *Defection*, MERRIAM-WEBSTER COLLEGIATE DICTIONARY (11th ed. 2003).
- 85 Jonathan Fryer, *World: Americas Why Cubans Defect*, BBC NEWS (Aug. 3, 1999, 7:46 PM), <http://news.bbc.co.uk/2/hi/americas/411203.stm>.

- 86 *Id.*; *World Report 2015: Cuba*, HUM. RTS. WATCH (2015), <https://www.hrw.org/world-report/2015/country-chapters/cuba>. Although human rights conditions have improved from the use of “long-term prison sentences to punish [political] critics,” the Cuban government continued to use tactics such as “beatings, public acts of shaming, and the termination of employment.” *Id.*
- 87 See Paola Loriggio, *Why Cuban Athletes Might Choose To Defect at Pan Am Games*, CANADIAN PRESS (Jan. 27, 2015, 2:49 PM), <http://globalnews.ca/news/1795884/whycubanathletes-might-choose-to-defect-at-pan-am-games/>.
- 88 See Mathew J. Frankel, *Major League Problems: Baseball's Broken System of Cuban Defection*, 25 B.C. THIRD WORLD L.J. 383 (2005) (discussing the major humanitarian issues with defection within the realm of Cuban baseball).
- 89 *Id.* at 384.
- 90 Sam Anderson, *Baseball's Last Cuban Escapees*, N.Y. TIMES (Aug. 20, 2015), http://www.nytimes.com/2015/08/23/magazine/baseballs-last-cuban-escapees.html?_r=0.
- 91 *Id.*
- 92 *Id.*
- 93 *Id.*
- 94 *Id.* With such meager salaries, Cuban baseball players were left “to play for the love of the game and the glory of the revolution.” *Id.*
- 95 Daniel Trotta & Junko Fujita, *Cuba Opens Pipeline of Baseball Talent to Japan, U.S. Left Out*, REUTERS (July 3, 2014, 9:28 PM), <http://www.reuters.com/article/2014/07/04/us-cubabaseballidUSKBN0F902V20140704>.
- 96 *Id.* Recent raises have increased average salaries between \$300 and \$400 a month. See *Cuba Lets Athletes Compete in Foreign Leagues*, *supra* note 80.
- 97 *Cuba: Athletes Can Sign Overseas*, *supra* note 79.
- 98 *Id.*
- 99 *Id.*
- 100 Peter Alfano, *For Soviet Athletes, a Greater Presence in American Sports*, N.Y. TIMES (Apr. 30, 1989), <http://www.nytimes.com/1989/04/30/world/for-soviet-athletes-a-greater-presence-in-american-sports.html?pagewanted=all>.
- 101 *Gorbachev's Miscalculation and the Collapse of the Soviet Union*, ST. CENTURY (Nov. 22, 2012), <https://thestateofthecentury.wordpress.com/2012/11/22/gorbachevs-miscalculation-and-the-collapse-of-the-soviet-union/>.
- 102 JAMES RIORDAN, *SPORT IN SOVIET SOCIETY: DEVELOPMENT OF SPORT AND PHYSICAL EDUCATION IN RUSSIA AND THE USSR* 161-62 (1978).
- 103 *Id.* at 162.
- 104 TONY COLLINS, *SPORT IN CAPITALIST SOCIETY: A SHORT HISTORY* 24-26, 102 (2013).
- 105 See *id.*
- 106 See *id.*
- 107 RIORDAN, *supra* note 102, at 167 (“Victory in sport abroad was to be regarded as propaganda in favour of the Soviet system both for foreign and domestic consumption.”).
- 108 Alfano, *supra* note 100. This description could be compared to the Cuban government, leaving Cuban baseball players with a meager \$17 a month salary.

- 109 VLADISLAV KRASNOV, SOVIET DEFECTORS: THE KGB WANTED LIST 133 (1985).
- 110 *Id.*
- 111 *Id.* at 131. “Each defection dealt a heavy blow to Soviet propaganda at home and abroad. Each contributed to the dilemma that Soviet leaders must now face: they need to improve the Soviet image abroad” *Id.* It can be argued that Cuba is currently facing the same challenge, with the rise of defection comes the negative worldwide perception, which suggests socialism is not as perfect as the Castro regime wants the world to believe.
