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## Give Me Your Tired, Your Poor, Your Fastball Pitchers Yearning for Strike Three: How Baseball Diplomacy Can Revitalize Major League Baseball and United States-Cuba Relations

Matthew N. Greller

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**GIVE ME YOUR TIRED, YOUR POOR, YOUR  
FASTBALL PITCHERS  
YEARNING FOR STRIKE THREE:<sup>1</sup>  
HOW BASEBALL DIPLOMACY CAN  
REVITALIZE MAJOR LEAGUE BASEBALL  
AND UNITED STATES-CUBA RELATIONS**

MATTHEW N. GRELLER\*

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\* J.D. Candidate, May 2000, American University Washington College of Law; B.A., History, 1996, Haverford College. This paper is dedicated to my father, Steven Grellor, whose courage in the face of adversity, love for his family, and passion for baseball continue to inspire me. Additionally, I would like to thank the many people who assisted with this endeavor.

1. See BARTLETT’S FAMILIAR QUOTATIONS 558 (16th ed. 1992) (providing Emma Lazarus’ famous poem, *The New Colossus: Inscription for the Statue Of Liberty, New York Harbor (1883)*, to which the title of this paper refers); see generally Peter Bjarkman, *Assessing the Cuban Pitchers*, INT’L BASEBALL RUNDOWN, Nov.-Dec. 1998, at 14-16 (describing the prevalence of pitchers among defecting Cuban baseball players, to which the title of this paper also refers).

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## INTRODUCTION

Few things ignite such heated passion in America as discussions about baseball<sup>2</sup> or the United States' international relations with

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2. See Joseph A. Kohm, Jr., *Baseball's Antitrust Exemption: It's Going, Going . . . Gone!*, 20 NOVA L. REV. 1231, 1231-32 (1996) (discussing the importance of baseball to American society and the effect of repealing baseball's antitrust exemption). Baseball's importance to American society recently enjoyed a rebirth due to the heroics of the 1998 season. See Tim Kurkjian, *Baseball's Back, From A to Z*, (last modified Feb. 2, 1999) <<http://espn.go.com/mlb/features/01063410.html>> (listing twenty-six alphabetical reasons why MLB experienced a renaissance during the 1998 season); cf. William Gildea, *McGwire's Life Is A Broken Record: 'Magical Year' Took Its Toll On Home-Run Hitting Legend*, WASH. POST, Feb. 25, 1999, at D8 (explaining the pressure and intense scrutiny that Mark McGwire faced during his single season home-run record setting year). Both Mark McGwire's and Sammy Sosa's shattering of baseball's hallowed home run record, and the New York Yankees' incredible 125-win World Championship season brought back many fans who turned away from the game following the 1994 strike-shortened season. Kurkjian, *supra*. Historically, baseball embodies a unique niche within American society and culture. Kohm, Jr., *supra*, at 1231. Baseball's history provides a parallel to the developments in twentieth century American life, including confrontations with class struggles, immigration, racism, and war. See *id.* at 1231-32. Moreover, discussions and passions about baseball transcend the differences of age, class, ethnicity, politics, and race, and provide a rapport to the American experience. See *id.* at 1231.

Cuba.<sup>3</sup> Recently, the Clinton Administration's proposal to ease the

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3. See *Alejandro v. Cuba*, 996 F. Supp. 1239, 1253 (S.D. Fla. 1997) (providing \$187,627,911 in total compensatory and punitive damages for the families of the Operation to the Rescue pilots, who were shot down by the Cuban government on February 24, 1996); *Alejandro v. Cuba*, No. 96-10126, 96-10127, 96-1012, 1999 U.S. Dist. LEXIS 4137, at \*79 (S.D. Fla. Mar. 18, 1999) (garnishing debt owed to a Cuban telecommunications organization by American telecommunications companies for the families of the murdered Operation to the Rescue pilots killed in 1996); see also Serge F. Kovaleski, *Judge Uses Cuba Funds For Award: Telephone Receipts Go To Flier's Families*, WASH. POST, Mar. 19, 1999, at A10 (describing how the *Alejandro* District Court ruling infuriated the Castro government and could further sour bilateral relations because of its potential effect on previously authorized financial transactions between the two nations). In response to *Alejandro*, the Cuban government filed suit against the United States. See *People of Cuba v. United States*, (Havana Civ. & Admin. Ct., filed June 1, 1999) (visited July 7, 1999) <<http://www.granma.cu/ingles/junio3/024-i.html>> (explaining Cuba's retaliatory \$181.1 billion compensation claim for deaths and injuries allegedly caused by the United States over the past forty years). In contrast to MLB's recent renaissance, the Clinton Administration's recent proposals ignited discord among many interested in the United States' policy towards Cuba. See Rafael Lorente, *Legislators Oppose Orioles-Cuba Baseball Games; Letter Seeks 'Solidarity With Cuban Workers'*, SUN-SENTINEL, (Ft. Lauderdale), Jan. 22, 1999, at 9A, available in LEXIS, News Library (discussing the vehement opposition of several Members of Congress to the exhibition baseball games between the Baltimore Orioles and the Cuban National Team). New Jersey Congressman Robert Menendez adamantly claims that any dilution to the embargo signals the United States' insensitivity to Cuba's poor labor and human rights record. See *id.*; see also Mireya Navarro, *Miami's Generations of Exiles Side By Side, Yet Worlds Apart*, N.Y. TIMES, Feb. 11, 1999, at A25 (illustrating the zealous and steadfast Cuban-American opposition towards engaging Cuba, and its influence on the United States government). Many Miami based Cuban exiles believe that relaxing the United States' embargo towards Cuba would strengthen Castro's Communist regime. See *id.*; Roger E. Hernandez, *Castro's American Fans*, WASH. POST, Jan. 8, 1999, at A24 (identifying the chasm existing between those in favor of lifting the United States' embargo and the organized and vociferous opposition to any rapprochement with Cuba). Hernandez condemns any relaxation of the United States' embargo as insensitive towards the suffering of Cuban people, particularly because he claims it would be changed in order to profit American businesses and bolster the egos of American celebrities. See *id.* See generally PATRICK J. KIGER, *SQUEEZE PLAY: THE UNITED STATES, CUBA AND THE HELMS-BURTON ACT 76* (1997) (noting that since 1979, individuals who lobbied on behalf of Cuban-American interests donated approximately \$5 million in campaign contributions). Of these contributions, over \$3.2 million came from high-ranking members of the Cuban American National Foundation ["CANF"], in an effort to strengthen the embargo. See *id.* But see Thomas J. Donohue, *Market Foothold In Cuba*, WASH. POST, July 26, 1999, at A19 (explaining that the President and CEO of the United States Chamber of Commerce desires to foster a private sector within Cuba as a way to promote democratic changes). See also Anita Snow, *Cuba Bishops Urge End to US Embargo*, WASH.

United States' trade embargo against Cuba<sup>4</sup> thrust these two seemingly diverse realms together,<sup>5</sup> permitting exhibition games between

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POST, Feb. 16, 1999, at A16 (relating the desire of North American Roman Catholic bishops to end the United States' embargo against Cuba). The bishops seek to build upon Pope John Paul's 1998 visit to Cuba to improve United States-Cuba relations. *See id.*

4. *See* PROCLAMATION No. 3447, 27 Fed. Reg. 1085 (1962) (explaining that President Kennedy's establishment of a comprehensive economic embargo against Cuba sought to promote security throughout the western hemisphere); *see also* Lucien J. Dhooze, *Fiddling With Fidel: An Analysis of the Cuban Liberty and Democratic Solidarity Act of 1996*, 14 ARIZ. J. INT'L & COMP. L. 575, 579-94 (1997) (providing a brief historical overview of the enmity between the United States and Cuba and the events that led to the strengthening of the embargo through the enactment of the Helms-Burton Act of 1996). The President of the United States originally had the discretion to impose the embargo against Cuba, but the Helms-Burton Act codified this policy into law. *See id.* at 576; Andreas F. Lowenfeld, *Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act: Congress and Cuba: The Helms-Burton Act*, 90 AM. J. INT'L L. 419, 423 (1996) (describing that the enactment of the Helms-Burton Act unequivocally illustrated the United States' hostile stance towards the Castro regime). The Helms-Burton Act provides for a mixture of economic sanctions and inducements to depose the Castro government, attempts to initiate democratic elections under international supervision, and safeguards United States nationals from the trafficking of confiscated American property. *See* Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 ("Helms-Burton Act") secs. 102, 201, 301, 22 U.S.C. secs. 6032, 6061, 6301; Serge F. Kovaleski, *Warming Up a Cold War: Castro Cracks Down on Cubans Sympathetic to U.S. Policies*, WASH. POST, Feb. 23, 1999, at A15 (reviewing the major developments in the United States trade embargo against Cuba). The United States initiated the trade embargo against Cuba in 1961, and made it comprehensive in 1962. *See id.* In 1992, the United States further tightened the embargo by making it illegal for subsidiaries of domestic firms operating overseas to conduct trade with Cuba. *See id.* In 1996, the United States imposed mandatory sanctions on foreign companies conducting business with Cuba. *See id.*; *What Follows Fidel? Forty Years of Revolutionary Fervor Have Left Cuba's Economy in Ruins and its Future Uncertain. But Fidel Castro Remains Unchallenged*, ECONOMIST, Jan. 2, 1999, at 31 (detailing the devastating effects of the embargo, and Cuban President Fidel Castro's position with the Cuban people); *see generally infra* note 180 and accompanying text (examining the codification of the Cuban embargo during the 1990s).