- 112 *Perestroika and Glasnost*, HISTORY (2010), <http://www.history.com/topics/cold-war/perestroika-and-glasnost>. This period of time was commonly called “perestroika” and “glasnost.” *Id.* Gorbachev sought change for the internal and international affairs of the Soviet Union. *Id.* “Valery Krutov, coach of the Soviet national diving team” in 1989, stated, “There is a lot of interest in many sports in the Soviet Union now. It helps our country's image to participate in so many sports internationally. It strengthens our position.” Sharon Robb, *Soviet Athletes Finding Freedom*, SUN SENTINEL (May 14, 1989), http://articles.sun-sentinel.com/1989-05-14/sports/8901250314_1_soviet-diver-soviet-union-soviet-athletes. Similarly, it could be argued that the reason that Cuba altered its stance on Cuban athletes playing abroad because of the negative image from the large amount of Cuban baseball defectors. Trotta & Fujita, *supra* note 95. (“In an attempt to halt defections, Cuba is allowing some of its players to sign overseas contracts while raising the pay of those who stay.”).
- 113 Robb, *supra* note 112.
- 114 *Id.*; Alfano, *supra* note 100 (noting Sergei Priakin was the first Soviet athlete to play on a professional sports team when he joined the NHL).
- 115 Alfano, *supra* note 100 (“Zvereva, a teen-ager ranked in the top 10 ... announc[ed] she would keep more of her prize money from now on ... a practice that some Soviet athletes ... now feel more emboldened to challenge.”).
- 116 *Id.*
- 117 *Alexander Mogilny Becomes the First Soviet NHL-Defector*, INT’L ICE HOCKEY FED’N (May 2, 1989), <http://www.iihf.com/iihf-home/the-iihf/100-year-anniversary/100-topstories/story-63.html>.
- 118 COLLINS, *supra* note 104, at 26-27; Anderson, *supra* note 90.
- 119 COLLINS, *supra* note 104, at 26-27.
- 120 Anderson, *supra* note 90.
- 121 *Id.*
- 122 Mike Jakeman, *Cuba Will Allow Athletes To Play Overseas--but Major League Baseball Is Still Off Limits*, QUARTZ (Dec. 28, 2013), <http://qz.com/160562/cuba-will-allowathletesto-play-overseas-but-major-league-baseball-is-still-off-limits/>.
- 123 *Id.*; see COLLINS, *supra* note 104.
- 124 Ben Strauss, *Star Brothers Are Apparently the Latest To Defect from Cuba*, N.Y. TIMES (Feb. 8, 2016), http://www.nytimes.com/2016/02/09/sports/baseball/yulieski-gourriel-topcubanplayer-slips-away-from-team-hotel.html?_r=0.
- 125 William Troop, *Cuba's Athletes Keep Defecting, Despite a New Era in US-Cuba Relations*, PUB. RADIO INT’L (July 22, 2015, 2:30 PM), <http://www.pri.org/stories/2015-07-22/cubas-athletes-keep-defecting-despite-new-era-us-cuba-relations>.
- 126 *Perestroika and Glasnost*, *supra* note 112.
- 127 *Glasnost and Perestroika*, COLD WAR MUSEUM, <http://www.coldwar.org/articles/80s/glasnostandperestroika.asp> (last visited Feb. 8, 2017).
- 128 Danielle Renwick et al., *Council on Foreign Relations: U.S.-Cuba Relations*, COUNCIL ON FOREIGN REL.: CFR BACKGROUNDERS (Sept. 7, 2016), <http://www.cfr.org/cuba/us-cuba-relations/p11113>.

- 129 Raul Castro has implemented policy changes that have “decentraliz [ed] the agricultural sector; relax[ed] restrictions on small businesses; liberaliz[ed] real estate markets; [and] ... expand[ed] access to consumer goods.” *Id.* Social reforms include the legalization of sex reassignment surgery. *LGBT Rights in Cuba*, SUSAN'S PLACE TRANSGENDER RES., https://www.susans.org/wiki/LGBT_rights_in_Cuba (last visited Feb. 8, 2017).
- 130 *See Cuba Lets Athletes Compete in Foreign Leagues*, *supra* note 80 (discussing Cuban baseball players abroad); Julia E. Sweig & Michael Bustamante, *Cuba After Communism: The Economic Reforms That Are Transforming the Island*, FOREIGN AFF. (July-Aug. 2013), <https://www.foreignaffairs.com/articles/cuba/2013-06-11/cuba-after-communism> (discussing how migration reform is making it easier for Cubans to travel abroad).
- 131 Troop, *supra* note 125; *see also* Strauss, *supra* note 124. In February 2016, two Cuban baseball players defected, Lourdes Gourriel and Yulieski Gourriel, Jr. Strauss, *supra* note 124. This occurred after MLB's goodwill tour to Cuba, where Lourdes spoke about his dream to play in MLB but that he would wait for the Cuban government's permission. *Id.* This was a significant loss for Cuba's already depleted baseball league as the Gourriels are “regarded as baseball royalty in Cuba.” *Id.*
- 132 *Gorbachev's Miscalculation and the Collapse of the Soviet Union*, *supra* note 101 (“Gorbachev's glasnost policy ... allowed people to discuss and question topics ... influencing independence movements in these areas.”).
- 133 *See* Renwick et al., *supra* note 128.
- 134 Matias F. Travieso-Diaz, *Actions Needed for Lifting the U.S. Trade Embargo Against Cuba*, 3 U. MIAMI INT'L & COMP. L. REV. 53, 84-85 (1995).
- 135 Kate Linthicum, *U.S. Companies Line Up To Do Business in Cuba*, L.A. TIMES (Mar. 25, 2016, 12:46 PM), <http://www.latimes.com/world/mexico-americas/la-fg-cuba-goldrush20160325-story.html>.
- 136 *See supra* notes 24-25 and accompanying text.
- 137 Travieso-Diaz, *supra* note 134, at 85, 92-93.
- 138 *Id.* at 92.
- 139 *Id.*
- 140 Matt Peppe, *How Obama Could End the Cuban Embargo*, COUNTERPUNCH (Jan. 12, 2015, 9:43 AM), <http://www.counterpunch.org/2015/01/12/how-obama-could-end-the-cubanembargo/> (arguing that there is “no legal merit for the regulations against Cuba, which are written based on the application of enemy status to Cuba”).
- 141 Paul Guzzo, *Cuba Ovations May Require Obama To Renew Enemy Status*, TIMES PUB. (Sept. 8, 2015, 7:50 AM), <http://www.tbo.com/news/politics/cuba-ovations-may-requireobamato-renew-enemy-status-20150908/>. By stripping the President of his power to act in relation to Cuba, it leaves the possibility that any progress already been made could regress. *Id.*
- 142 Travieso-Diaz, *supra* note 134, at 65.
- 143 *Id.* at 66-67.
- 144 *Id.* at 92-93.
- 145 The FAA states, Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this chapter to any government of Cuba, nor shall Cuba ... receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens ... property taken from such citizens ... by the government of Cuba. 22 U.S.C.A. § 2370(a)(2) (West 2017) (emphasis added).
- 146 *Id.* (a)(1) (“No assistance shall be furnished under this chapter to the present government of Cuba.”).
- 147 *Id.* (a)(1)-(2).

- 148 *Id.*
- 149 *See supra* Section IV.B (discussing reform under Raul Castro).
- 150 Travieso-Diaz, *supra* note 134, at 93.
- 151 *Id.*
- 152 *Id.* at 56, 72.
- 153 *Id.* at 70; *The Embargo's Economic and Social Impact*, *supra* note 21, at 10.
- 154 Travieso-Diaz, *supra* note 134, at 72.
- 155 *Id.* at 71.
- 156 *Id.* at 94. These requirements instill impossible and unattainable goals that Cuba will likely never agree to. Although a democratic country would be ideal, it seems strange that the United States is imposing these standards on Cuba when it regularly does business with China. Roland Martin, *The Hypocrisy of America's Cuba Policy*, CNN (Jan. 28, 2012, 10:46 AM), <http://www.cnn.com/2012/01/28/opinion/martin-cuba-policy/> (questioning why we have such strict sanctions against Cuba, a communist country, when we openly do a great deal of business with China, a communist country).
- 157 Travieso-Diaz, *supra* note 134, at 94.
- 158 *The Embargo's Economic and Social Impact*, *supra* note 21, at 10.
- 159 *Id.*
- 160 *Id.* at 10-11.
- 161 Sweig & Bustamante, *supra* note 130.
- 162 Shamberger, *supra* note 25, at 507-08.