5. *See* Statement on United States Policy Toward Cuba, 35 WEEKLY COMP. PRES. DOC. 7 (Jan. 5, 1999) (explaining that the changes in United States' policy assist the Cuban people without strengthening the Castro regime). To accomplish this objective, the Clinton Administration's proposal allows United States residents to perform an array of functions: send \$1,200 a year to specific Cuban families; sell food to non-governmental entities such as religious organizations; charter flights to cities other than Havana; establish direct mail service to Cuba; strengthen Radio and TV Marti; and conduct exchanges in science, academia, and athletics.

the Baltimore Orioles and the Cuban National Team<sup>6</sup> in Havana<sup>7</sup> and Baltimore.<sup>8</sup> Despite the Cuban government's reactionary measures<sup>9</sup>

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*See id.* The latter proposal called for two exhibition baseball games between the Baltimore Orioles and the Cuban national team. *See* Thomas W. Lippman, *U.S. Ready to Play Ball With Cuba: Clinton to Ease Trade Embargo, Using Orioles As Unofficial Envoys*, WASH. POST, Jan. 5, 1999, at A1. President Clinton stated that these recommendations will continue the policy of applying pressure on the Cuban government for democratic change, while seeking additional people-to-people contacts to improve society. *See* Statement on United States Policy Toward Cuba, *supra*, at 7.

6. *See* Richard Justice, 'A Great Spectacle For Baseball' on Deck: Orioles Gear Up for Their Trip to Cuba, WASH. POST, Mar. 26, 1999, at D4 (contrasting the players on the Cuban National Team that played the Orioles with the National Team that normally competes in international competitions).

7. *See* Richard Justice, *In Cuba, O's Take Home a Win*, WASH. POST, Mar. 29, 1999, at D1 (arguing that the Cuban National Team demonstrated that they could compete with MLB players during the Orioles' 3-2, eleven-inning victory in Havana).

8. *See* Richard Justice, *Orioles Get Smoked By Cubans: Visitors Dominate Game*, WASH. POST, May 4, 1999, at D1 (discussing Cuba's commanding 12-6 victory over the Orioles in the second exhibition game in Baltimore); *see also Orioles Lit Up By Cuban Stars* (visited May 5, 1999) <<http://espn.go.com/mlb/news/1999/990503/01241658.html>> (explaining that in the first meeting between a Cuban and a MLB team in the United States, the Cubans, with a payroll of approximately \$2,250, handily defeated the Orioles, who operate with a \$78 million payroll).

9. *See* Richard Lapper & Pascal Fletcher, *Tough New Punishments Ordered In Response to Alterations to Embargo: Cuba Launches Clampdown On Links with U.S.*, FIN. TIMES, Feb. 16, 1999, at 3 (noting Cuba's hostility towards modifications in the United States' embargo and the reactionary measures against any domestic opposition). According to the Cuban National Assembly of Popular Power's reactionary legislation, the Clinton Administration's measures represent a persistent American effort to subvert Cuba's sovereignty. *See id.*; *see also U.S.-Cuba Relations: Where Are We and Where Are We Heading? Before the Subcomm. on W. Hemisphere of the House Comm. on Int'l Relations*, 106th Cong. 1-2 (1999) [hereinafter *Where Are We Heading?*] (statement of Michael Ranneberger, Coordinator for Cuban Affairs, Department of State) (recounting the condemnation from the United States and various human rights organizations of the application of Cuba's Protection of National Independence and Economy ("Law No. 88"), as well as the closed trial and sentencing of the Dissident Working Group's four leaders). Cuba convicted the group members under Law No. 88 for "inciting sedition," by criticizing Cuba's one-party political system and calling for peaceful democratic change. *See id.* at 1; Cloe Cabrera, *Cuba Sentences Dissidents to Prison* (last modified Mar. 15, 1999) <<http://www.tampatrib.com/news/cuba100h.htm>> (explaining that Law No. 88 penalizes those who work with the foreign press to promote the United States embargo or support efforts to change Cuba's political system). *See generally* H.R. Res. 99, 106th Cong. (1999)(enacted) (expressing the

towards the new United States initiatives,<sup>10</sup> and stern rebukes from influential Cuban-Americans,<sup>11</sup> Cuban and Major League Baseball ("MLB") players met on the baseball diamond<sup>12</sup> for the first time in forty years.<sup>13</sup>

Now that the complex relationship between the United States and Cuba begins to look towards baseball,<sup>14</sup> MLB must continue to con-

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House of Representatives' unanimous condemnation of the human rights situation in Cuba); S. Res. 57, 106th Cong. (1999)(enacted) (expressing the Senate's unanimous condemnation of the Castro regime's human rights violations).

10. See *Where Are We Heading?*, *supra* note 9, at 2-3 (statement of Michael Ranneberger) (detailing five initiatives to accomplish the United States foreign policy towards Cuba). This policy seeks to encourage a democratic transition through greater contacts with the Cuban people. See *id.*

11. See *id.* (statement of Jorge Mas, Vice Chairman, CANF) (denouncing any effort to engage the Cuban government through baseball, and imploring the United States to properly act as the moral leader of the free world by not trivializing the abuses of the Castro government by playing baseball); see also *United States Senate Condemns Cuba Human Rights Record*, CUBAN AM. NAT'L FOUND. PRESS RELEASE, Mar. 25, 1999, (criticizing both the Clinton Administration's overtures towards greater people to people contacts with Cuba and the human rights abuses within Cuba). CANF Vice Chairman Jorge Mas urged the United States Senate to fulfill its moral obligation and support the pro-democracy opposition and independent press movement within Cuba. See *id.*; see also *Sports Briefs*, (last modified Mar. 25, 1999) <<http://www.bergen.com/sports/briefs/25199903258.htm>> (noting the opposition of Cuban-American Congresswoman Ilena Ros-Lehtinen to baseball games with Cuba because of Cuba's dismal human rights record).

12. See *supra* notes 5-8 and accompanying text (discussing the Orioles-Cuban National Team exhibition series); see also Kohm, Jr., *supra* note 2, at 1231 (emphasizing the significance of baseball to American society); see Baxter & Dominguez, *infra* note 15, at 12 (explaining the fervor with which Cubans follow baseball).

13. See Murray Chass, *Orioles to Play in Cuba; First Such Trip Since '59*, WASH. POST, Mar. 6, 1999, at D6 (explaining that prior to the Orioles series against the Cuban National Team, the Cincinnati Reds and the Los Angeles Dodgers were the last MLB teams to play in Cuba). The Reds and Dodgers games took place in 1959, almost three months after Castro took power. See *id.* Moreover, several MLB teams established their spring training facilities in Cuba, including the 1937 New York Giants, and the 1941, 1942, and 1947 Brooklyn Dodgers. See *id.* The 1953 Pittsburgh Pirates, however, stood as the last MLB to conduct their preseason on the island nation. See *id.*; see generally ROBERTO GONZALEZ ECHEVARRIA, *THE PRIDE OF HAVANA: A HISTORY OF CUBAN BASEBALL* 377 (1999) (remarking that over the last ten years, collegiate American teams and the Cuban National Team regularly competed against each other in international competitions).

14. See Serge F. Kovaleski, *Orioles vs. Cuba 'Is All About Baseball,'* WASH.

front the relationship between these two nations.<sup>15</sup> Wielding the big

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POST, Mar. 27, 1999, at A1 (conveying the statements of undisclosed senior State Department officials who stated that the exhibition series between the Orioles and the Cuban National Team reflected increased people-to-people contacts between the two nations rather than any formal attempt at diplomacy through baseball). These officials stressed the long-term importance of such contacts despite the current relations between the two nations. *See id.*; *see generally* Mark Matthews, *Hopes Up For Series Between O's, Cuba: White House Flexible on Spending of Profits*, BALTIMORE SUN, Jan. 30, 1999, at A8 (detailing the compromise over how to direct proceeds from the Orioles-Cuban National Team exhibition series); Preston Williams, *O's Angelos, Cuba Keep Working on a Deal; Profits Are an Issue*, WASH. POST, Jan. 20, 1999, at D10 (explaining that a resolution on the receipt of proceeds from the exhibition games threatened the scheduling of the series). The Clinton Administration departed from the position that the proceeds should benefit *Caritas*, a Catholic charity organization in Cuba. *See id.* This position enabled the series to take place, as proceeds funded baseball and sporting activities for Cuban youth. *See* Eric Green, *Orioles To Play Home-and-Home Baseball Series With Cuba*, USIS WASHINGTON FILE (visited Mar. 27, 1999) <<http://www.usia.gov/regional/ar/us-cuba/base15.htm>>.

15. *See* Kevin Baxter & Fernando Dominguez, *Baseball Si, Cuba No: Castro's Island May Be a Gold Mine For Major League Talent, But Under His Regime, We May Never Know To What Extent*, SPORTING NEWS, Mar. 21, 1994, at 12, available in LEXIS, News library (recounting the history of Cuban and Latino players in MLB). From 1920 to 1945, more than two dozen Cuban players competed on many of the diamonds in the Major Leagues. The 1950s brought the stellar play of popular Cuban players Orestes "Minnie" Minoso, Camillio Pascual, and Pedro Ramos to MLB. *See id.* These players were followed by the well-known Cuban stars of the 1960s and 1970s, including Dagoberto "Bert" Campaneris, Miguel "Mike" Cuellar, Tony Oliva, Tony Perez, Luis Tiant, and Zoilo Versalles. *See* Gonzalez Echevarria, *supra* note 13, at 356-361 (detailing the careers of many Cuban players in MLB); *see also* Bjarkman, *supra* note 1, at 14 (examining the careers and abilities of Cuban pitchers in MLB); Peter Bjarkman, *Lifting the Iron Curtain of Cuban Baseball*, 17 NAT'L PASTTIME 30, 32 (1997) [hereinafter Bjarkman, *Lifting the Iron Curtain*] (reviewing the top players in MLB history and the current problems surrounding Cuban baseball). The reservoir of potential Cuban-trained talent, however, dissipated when Cuban President Fidel Castro banned professional sports in 1960. *See* Baxter & Dominguez, *supra*, at 12.; *infra* notes 80-81 and accompanying text (describing that MLB fans enjoyed the talents of several American trained players of Cuban heritage during the 1980s and 1990s). Since Castro's ban, however, only a handful of players entered MLB from Cuba, with the most players arriving during the defections of the 1990s. *See generally* Peter Bjarkman, *Cuba: Four Decades of Cuban Amateur Baseball Tradition*, INT'L BASEBALL RUNDOWN, Sept. 1998, at 15 [hereinafter Bjarkman, *Cuba: Four Decades*] (describing the end of professional baseball in Cuba after Castro's 1960 ban on professional sports, and the limited number of Cuban players that came to the United States and played for MLB since the ban). Without access to baseball players, MLB shifted its focus to the Dominican Republic for talented Latin players. *See id.*; *see* Jerry Crasnick, *Lost in America: South-Of-The-Border Players*

stick of Baseball Diplomacy<sup>16</sup> can vastly alter both MLB and the antagonistic relations between the United States and Cuba.<sup>17</sup> To revitalize the competitiveness of MLB and to improve international relations, however, an effective Baseball Diplomacy requires that the United States, Cuba, and MLB reevaluate the immigration of Cuban baseball players.

This Comment examines how alterations to the current methods of baseball immigration from Cuba can improve international relations between the United States and Cuba, as well as the quality of MLB

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*Searching For Better Treatment*, DENVER POST, Aug. 8, 1994, at D1, available in LEXIS, News library (noting that almost every Major League team presently operates a player-development program in the Dominican Republic). The Department of Immigration grants each team 22-25 visas per year to sustain such international operations, and allows MLB teams to move these international players to the rosters of teams within the United States. See *id.*; Bill Shaikin, *Angels Take Small International Step: The Inroad Into Mexico Doesn't Overcome Their Developmental Absence In Other Latin Countries*, PRESS-ENTERPRISE, Sept. 10, 1996, at D1, available in 1996 WL 10301000 (describing the efforts of the California Angels and other teams to mine the best players within their international training complexes to determine which players should receive visas to play in the United States).

16. See James A. R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 489-95 (1992) (describing the evolving field of international sports law, and the use of sport as a tool to respond to larger socio-economic and political issues); cf. Pam Ramsey, *The Ping Pong Diplomacy*, San Diego Table Tennis Association (last modified July 27, 1997) <[http://www.sdttta.com/pp\\_diplomacy.html](http://www.sdttta.com/pp_diplomacy.html)> (emphasizing the effectiveness of the historic 1971 Ping-Pong Diplomacy between the People's Republic of China and the United States in promoting understanding between the Chinese and American people). See generally Andy Kay Lieberman, *Baseball Diplomacy – USA/Nicaragua Style 1996*, (Int'l Inst. For Sports Dipl., Los Angeles, Cal.), Feb. 27, 1996, at 5 (identifying the effective “Bats Not Bombs” campaign between the Nicaraguan National Team and four Californian college teams that utilized baseball as a way to improve international relations between the previously warring nations). For the purposes of this Comment, “Baseball Diplomacy” refers to the ability of the United States and Cuba to utilize the sport of baseball as a tool for improving their international relations.

17. See Kovaleski, *supra* note 4, at A13 (delineating the key events in United States-Cuba relations since the 1959 Revolution that brought Fidel Castro to power). In particular, the 1996 downing of two Cuban-exile group planes over international waters and the subsequent adoption of the harsh Helms-Burton Act, which imposes mandatory sanctions against foreign companies that conduct business in Cuba, embittered the already sour relations between these nations. See *id.* at 13-15. See generally *infra* note 179 and accompanying text (explaining how the shooting of the exile group planes led to the enactment of the Helms-Burton Act).

itself. Section I examines United States immigration laws regarding foreign baseball players and the rules governing MLB's draft system. Section II contrasts the competing modes of Cuban baseball immigration in the 1990s, and illustrates that the defection and free agency fostered by the Orlando "El Duque" Hernandez model<sup>18</sup> hurts MLB. Section III examines early Baseball Diplomacy efforts, and the tenor of bilateral relations after the baseball defections of the 1990s. Section IV proposes an alternative method of Cuban baseball immigration as part of a comprehensive Baseball Diplomacy, which is designed to improve the quality of both MLB and the international relations between the United States and Cuba.

## I. THE BASE-PATH: HOW UNITED STATES IMMIGRATION LAWS AND MLB RULES INTERACT TO ALLOW FOREIGN BASEBALL PLAYERS TO COMPETE IN THE UNITED STATES

Congress responded to the increasing globalization of the sports world<sup>19</sup> by amending existing immigration law with the Immigration

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18. See *infra* notes 134-157 and accompanying text (classifying the "El Duque" model as one that meanders between United States immigration laws and MLB's Rules to provide a large contract for defecting Cuban baseball players). This model draws its name from Cuban pitcher Orlando Hernandez' nickname, "El Duque," which derives from the nickname of actor John Wayne, "The Duke." See L. Jon Wertheim & Don Yaeger, *Fantastic Voyage: Three Fellow Refugees Say the Tale of Yankees Ace Orlando (El Duque) Hernandez's Escape From Cuba Doesn't Hold Water*, SPORTS ILLUSTRATED, Nov. 30, 1998, at 61. See generally Bjarkman, *supra* note 1, at 15 (detailing the career pitching records of the Cuban League). "El Duque" holds the Cuban League record for the highest lifetime winning percentage, winning over 73% of his games. See *id.*

19. See MLB, Office of the Commissioner, *More Than 21 Percent of Major League Players Born Outside the U.S.*, NEWS RELEASE, Apr. 8, 1999 (noting that, although the number fluctuates almost daily, more than 21% of MLB's team rosters possess players who come from a nation other than the United States). Moreover, of the 178 MLB players born outside of the United States, 159 hail from Latin American nations. See *id.* Most of these players hail from either the Dominican Republic or Puerto Rico. See *id.*; see generally Rod Beaton, *Big-League Affiliations*, USA TODAY, Mar. 26, 1999, at 22C (listing the twenty-six players of Cuban heritage that compete throughout MLB organizations, including the teams' minor league affiliates); Wayne Lockwood, *Baseball Goes International: Major Leagues in a Scramble to Sign Best of Foreign Talent*, SAN DIEGO UNION-TRIB.,

Act of 1990 ("Immigration Act").<sup>20</sup> Subsequently modified, the Immigration Act provides specific visa categories, known as the "O" and "P" categories, for the arrival of athletes who do not intend to permanently reside in the United States.<sup>21</sup> For many foreign baseball players, the "O" and "P" visa categories provide a ticket to MLB.<sup>22</sup>

### A. THE "O" VISA CATEGORY

As the international flavor of MLB continues to expand, both the

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May 20, 1996, at D5, available in LEXIS, News Library (discussing the increasing percentage of foreign players in MLB due to the expanded international scouting efforts of MLB teams).

20. See Jon Jordan, Comment, *The Growing Entertainment and Sports Industries Internationally: New Immigration Laws Provide For Foreign Athletes and Entertainers*, 12 U. MIAMI ENT. & SPORTS L. REV. 207, 207-09 (1995) (stating that the Immigration and Nationality Act became policy in response to the rise of foreign athletes in American sports).

21. See *id.* at 213-35 (discussing "O" and "P" visa categories). Players who wish to permanently reside in the United States can become permanent residents under the Immigration and Nationality Act sec. 203, 8 U.S.C. sec. 1153(b)(1)(A)(1992), amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 ("Immigration and Nationality Act"). See *id.* Prior to the Immigration and Nationality Act, non-immigrant athletes sought to play in the United States under the "H-1" category as persons of "distinguished merit and ability," or under the "H-2" category for positions where no qualified American workers were available. See Immigration and Nationality Act sec. 101, 8 U.S.C. sec. 1101 (a)(15)(H)(i)(b), (ii)(b)(Supp. I 1989) (describing the "H" visa category). The "H-1" category provided for aliens of "distinguished merit and ability" who came to the United States "to perform services of an exceptional nature requiring such merit and ability. . . ." *Id.* Since the "H-1" category based admission on the achievements of the athlete or entertainer, these performers favored this category. Jordan, *supra* note 20, at 210. By contrast, the "H-2" category required that a dearth of Americans exist for particular services, and was subsequently more difficult to illustrate than the accomplishment-based requirements of the "H-1" category. See *id.* at 210-13. While the Immigration and Nationality Act provided the "O" and "P" categories for entertainers and athletes respectively, delays in its execution led to the use of a new H-1B category for six months. See *id.* at 211. On April 1, 1992, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 put the "O" and "P" categories into effect. See *id.* at 213.