- 163 ADRIENNE ARSHT LATIN AM. CTR., ATLANTIC COUNCIL, U.S.-CUBA: A NEW PUBLIC SURVEY SUPPORTS POLICY CHANGE 5 (Feb. 11, 2014), <http://www.atlanticcouncil.org/images/publications/2014cubapoll/US-CubaPoll.pdf> (indicating that 56% of American responders and 63% of adult Floridians favor change to the United States' policy towards Cuba).
- 164 Shamberger, *supra* note 25, at 512.
- 165 *See id.* (explaining Canadian opposition to the embargo and its belief “that nurturing economic, political, and educational ties” is the best method to promote democracy in Cuba).
- 166 *Id.*
- 167 Renwick et al., *supra* note 128.
- 168 *Id.* (quoting a prediction by Julia Sweig, a Cuba and Brazil scholar at the Lyndon B. Johnson School of Public Affairs).
- 169 *See supra* Part III (discussing how the embargo impacts Cuban baseball players' ability to immigrate to the United States to play baseball).
- 170 Wallance, *supra* note 58.
- 171 *Id.*
- 172 *Id.*
- 173 *Id.*

- 174 *See id.* (explaining that some Cuban players would still prefer the risks of illegal smuggling than “giving up millions of tens or millions of dollars to a government that had paid them next to nothing”); Erwin & Simon, *supra* note 81 (explaining that Cuba requires a percentage of the player's contract and any income tax).
- 175 UNITED NATIONS, UNIVERSAL DECLARATION OF HUMAN RIGHTS art. 23 (Dec. 10, 1948), http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf; Wallance, *supra* note 58.
- 176 Income tax rates in Cuba range between 15% and 50%. *Cubans Line Up To Pay Taxes for First Time in Over 50 Years*, FOX NEWS: LATINO (Feb. 19, 2013), <http://latino.foxnews.com/latino/news/2013/02/19/cubans-prepare-to-pay-taxes-for-first-time-in-over-50-years/>. Although Cuba can still determine how much income tax to charge Cuban baseball players, that issue is outside of the scope of this Article.
- 177 Ben Badler, *How Will MLB Handle Big Changes with Cuba?*, BASEBALL AM. (Dec. 18, 2014), <http://www.baseballamerica.com/international/mlb-will-handle-big-changes-cuba/>.
- 178 *Id.*
- 179 Erwin & Simon, *supra* note 81.
- 180 Badler, *supra* note 177.
- 181 *A Cuban Brain Drain, Courtesy of the U.S.*, N.Y. TIMES (Nov. 16, 2014), http://www.nytimes.com/2014/11/17/opinion/a-cuban-brain-drain-courtesy-of-us.html?_r=0 (discussing the rising number of Cuban medical personnel defecting to the United States).
- 182 *See* Balder, *supra* note 177.
- 183 One player, Frederick Cepeda, is described as “one of the greatest switch hitters who has ever picked up a Cuban bat.” Mary Murray & Orlando Matos, *Cuban National Signs First Million Dollar Baseball Contract*, NBC NEWS (Apr. 23, 2014, 11:28 AM), <http://www.nbcnews.com/news/world/cuban-national-signs-first-million-dollar-baseball-contract-n87526>. Cepeda signed a \$1.5 million baseball contract with the Yomiuri Giants, one of the most successful baseball teams in Japan. *Id.* Many Cuban fans will proudly watch Cepeda play abroad; however, another Cuban commenting on the contract viewed the situation in a different light, worrying about the future of Cuban baseball if Cuba continues to lose its best baseball players to other countries. *Id.*
- 184 *See Cuban Baseball Crisis: The Downside of Warming Relations with America*, ECONOMIST (Dec. 19, 2015), <http://www.economist.com/news/christmas-specials/21683976-downside-warming-relations-america-cuban-baseball-crisis> (noting that Cuba and its people are afraid of a “brawn drain” of Cuban baseball players to MLB).
- 185 SPRING TRAINING CONNECTION, <http://www.springtrainingconnection.com/> (last visited Feb. 9, 2017).
- 186 Badler, *supra* note 177.
- 187 Casey Duncan, *Stealing Signs: Is Professional Baseball's United States-Japanese Player Contract Agreement Enough To Avoid Another “Baseball War”?*, 13 MINN. J. GLOBAL TRADE 87, 93-94 (2004).
- 188 *Id.*
- 189 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, 502 (2015).
- 190 *Id.*
- 191 *Id.*; Zachary D. Rymer, *How the New MLB-Japanese Baseball Posting System Will Change the League*, BLEACHER REP. (Dec. 16, 2013), <http://bleacherreport.com/articles/1890276-how-the-new-mlb-japanese-baseball-posting-system-will-change-the-league>.