22. See Immigration and Nationality Act sec. 203, 8 U.S.C. sec. 1153 (b)(1)(A) (stating that there is a preference for aliens with extraordinary ability, among other characteristics); see also *infra* notes 24-49 and accompanying text (setting forth the ways in which foreign baseball players utilize "O" or "P" visas to play in MLB).

“O” and “P” visa categories gain added importance.<sup>23</sup> Strictly applied to the baseball world for the purposes of this Comment, the “O” visa category provides an extremely practical form of entry for proven baseball players.<sup>24</sup> In addition to providing temporary work permits for exceptional foreign baseball players, the “O” visa category also enables the coaches, trainers, and families of these players to enter the United States.<sup>25</sup>

Applying for the “O” visa requires that this large contingent of foreign baseball players follow two main steps. First, a baseball team must contract with the foreign player<sup>26</sup> and file a petition with one of the four regional Immigration and Naturalization Service (“INS”) Centers that possess jurisdiction in the area where the foreign baseball player will compete.<sup>27</sup> The player’s petition for the “O” category visa must include the baseball team’s schedule with the specific dates and locations of each game.<sup>28</sup> If the player is traded to another team, the player’s new team must file a separate petition.<sup>29</sup> Second, approval of these “O” visa petitions requires consultation with a peer group in the player’s field.<sup>30</sup> Baseball player peer groups can consist of other players, managers, or baseball officials as long as these individuals possess sufficient baseball expertise and can attest to the ex-

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23. See Lockwood, *supra* note 19, at D5 (examining the increasing Latin American presence in MLB); see also Crasnick, *supra* note 15, at D1 (identifying the utility of international facilities operated by MLB teams).

24. See Jordan, *supra* note 20, at 222 (describing how amateur athletes who are not yet established or recognized have difficulty qualifying under such standards).

25. See *id.* at 218-19 (detailing the various “O” visa categories available for people to accompany athletes and entertainers).

26. See *infra* notes 50, 52-60 and accompanying text (describing how the residency status of baseball players affects their ability to sign contracts).

27. See 2 CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE 25-22 (1998) (stating that the employer or agent must file a Form I-129 with the Immigration and Naturalization Service to seek an “O” or “P” visa). For “P-1” visas, MLB has entered into an agreement to process all petitions at the Northern Service Center. See *id.* at 25-37.

28. See 8 C.F.R. sec. 214.2(o)(2)(iv)(A) (1998) (explaining that such an itinerary is required).

29. See 8 C.F.R. sec. 214.2(o)(2)(iv)(B)-(C) (1998) (delineating the specific procedures for foreign players who are traded to another team).

30. See GORDON ET AL., *supra* note 27, at 25-23 n.8, 25-24, 25-25 (defining a peer group as an organization comprised of practitioners in the alien’s occupation).

ceptional ability of the foreign player.<sup>31</sup>

The "O" visa category contains three subcategories. The first subcategory, the "O-1" visa, enables an alien to enter the United States if the alien possesses extraordinary athletic ability<sup>32</sup> that is supported by sustained recognition.<sup>33</sup> Congress enables an unlimited allotment of these "O-1" visas per year,<sup>34</sup> and allows foreign baseball players to use these visas for a maximum period of three years.<sup>35</sup> The second

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31. See 8 C.F.R. sec. 214.2(o)(5)(I)(A)-(B) (clarifying the peer group consultation); see also GORDON, *supra* note 27, at 25-24 ("The evident purpose of the [peer group] consultation is to support the claim of extraordinary ability or achievement with an outside opinion."). When requests for a petition are time-sensitive, and a consultation with a peer group cannot take place via phone, the Immigration and Naturalization Service ("INS") must make its decision without the peer group's opinion. See *id.* at 25-25 n.15.

32. See Immigration and Nationality Act sec. 101(a), 8 U.S.C. sec. 1101(a)(46)(1992), amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546; see also Jordan, *supra* note 20, at 234 (describing that "extraordinary ability" is an amorphous term that became more clearly defined as a "distinction" for performers of the arts only after intense lobbying).

33. See Immigration and Nationality Act sec. 203, 8 U.S.C. sec. 1153(b)(1)(A); see also GORDON ET AL., *supra* note 27, at 25-16 (explaining the characteristics required to illustrate international acclaim). Such international acclaim can be established by providing evidence of either receiving a major international award, or by producing three of the following: 1) documentation of receipt of an award for excellence; 2) documentation of membership in the field for which the alien seeks classification, and outstanding achievement as judged by experts within the field; 3) professionally published material about the alien's work in the field; 4) evidence that the alien is qualified to judge others in the same field; 5) evidence that the alien worked in a distinguished organization, and provided an essential service; 6) evidence that the alien receives a large salary based upon his standing within the field. See *id.*; see also Jordan, *supra* note 20, at 219-21 (explaining the qualifications for the "O-1" visa category).

34. See Larry Carp & Mark Goldman, *Key Entertainment and Sports Law Provisions in the New Immigration Law*, 9 SPG ENT. & SPORTS LAW 9, 10 (1991)(explaining that Congress intended not to limit the number of "O-1" visas granted).

35. See Jordan, *supra* note 20, at 222 (stating that while the time period for the foreign baseball player's visa may not exceed three years, the Attorney General can designate the time provided within that three-year span for the non-immigrant's admitted purpose). See generally 8 C.F.R. sec. 214.2(o)(11)-(12) (1998) (setting forth further restrictions on the permitted length of stay under the "O-1" visa). Additionally, players may seek one year extensions of an "O-1" visa to continue playing baseball. See *id.* Moreover, the foreign baseball player can be

subcategory, known as the "O-2" visa, provides a nonimmigrant visa for an alien to accompany the "O-1" alien.<sup>36</sup> For foreign baseball players, for instance, a coach or trainer can utilize this "O-2" visa subcategory to accompany the player.<sup>37</sup> Such a coach or trainer who accompanies the "O-1" baseball player, however, must only arrive for a temporary stay or visit.<sup>38</sup> Additionally, this coach or trainer must maintain a foreign residence without harboring an intention to abandon that residence.<sup>39</sup> The third "O" visa subcategory, known as the "O-3" visa, permits the spouse or children of an "O-1" or "O-2" alien to accompany or follow their alien family member.<sup>40</sup> Thus, the "O" visa subcategories provide avenues for an extraordinary foreign baseball player, as well as his coach and immediate family members, to reach the United States.

## B. THE "P" VISA CATEGORY

The "P" visa category provides for the temporary employment of

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admitted to the United States both ten days before the "O" visa takes effect and ten days after it expires. *See id.* The player, however, is prohibited from working during these ten day periods. *See id.* at sec. 214.2(o)(12)(ii).

36. Immigration and Nationality Act sec. 101 (a), 8 U.S.C. sec. 1101(a)(15)(o)(ii); *see also* GORDON ET AL., *supra* note 27, at 25-20 (explaining that "O-2" visas only exist for assisting athletic or artistic fields, and the fields of education, science, and business do not receive such visas).

37. Immigration and Nationality Act sec. 101(a), 8 U.S.C. sec. 1101(a)(15)(o)(ii)(II); *see also* GORDON ET AL., *supra* note 27, at 25-20 (claiming the "O-2" aliens must possess critical skills that are integral to the athlete's performance).

38. Immigration and Nationality Act sec. 101(a), 8 U.S.C. sec. 1101(a)(15)(o)(ii)(I); *see also* GORDON ET AL., *supra* note 27 at 25-28 (asserting that "temporary" is not defined by the statute, but that the Department of State suggests that "temporary" involves a stay that is reasonable, finite, and does not become permanent residency). According to the Department of State, a stay is temporary as long as there is no intent to remain permanently. *See id.*

39. *See* Carp & Goldman, *supra* note 34, at 11 (defining the intent necessary to illustrate that the alien desires to abandon their residence); *see also* Immigration and Nationality Act and Nationality Act sec. 101(a)(15)(o)(iv), 8 U.S.C. secs. 1101-1524 (1992), *amended by* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (setting forth the provisions relating to the foreign residency requirement).

40. *See* Immigration and Nationality Act sec. 101(a)(15)(o)(iii), 8 U.S.C. sec. 1101 (a)(15)(o)(iii)(detailing the circumstances in which certain persons may accompany an athlete or artist).

internationally renowned athletes and certain outstanding entertainers.<sup>41</sup> While the "P" visa includes four subcategories,<sup>42</sup> the "P-1" visa subcategory proves particularly useful for foreign baseball players because it can cover both internationally recognized individual baseball players, or each member of an internationally recognized team.<sup>43</sup> Thus, even if the individual team members do not enjoy international recognition, they can still obtain a "P-1" visa.<sup>44</sup>

Although the procedures for obtaining a "P" visa are generally the same for the "O" visa, the "P" visa category contains less stringent eligibility requirements<sup>45</sup> and a longer period of stay.<sup>46</sup> The items required to petition for a "P-1" visa illustrate why this visa category

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41. See Jordan, *supra* note 20, at 227-28 (explaining that athletes and entertainers are the only types of immigrants permitted to utilize the "P" visa category); see also Carp & Goldman, *supra* note 34, at 11 (discussing the limited application of the "P" visa category).

42. See GORDON ET AL., *supra* note 27, at 25-30 (identifying that the "P-1" visa is available for athletes); see *id.* at 25-40 (discussing the "P-2" visas for "Artists and Entertainers Under Reciprocal Exchange Programs"); see *id.* at 25-42 (setting forth the "P-3" visas for "Culturally Unique Artists and Entertainers"); see *id.* at 25-43, 25-44 (describing the "P-4" visas for "Accompanying Spouse and Children"); see *id.* (suggesting the requirements and benefits of the aforementioned visa categories).

43. See *id.* at 25-36, 25-37 (describing the regulations for both teams and individual members of teams to receive international recognition and "P-1" visas).

44. See 8 C.F.R. sec. 214.2(p)(4)(i)(A)-(B)(1998) (setting forth the regulations for obtaining "P-1" visas for non-internationally recognized team members of an internationally recognized team).

45. See GORDON ET AL., *supra* note 27, at 25-30 (contrasting the "O-1" visa category's "extraordinary ability" requirement and the requirements of the "P-1" visa category); see also 8 C.F.R. sec. 214.2(p)(1) (observing that unlike the "extraordinary ability" requirements of the "O-1" category, baseball players seeking to enter under a "P-1" visa only need to demonstrate that they can compete at an "internationally recognized level of performance"). Such a standard indicates a top level performer who, by demonstrating a high degree of skill, is recognized as such in more than one country. See *id.*

46. See Immigration and Nationality Act, sec. 214, 8 U.S.C. sec. 1184 (a)(2)(B)(i) amended by Illegal Immigration and Nationality Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (emphasizing that under the "P" visa category, athletes seeking to compete in the United States can stay for a maximum of ten years, whereas under the "O" visa category, foreign athletes seeking to play in the United States can stay for a maximum of three years). According to the statute, this ten year period consists of an initial five year period, and an additional five year period subject to the Attorney General's discretion. See *id.*

provides the most obtainable visa for foreign baseball players. First, to petition for the "P-1" visa, a foreign baseball player needs a tendered contract with either MLB or a specific team.<sup>47</sup> In addition, these baseball players must provide documentation of at least two of the following: participation with a national team during international competition; a written statement by a MLB official detailing the player's international reputation; or evidence that the player received a significant award or honor in the sport.<sup>48</sup> Consequently, by demonstrating sufficient talent to warrant a MLB official to attest to the player's ability, a foreign national team baseball player who tenders a contract with a MLB team can obtain a "P-1" visa. Therefore, the "P-1" visa provides many foreign baseball players a less obstructed path to play in the United States.<sup>49</sup>

### C. THE "MLB" CATEGORY

MLB's own operating procedures with respect to the signing and drafting of baseball players tremendously assist the ability of foreign baseball players to obtain either "O" or "P" visas. These procedures clearly express the eligibility requirements for MLB teams to sign<sup>50</sup> or draft<sup>51</sup> baseball players under the terms of Major League Rules 3 and 4, respectively. These Rules apply only to players who never signed a Major League or Minor League contract,<sup>52</sup> and to those who

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47. See GORDON ET AL., *supra* note 30, at 25-36, 25-37 (describing the requirements applicable for foreign baseball players to sign with MLB teams).

48. See *id.* (setting forth the requirements for the "P" visa); see also Immigration and Nationality Act, sec. 101(p)(4)(ii)(B) (detailing the regulations for foreign baseball players to enter MLB).

49. See Thomas R. Dominczyk, Comment, *The New Melting Pot: as American Attitudes Toward Foreigners Continue to Decline, Athletes are Welcomed With Open Arms*, 8 SETON HALL J. SPORTS L. 165, 170-75 (1998) (asserting that the requirements for "P-1" visas are easily fulfilled by talented foreign athletes).

50. See Major League Baseball Rules, Rule 3 (1998) (defining the eligibility requirements to sign contracts, and the terms of these contracts for players who reside either in foreign nations or domestically).

51. See Major League Baseball Rules, Rules 4, 4.2(a)(1998) (proscribing the procedures for the drafting of first year players); see also *First-Year Player Draft Rules* (last modified May 28, 1998) <<http://www.majorleaguebaseball.com/draft/rules.sml>> (explaining that MLB's First-Year Player Draft occurs each June via conference call among the thirty Major League teams).

52. See Major League Baseball Rules, *supra* note 50, at Rule 3(a)(1)(A) (stat-

satisfy certain residency requirements.<sup>53</sup> The residency requirements of the rules permit only players who reside in “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,”<sup>54</sup> to gain exposure to the First-Year Player Draft.<sup>55</sup> For foreign players who do not reside in the aforementioned areas, however, the rules differ.<sup>56</sup>

If foreign baseball players do not comply with the residency requirements of MLB Rules 3 and 4, their career paths and salaries are dramatically affected. For such players, only the minimum age requirements of Rule 3 govern their potential entry into MLB.<sup>57</sup> Once these age requirements are met, the foreign players can freely negotiate with all thirty MLB teams to sign a contract.<sup>58</sup> Therefore, in contrast to the players whose negotiating rights become limited to just one team by the draft,<sup>59</sup> the structure of MLB’s Rules enable foreign

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ing that players who never previously contracted with a Major or Minor League team, and who satisfy the residency requirements, can sign a contract only after exposure to the Rule 4 Draft).

53. *See id.* at Rules 3(a)(1)(A)-(B), 4(a) (defining the residency requirements for Rules 3 and 4, respectively).

54. *Id.* at Rule 3(a)(1)(A). Moreover, under this rule, MLB recognizes players as United States residents if they enroll in a United States high school or college. *See id.* Additionally, MLB further recognizes players as United States residents if they establish either a legal residence within the United States at the signing of their individual contracts, or within one year prior to signing their contracts. *See id.*

55. *See First-Year Player Draft Rules, supra* note 51 (detailing the procedures of the First-Year Player Draft).

56. *See infra* notes 57-60 and accompanying text (delineating the application of MLB Rules to foreign players who do not reside in the areas specified by Rule 3).

57. *See Major League Baseball Rules, supra* note 50, at Rule 3(a)(1)(B)(i)-(ii) (stating that foreign baseball players must at least attain age seventeen when they sign with a team). MLB also permits teams to sign players who are sixteen years old at the time of signing as long as these players turn seventeen either during the season or by September 1st. *See id.*

58. *See id.* (detailing the effect of the age requirement).

59. *See Telephone Interview with Robert Lenaghan, Assistant General Counsel, Major League Baseball Players Association (Feb. 26, 1999)* (stating that when a team drafts a player, the team holds the exclusive negotiating rights to that player); *see also First-Year Player Draft Rules, supra* note 51 (indicating that teams retain the rights to negotiate with the player that they draft until one week prior to the next year’s Draft or until the player enters or returns to college on a full-time basis).

players to immediately become free agents.<sup>60</sup>

Applying these MLB Rules to the requirements of the “O” and “P” visa categories illustrates the rather facile entry into MLB for foreign baseball players. First, for a foreign player to receive either an “O” or “P” visa, both visa categories require that the player sign a contract with a MLB team.<sup>61</sup> Since MLB’s Rule 3 places an age restriction as the only limitation upon the signing of a foreign baseball player to a contract, this requirement is readily satisfied when the player attains the minimum age.<sup>62</sup> Second, each visa category establishes certain ability-based requirements.<sup>63</sup> Many MLB teams operate multi-million dollar international scouting programs to locate foreign baseball players and assess whether they are sufficiently talented to satisfy the respective ability requirements of either the “O” or “P” visa.<sup>64</sup> Once these teams locate sufficiently talented players, they can sign the free

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60. See Dave Anderson, *El Duque’s Man, a Hero of the Cuban People, Stashes Two More*, N.Y. TIMES, Feb. 11, 1999, at C31 (explaining that foreign players with residency in nations other than Cuba and the United States become free agents who can sign with any team, whereas foreign players that establish residency within the United States are subject to MLB’s Draft); see also Major League Baseball Rules, *supra* note 50, Rules 3(a)(1), 4(a) (specifying the relationship between residency in the United States and the requirements for signing contracts and exposing players to the Draft).

61. See GORDON ET AL., *supra* note 27, at 25-36, 25-37 (noting that both “O” and “P” visa requirements stipulate that foreign baseball players sign a contract with a MLB team).

62. See Major League Baseball Rules, *supra* note 50, Rule 3(a)(1)(B)(i)-(ii) (mandating that foreign players must reach a certain age to sign contracts with MLB teams).

63. See Jordan *supra* note 20, at 222 (explaining that the “O-1” visa requires the foreign player to demonstrate extraordinary and internationally recognized athletic ability); see also *supra* note 48 and accompanying text (observing that for a foreign baseball player to obtain a “P-1” visa, the player must similarly sign a contract with a MLB team, and obtain at least two of the following: an experience with a touring national team, a significant award, or a MLB official who can attest to the player’s international reputation).

64. See Crasnick, *supra* note 15, at D1 (describing that the international training facilities operated by MLB teams groom foreign baseball players and determine which players will receive one of the team’s allotted “O” or “P” visas). The INS supplies each team with 22 to 25 of these visas for their international scouting operations. See *id.*; see also Shaikin, *supra* note 15, at D1 (describing the efforts of the California Angels and other teams to mine the best players within their international training complexes to determine which players should receive visas to play in the United States).

agent foreign players to a contract if the players meet the minimum age requirements.<sup>65</sup> Thus, when foreign baseball players sign lucrative free agent contracts and obtain the visas necessary to enter the United States, they can compete upon MLB diamonds.<sup>66</sup> For Cuban players, though, the road is much more circuitous.