- 192 Rymer, *supra* note 191.

- 193 AGREEMENT BETWEEN THE OFFICE OF THE COMMISSIONER OF BASEBALL AND THE OFFICE OF THE COMMISSIONER OF NIPPON PROFESSIONAL BASEBALL para. 7, at 3 (Nov. 2013-Oct. 2016), http://jpbpa.net/up_pdf/1415704387-212862.pdf [hereinafter MLB-NPB POSTING AGREEMENT].
- 194 *Id.* para 9, at 3.
- 195 *Id.* at 3-4.
- 196 *Id.*; Kawai & Nichol, *supra* note 189, at 503.
- 197 MLB-NPB POSTING AGREEMENT, *supra* note 193, para. 11, at 6.
- 198 *Id.* para. 12, at 6.
- 199 *Id.* para. 15, at 7-8.
- 200 *Id.*
- 201 *Id.*
- 202 Rymer, *supra* note 191.
- 203 *Id.* This issue is similar to the issue of athlete defection in Cuba. If Cuba does not enter into an agreement with MLB or permit athletes to play in the United States, it will continue to lose talented players without acquiring anything in return.
- 204 *Id.*
- 205 *Id.*
- 206 Kawai & Nichol, *supra* note 189, at 503. Even though the Posting Agreement is in place, “only twenty-three players have been posted and only fourteen players transferred after signing contracts.” *Id.*
- 207 *See supra* Section VI.A (discussing the potential setbacks of a contractual agreement).
- 208 Anderson, *supra* note 90. Optimally, if the embargo were lifted, Cuba would have already begun or be in the process of changing to a more democratic society, and professional sports would be reinstated. However, for the purposes of this Article, it can be inferred that such a change will take quite some time and a system must be developed using the current amateur league.
- 209 *Cuban National League*, BASEBALL-REFERENCE, http://www.baseball-reference.com/bullpen/Cuban_National_League (last visited Apr. 9, 2017).
- 210 *Id.*
- 211 Harvey Araton, *Competing on Good-Will Tour in U.S., a Cuban Team Sends Mixed Signals*, N.Y. TIMES (June 29, 2016), http://www.nytimes.com/2016/06/30/sports/baseball/withthawin-us-relations-cuban-baseball-fears-its-uncertain-future.html?_r=0; *Cuba's Antonio Castro Looks to Bright Future*, ESPN (Dec. 17, 2015), <http://www.espn.com/espn/print?id=14389573&type=HeadlineNews&imagesPrint=off>.
- 212 Baxter, *supra* note 4. Antonio Castro stated, “We’re experiencing a new relationship with Major League Baseball, one where we want the baseball players to play baseball and where we live in a normal world and they have the same rights.” *Id.* (internal quotation marks omitted).
- 213 MLB-NPB POSTING AGREEMENT, *supra* note 193, para. 8, at 3.
- 214 *Cuban National League*, *supra* note 209.
- 215 Rymer, *supra* note 191.
- 216 *Id.*

- 217 *The Universal Declaration of Human Rights*, *supra* note 175.
- 218 MLB-NPB POSTING AGREEMENT, *supra* note 193, para. 12, at 6.
- 219 *The Universal Declaration of Human Rights*, *supra* note 175.
- 220 *See supra* Section VI.B (discussing Japan's incentive to allow baseball players that are close to becoming free agents to be posted).
- 221 *The Universal Declaration of Human Rights*, *supra* note 175.
- 222 Erwin & Simon, *supra* note 81.
- 223 *Id.*; Lind, *supra* note 48.
- 224 *See* Troop, *supra* note 125.
- 225 Baxter, *supra* note 4.
- 226 *Id.*
- 227 Jorge Arangure, Jr., *What Happens to the Cuban Baseball Players Who Never Make It?*, VICE SPORTS (Oct. 1, 2014), https://sports.vice.com/en_us/article/what-happens-to-thecubanbaseball-players-who-never-make-it (noting that not all Cuban baseball players who defect end up signing contracts, leaving them exiled from their home country in the same financial situation).
- 228 *See supra* Section V.A (discussing the impact of lifting the trade embargo on the future of MLB-Cuba relations).
- 229 *The Universal Declaration of Human Rights*, *supra* note 175.

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