Although both the "O" and "P" visa categories provide routes for foreign baseball players to enter the United States, players from Cuba need not apply. This discrepancy stems from the rancorous international relations between the United States and Cuba.<sup>67</sup> Consequently, the interaction of MLB's internal policies and the hostile relations between Cuba and the United States steer Cuban baseball players in a different direction.<sup>68</sup>

Former MLB Commissioner Bowie Kuhn clarified MLB's position regarding Cuban baseball players in a 1977 letter known as the Kuhn Directive.<sup>69</sup> Subsequently amended in 1991,<sup>70</sup> the Kuhn Direc-

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65. See Major League Baseball Rules, *supra* note 50, Rule 3(a)(1)(B)(i)-(ii) (detailing the minimum age provisions required for foreign players to sign contracts with MLB teams).

66. See *supra* notes 57-65 and accompanying text (explaining how the connection between MLB's Rules and the requirements of the "O" and "P" visa categories permit foreign baseball players to compete in MLB).

67. See *supra* notes 3-4 (characterizing the recent developments and history behind the antagonistic international relations between the United States and Cuba).

68. See *infra* notes 83-107 and accompanying text (defining the Rene Arocha model that stems from the interaction of the MLB and United States policies); see also *infra* notes 109-132 and accompanying text (contrasting the Rene Arocha model with the "El Duque" model, which achieves free agency for defecting Cuban players instead of subjecting these players to the Draft).

69. See Letter from Bowie K. Kuhn, Commissioner, *MLB*, to All MLB Clubs 1 (Apr. 5, 1977)[hereinafter Kuhn Directive] (forbidding all MLB teams from conducting tryouts, workouts, discussions, negotiations, or signings with any Cuban baseball players); see generally Baxter & Dominguez, *supra* note 15, at 12 (asserting that the 1977 Kuhn Directive prevented MLB officials from speaking or negotiating with Cuban baseball players in Cuba).

70. See Memorandum from William A. Murray, Office of the Commissioner, to All Major League Chief Executive Officers, General Managers, and Scouting Directors (Aug. 9, 1991) (on file with author)(detailing the revised MLB policy regarding the scouting and signing of non-American and Canadian players). The modifications occurred one month after Arocha's defection in response to many MLB teams' concerns about their respective ability to compete and scout equally for foreign baseball players. See *id.*; see also Telephone Interview with William A.

tive forbids MLB teams from either discussing or negotiating with anyone in Cuba regarding the signing of any baseball player in Cuba.<sup>71</sup> This clear policy effectively forces Cuban players to seek residency elsewhere if they desire to play in MLB.<sup>72</sup> Additionally, aside from the hostility between the United States and Cuba, the latter nation's anti-professional baseball disposition frowns upon players seeking to join a professional baseball league.<sup>73</sup> Such a disposition, combined with the extremely favorable United States immigration policy that enables Cubans to achieve residency if they

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Murray, Executive Director of Baseball Operations, MLB (Mar. 23, 1999) (stating that the revised policy reaffirmed MLB's compliance with the United States' economic embargo against Cuba, and demonstrated MLB's desire to put all teams on equal footing by preventing Canadian and non-American MLB scouts from signing Cuban players within Cuba).

71. See Kuhn Directive, *supra* note 69 (explaining key provisions of the one page Kuhn Directive which prevents MLB teams from scouting or signing Cuban baseball players in Cuba). See, e.g., Steve Fainaru, *Did L.A. Step over the Line? Dodgers Accused of a Cuban Infiltration*, BOSTON GLOBE, May 2, 1999, at D1, available in 1999 WL 6060438 (disclosing that the Dodgers violated the Kuhn Directive by holding secret tryouts and assisting the defections of two Cuban players); see also Ross Newhan, *Dodgers Punished For Role in Signing Cuban Players*, L.A. TIMES, June 29, 1999, at D5, available in 1999 WL 2172877 (detailing that MLB Commissioner Selig granted free agency to Cuban players Juan Carlos Diaz and Josue Perez from the Dodgers' minor league system because the Dodgers violated the Kuhn Directive); see generally Ronald Blum, *Selig 'Comfortable' As Commissioner*, NEWS & OBSERVER, (Raleigh, N.C.), July 11, 1999, at C10, available in WL 2759381 (explaining that MLB fined the Dodgers \$200,000 for violating the Kuhn Directive). Additionally, the Dodgers may face further fines for violating the Trading with The Enemy Act. See Trading with the Enemy Act of 1917, ch. 106, sec. 16, 40 Stat. 411, 425, amended by 50 U.S.C sec. 1601, sec. 103(a), Pub. L. No. 95-223, 91 Stat. 1625 (1977) (empowering the President to fine individuals convicted of violating provisions of the Trading with The Enemy Act).

72. See Baxter & Dominguez, *supra* note 15, at 12-13 (emphasizing that the Kuhn Directive effectively limits the ability of MLB teams to sign only those Cuban players who can establish residency within a country other than Cuba).

73. See Peter Bjarkman, *Baseball and Fidel Castro: The Maximum Leader Affected Baseball in Cuba, But He Was Never a Big League Pitching Prospect*, 18 NAT'L PASTIME 64, 65-68 (1998)(noting that after Castro banned professional sports in 1960, he reinstated baseball as an amateur sport, contributing to the hostility against professional sports); see also Baxter & Dominguez, *supra* note 15, at 12 (maintaining that Castro's 1960 ban of professional sports led to the rise of amateur baseball in Cuba, and the decrease of talented Cuban players in MLB).

live in the United States for one year,<sup>74</sup> presents a clear choice for Cuban baseball players. If a Cuban player desires to play in MLB, these policies compel the player to defect.<sup>75</sup> Ultimately, encouraging revered Cuban athletes to defect only further embitters relations between the United States and Cuba.<sup>76</sup>

## II. LA MANERA CUBANA – “THE CUBAN WAY” – HOW CUBAN PLAYERS COME TO THE UNITED STATES

The dramatic changes in the international climate following the demise of the Soviet Union drastically affected the baseball world as

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74. See Cuban Adjustment Act of 1966, Pub. L. No. 89-732, sec. 1, 80 Stat. 1161, 1161, *amended by* Immigration and Nationality Act, 8 U.S.C. sec. 1255, sec. 203(i), sec. 1, Pub. L. No. 96-212, 94 Stat. 108 (1996) (“CAA”) (providing permanent resident status to Cubans who reside in the United States for at least one year); Ruth Ellen Wasem, *Cuban Migration to the United States: Trends and Issues*, CRS REP. FOR CONGRESS, May 25, 1995, at 1 (explaining that this policy is not available to any other nationality); see also *Matter of Marchena*, 12 Imm. & Nat. Dec. 355 (1967) (explaining that under the CAA, the Attorney General is granted discretion to confer permanent resident status upon Cubans that are admitted into the United States). See generally David Beard, *Cuban Athletes Keep Trying to Leave No-Future Situations*, ARIZ. REPUBLIC, Nov. 30, 1993, at C4, available in WL 8237377 (explaining that Cuban athletes who arrive in the United States are generally granted resident status under the CAA).

75. See *supra* notes 49, 50 and accompanying text (arguing that United States immigration laws and MLB’s Rules compel Cuban players who desire to play in the Major Leagues to defect to the United States). *But see infra* notes 108-133 and accompanying text (explaining that the “El Duque” model departs from both the combination of United States immigration laws and MLB’s Rules, which subjects foreign players to the Draft, and instead achieves free agency for defecting Cuban players).

76. See *supra* notes 3-4 and accompanying text (identifying recent developments and providing an historical perspective on the antagonistic international relations between the United States and Cuba); see also Tessie Borden, *Sports Agent in the Company Of Politicians*; George Magazine Puts Him on List of Fascinating Men, SUN-SENTINEL, (Ft. Lauderdale), May 24, 1998, at 3B, available in LEXIS, News Library (explaining that Cuban defections in general, and the “El Duque” model in particular, sour United States-Cuba relations and personally hurt Castro because he is a baseball fan). See generally Anita Snow, *Castro Hails ‘Historic’ Victory*, ASSOCIATED PRESS, May 4, 1999, available in WL, APNEWS (relating Castro’s abhorrence for the financial lures of MLB that attract Cuban baseball defectors).

well.<sup>77</sup> Although MLB's Cuban-trained talent pool remained dry for thirty years by failing to add new players, the end of the Cold War ushered in a new era.<sup>78</sup> Subsequently, as the more than \$4 billion in yearly Soviet assistance to Cuba ceased,<sup>79</sup> and the conditions of Cuban baseball deteriorated, Cuban players sought a better life in MLB. In 1991, a new wave of Cuban-trained<sup>80</sup> players arrived,<sup>81</sup> beginning

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77. See *infra* notes 175-93 and accompanying text (discussing how the cessation of Soviet assistance to Cuba and the implementation of a comprehensive economic embargo by the United States rapidly deteriorated the conditions of Cuban baseball, and turned the players' attention to the well-paying careers of MLB).

78. See Baxter & Dominguez, *supra* note 15, at 12 (explaining that with the collapse of the Cuban economy, Cuban baseball players now earn less than \$120 per month). By contrast, the average monthly salary for non-baseball playing Cubans remains about \$11. See James C. McKinley Jr., *In City of Castro's Triumph, Most Still Back Him*, N.Y. TIMES, Jan. 2, 1999, at A3 (detailing the poor economic conditions faced by many Cubans). Many goods and services are in short supply, rendering difficult financial conditions for the majority of Cubans. Hernandez, *supra* note 3, at A24. Additionally, the per capita gross domestic product is the lowest in Ibero-America at \$1,300. See *id.* Moreover, the corruption in Cuba is among the worst in Latin America because the dearth of basic goods compels many officials to steal items from the government. See *id.* The United States embargo, designed to encourage a democratic transition in Cuba by blockading the Cuban government from the rest of the world, exacerbates the economic conditions within Cuba. See *infra* note 180 and accompanying text.; *U.S.-Cuba Commission: U.S.-Cuba History* (visited Mar. 27, 1999) <<http://uscubacommission.org/history.html>> (specifying that aid and loans from the former Soviet Union totaled over \$100 billion from 1962 to 1991, and that severe shortages resulted from the cessation of such aid in 1991).

79. See McKinley, *supra* note 78, at A3 (discussing the deleterious effects upon Cuba's economy after Soviet assistance ceased).

80. See Jim Caple, *Cuba Trip Good for Baseball* (visited Mar. 24, 1999) <<http://espn.go.com/premium/mlb/columns/offbase/01177934.html>> (stating that approximately 140 Cuban born players competed in MLB). Almost all of the players of Cuban heritage that competed in MLB during the 1980s, however, grew up in the United States as the sons of Cuban refugees. See Pedro Gomez, *One More Step: The Orioles' Cuban Exhibition Strengthens the Bond between Baseball and Cuban Fans* (last modified Mar. 24, 1999) <<http://www.majorleaguebaseball.com/news/0323cuba.sml>> (recounting the history of Cuban baseball players within MLB, and the talent of American-trained players of Cuban heritage such as Jose Canseco, Bobby Estalella, Alex Fernandez, Mike Lowell, Eli Marrero, Rafael Palmeiro, and David Segui). See generally Baxter & Dominguez, *supra* note 15, at 22 (discussing the many popular Cuban-born and trained players in MLB history).

81. See Bruce Brown, *Cuban Baseball*, ATLANTIC, June 1984, at 110 (noting that former Cuban National Team player Barbaro Garbey competed in MLB during the early 1980s). Garbey, a Mariel refugee, came to the United States with five

with the defection of Cuban National team pitcher Rene Arocha. Arocha's bold step paved the way for other Cuban players to play in MLB,<sup>82</sup> and provided an elementary model for MLB to deal with the new Cuban influx.

#### A. THE RENE AROCHA MODEL

After ten years with the Cuban National team, Arocha abandoned the sagging conditions of Cuban baseball for the freedom and opportunity of American baseball.<sup>83</sup> Arocha's defection, though, posed problems for both his family, and for MLB. The former National Team pitcher feared that the Cuban government would seek reprisals against his family,<sup>84</sup> which made his decision to defect extremely dif-

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other players in 1980. See William G. Belden, *Paradise Lost: The Continuing Plight of the Excludable Mariel Cubans*, 5 KAN. J.L. & PUB. POL'Y 181, 181-89 (1996) (detailing the situation of the approximately 125,000 Cuban boat immigrants that came from the Cuban port of Mariel in 1980, and the difficulty that the United States faced with absorbing these refugees). Of the Mariel Cuban players, only Garbey succeeded in playing MLB baseball, albeit briefly. See Gonzalez Echevarria, *supra* note 13, at 388. See generally Peter Bjarkman, *A Look At the Cuban Sluggers*, INT'L BASEBALL RUNDOWN, Late Winter 1999, at 14 (describing the rise and fall of Garbey in MLB, and his attempt at a comeback during the 1995 spring training lockout).

82. See Beaton, *supra* note 19, at 22C (listing the current number of Cuban players within each MLB organization, including the teams' minor league affiliates). Currently, twenty-six players with Cuban heritage are dispersed among thirteen MLB organizations, with six Cuban defectors competing on MLB teams. See *id.*; see also Gonzalez Echevarria, *supra* note 13, at 388-91 (reviewing the careers of eighteen Cuban defectors in the 1990s).

83. See Sharon Robb, *Cuban Pitcher Defects to Chase Major-League Dream*, CHI. TRIB., Aug. 7, 1991, at C4, available in LEXIS, News Library (describing Arocha's defection). After a summer series against the United States, Arocha left the Cuban National team at Miami's International Airport on July 10, 1991, and requested political asylum. See *id.* But see Anne-Marie Garcia, *Cuba On A Par With the Major Leagues* (visited Apr. 15, 1999) <<http://www.granma.cu/granma/ingles/abril1/13abr4i.html>> (asserting that most of the best players on the Cuban team rejected offers to play in MLB while abroad because they love playing for Cuba).

84. See Baxter & Dominguez, *supra* note 15, at 12 (explaining that soon after Arocha defected, the Cuban government accused him of "high treason against the revolution," although no form of retaliation against his family occurred). The recent 40th anniversary of the Cuban Revolution displayed the continued strength of the Cuban government's revolutionary fervor. See McKinley, *supra* note 78, at A3. At the anniversary celebration, banners were displayed bearing the motto: "To be Cuban is a privilege and a pact with Fidel." *Id.*

ficult.<sup>85</sup> Because the Kuhn Directive forbids MLB teams from signing or even speaking with any player within Cuba,<sup>86</sup> however, Arocha's defection posed a different problem for MLB. The question became what to do with a Cuban national *within* the United States.

The special circumstances of Arocha's defection to the United States illustrated the connection between both the United States' policies regarding Cuba and MLB's Rules.<sup>87</sup> Once inside the United States, and freed from the constraints of the Kuhn Directive, Arocha sought to maximize the benefits of the United States immigration laws to expedite his entry into MLB.<sup>88</sup> First, Arocha immediately sought political asylum.<sup>89</sup> Second, Arocha relied upon the favorable

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85. See Gonzalez Echevarria, *supra* note 13, at 187 (asserting that, as in the United States, baseball is widely popular in Cuba because it transcends socio-economic and ethnic differences); Baxter & Dominguez, *supra* note 15, at 12 (explaining that defection forces a player to choose between playing baseball, or staying with his family). The importance of baseball in Cuban society explains how such a difficult decision is made. See *id.* A well known Cuban maxim illustrates Cuba's obsession with baseball: "*todos los ninos nacen con un guante en sus manos.*" Translation: "all boys are born with a baseball glove in their hands." *Id.*; Thomas Boswell, *No Matter Who Wins, Castro Suffers a Loss*, WASH. POST, Jan. 6, 1999, at D1 (emphasizing the importance of baseball to Cuban pride, calling it the "sustenance" of Cuban society). Boswell illustrated the prominence of baseball in Cuba: "[s]upremacy in international baseball events sometimes seems like the island's only reason to smile." *Id.* See generally Brown, *supra* note 81, at 109 (elucidating the rigorous structure of play in Cuban baseball). Cuban players compete in two levels of elimination tournament play, the National Series and the Selective Series, to determine the National Team's composition. See *id.* More than 10% of Cubans play organized baseball for Cuba's 35,000 teams, and only the 20 best players from Cuba's population of over eleven million can represent their country for *La Seleccion Nacional* – the Cuban National Team. See *id.*; Rene Arocha received this honor and became *La Seleccion Nacional's* number three starting pitcher. See *id.*

86. See Kuhn Directive, *supra* note 69 (establishing the exclusionary policy regarding Cuban players).

87. See Telephone Interview with William A. Murray, *supra* note 70 (declaring that the post-Arocha revisions to the 1977 Kuhn Directive reaffirmed MLB's compliance with the United States embargo against Cuba by emphasizing that signing and scouting baseball players in Cuba remained forbidden).

88. See Wasem, *supra* note 74, at 1-3 (explaining that only Cubans possess opportunities to establish residency under the CAA, while other nationalities must utilize different means).

89. See Immigration and Nationality Act, 8 U.S.C. sec. 1101(a)(24)(A) (1992), amended by Illegal Immigration Reform and Immigrant Responsibility Act of

terms of the United States' Cuban Adjustment Act<sup>90</sup> ("CAA"), which quickly enabled him to establish residency within the United States.<sup>91</sup> Consequently, Arocha satisfied the residency requirements of MLB's Rules 3 and 4, which qualified him for the June Draft.<sup>92</sup> Due to the special circumstances presented by Arocha's unique situation, however, MLB decided upon a special lottery-style draft,<sup>93</sup> with the winner holding the rights to Arocha until June 1992.<sup>94</sup> The St. Louis Cardinals won the lottery drawing, and negotiated with Arocha to sign a

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1996, Pub. L. No. 104-208, 110 Stat. 3009-546 sec. 101(a)(42)(A) (setting forth the eligibility requirements for establishing political asylum). Political asylum enables aliens to remain in the United States once they establish that political persecution, or fear of such persecution, would occur if they returned to the country of nationality. *See id.* *See generally* INS v. Cardoza-Fonseca, 480 U.S. 421, 442-49 (1987) (identifying the various persecution standards that enable aliens to avoid deportation, specifically that aliens need not prove that it is "more likely than not" that a "well-founded fear of persecution" exists).

90. *See* Cuban Adjustment Act of 1966, Pub. L. No. 89-732, sec. 1, 80 Stat. 1161, 1161, *amended by* Immigration and Nationality Act, 8 U.S.C. sec. 1255, sec. 203(i), sec. 1, Pub. L. No. 96-212, 94 Stat. 108 (1996) (declaring a policy that is unavailable to other national groups, yet allows Cubans who reside in the United States for at least one year to become permanent residents).

91. *See* Wasem, *supra* note 74, at 1 (explaining that under the CAA, Arocha could establish residency in the United States after residing in the United States for at least one year).

92. *See* Major League Rules, *supra* note 50, Rule 3 (detailing the controlling language of MLB's residency requirement for contracts and the June Draft).

93. *See Cuban Will Be Allowed to Play Major-League Baseball*, AUSTIN AM.-STATESMAN, Sept. 11, 1991, at C4, *available in* 1991 WL 4324707 (stating that, after an instructional league tryout, MLB employed the special lottery-style draft to determine which team selected Arocha). *See generally* *First-Year Player Draft Rules*, *supra* note 51 (explaining that MLB's First-Year Player Draft occurs each June based upon reverse won-loss records).

94. *See supra* note 59 and accompanying text (providing that when a team drafts a player, it holds the exclusive negotiating rights to that player until one week prior to the following year's Draft, or until the player enters or returns to college on a full-time basis); *see also* Baxter & Dominguez, *supra* note 15, at 12 (specifying that of the 26 MLB teams at the time, only eight entered the special draft, indicating the skepticism about Arocha's age). *See generally* Parry Shaw, *Cuban Defector Arrojo Signs with Rays*, BRANDENTON HERALD TRIB., Apr. 27, 1997, at C5, *available in* LEXIS, News Library (discussing Arrojo's decision to sign with the Tampa Bay Devil Rays and the perceived doubts about his age). Because these players do not sign their own passports, and the Cuban government can easily manipulate the age on their passports, many MLB teams doubt their veracity. *See id.* Additionally, players are discouraged from carrying their passports, since doing so may indicate a desire to defect. *See id.*

contract.<sup>95</sup>

## B. EARLY VARIATIONS OF THE RENE AROCHA MODEL

Arocha's relatively easy transition and brief success in MLB illustrated to other Cuban ballplayers that they too could come to America and succeed.<sup>96</sup> Additionally, MLB's treatment of Arocha set an early precedent for drafting Cuban defectors.<sup>97</sup> For the players who followed Arocha, however, the rules changed.

Instead of conducting further special lottery drafts, MLB sought to stabilize the situation with a more familiar system.<sup>98</sup> Consequently, MLB decided to subject all future Cuban defectors to Rule 4's June Draft.<sup>99</sup> Thus, when pitcher Osvaldo Fernandez and first baseman Luis Alvarez defected soon after the 1993 June Draft, MLB required

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95. See *Cuban Will Be Allowed to Play Major-League Baseball*, *supra* note 94, at C4 (reporting that the Cardinals picked Arocha in the special lottery draft).

96. See Baxter & Dominguez, *supra* note 15, at 12 (characterizing Arocha's successful first season in MLB in which he posted an 11-8 record with a 3.78 earned run average). *But see* Bjarkman, *Lifting the Iron Curtain*, *supra* note 15, at 31 (explaining that an arm injury prematurely ended Arocha's career with the Cardinals in 1993). In addition to Arocha's initial successful performance, the motivations behind his defection encouraged subsequent Cuban players to defect. See Baxter & Dominguez, *supra* note 15, at 12 (explaining the reasons behind the defections of Cuban baseball players). Arocha recalled: "The main reason I left was to look for liberty. In Cuba, there isn't any. This was a way to start a new life." *Id.*

97. See Baxter & Dominguez, *supra* note 15, at 12 (characterizing MLB's treatment of Arocha's defection as an early example of how to deal with future defectors).

98. See Chass, *infra* note 110, at 10 (explaining that MLB's policy of utilizing a special lottery draft for defectors changed after Arocha); *see also* Memorandum from William A. Murray, *supra* note 70 (suggesting that in addition to seeking compliance with the United States embargo, the 1991 amendments to the Kuhn Directive indicated MLB's desire to maintain fairness in the absorption of Cuban defectors).

99. See Memorandum from William A. Murray, *supra* note 70 (explaining the application of the evolving MLB policy towards Cuban defectors). *But see* Baxter & Dominguez, *supra* note 15, at 12 (describing the use of a special lottery draft for the July 1993 defection of shortstop Rey Ordóñez). The New York Mets acquired the rights to Ordóñez in this special lottery draft, and later signed him in February 1994. *See id.*; *see also* Telephone Interview with Robert Lenaghan, Assistant General Counsel, Major League Baseball Players Association, (Mar. 1, 1999) (surmising that Ordóñez' agents requested that MLB utilize a special lottery draft so that Ordóñez could start his livelihood and not wait for the next year's June Draft).

them to wait until the 1994 June Draft to sign with a team.<sup>100</sup> This decision stemmed in part because of the efforts of Arocha's former teammates, shortstop Osmani Estrada and left fielder Alexis Cabreja.<sup>101</sup>

On October 11, 1992, the two Cuban National team players defected in Mexico, but decided to depart from Arocha's model. The teammates entered the United States illegally, and instead of requesting political asylum,<sup>102</sup> they sought to sign with a MLB team as free agents. MLB, however, objected to the idea that the two unauthorized aliens<sup>103</sup> could freely sign with any team willing to meet their price.<sup>104</sup> Additionally, the Office of the Commissioner warned all twenty-six teams<sup>105</sup> that they could not sign the players until the INS conferred work authorization.<sup>106</sup> Ultimately, the players changed

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100. See Chass, *infra* note 110, at 10 (describing the change in MLB policy regarding the absorption of Alvarez and Fernandez).

101. See Barry Horn, *Cubans Travel Long Road to Join Rangers*, DAILY OKLAHOMAN, July 11, 1993, at 7, available in 1993 WL 7986721 (tracing the path taken by Alvarez, Cabreja, and Estrada to play in MLB).

102. See *supra* note 89 and accompanying text (describing the requirements of political asylum).

103. See Immigration and Nationality Act sec. 274A(h)(3), 8 U.S.C. sec. 1324a(h)(3)(1992), amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546. (defining an "unauthorized alien" who seeks employment as an alien that is neither admitted for permanent residence nor authorized by the Attorney General to be employed within the United States).

104. See Paul D. Staudohar, *Baseball's Changing Salary Structure*, COMPENSATION & WORKING CONDITIONS, Fall 1997, at 7 (explaining that free agents can sign with the team of their choice, and that the competitive bidding between MLB teams escalates the salaries available for the free agents).

105. See Immigration and Nationality Act sec. 274A(a)(1)(A), 8 U.S.C. sec. 1324 a(a)(1)(A) (describing the "knowing" requirement as one of constructive knowledge of the alien's status). By warning all MLB teams, the Office of the Commissioner subjected the teams to the "knowing" requirement that prevents hiring, contracting, or recruiting an alien if they are known to be unauthorized. See *id.*

106. See 8 C.F.R. sec. 274a.13(a), as amended, 55 Fed. Reg. 25937 (1990) (explaining the application process and requirements for the Employment Authorization Documents ["EAD"]). Many aliens, including baseball players seeking asylum, adjustment of status, and suspension of deportation, are required to apply for EADs. See *id.* These alien baseball players require employment to gain legal status and must apply for and receive an EAD to indicate their employment authoriza-

their minds about obtaining free agency, and the Texas Rangers selected both in the June Draft.<sup>107</sup> Cabreja's and Estrada's efforts, though, represented the first attempt by defecting Cuban baseball players to avoid exposure in MLB's June Draft for the potentially higher salaries of free agency.

### C. JOE CUBAS AND THE "EL DUQUE" MODEL

If Arocha's defection threw MLB a curve, Joe Cubas' continuing efforts make MLB's knees buckle.<sup>108</sup> Cubas, an agent for many Latin American baseball players, perfected the second attempt to take advantage of MLB's Rules for his clients.<sup>109</sup> The agent not only assists his players to avoid the Draft, but also allows the players to enter MLB as high-priced free agents.<sup>110</sup>

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tion. *See id.* Additionally, these alien players must affirm, under penalty of perjury, that they are lawfully permitted to work in the United States. *See* Immigration and Nationality Act sec. 274A (b)(2), 8 U.S.C. sec. 1324(a)(b)(2) (stating that citizens or nationals of the United States, aliens lawfully admitted for permanent residence, or aliens authorized by the INS to work in the United States must attest to their status to work in the United States).

107. *See* Horn, *supra* note 101, at 7 (discussing MLB's refusal to allow Cabreja and Estrada to avoid the Draft). *See generally* Baxter & Dominguez, *supra* note 15, at 12 (describing Cabreja and Estrada's efforts to obtain unrestricted free agency).

108. *See* Deborah Ramirez, *Joe Cubas Key Go-Between for Cuba Baseball Hopefuls*, SEATTLE TIMES, Apr. 5, 1998, at D5, available in LEXIS, News Library (discussing the reputation that Cubas' earned through his efforts, and the lack of a response by MLB). The "El Duque" model that Cubas perfected earned him quick recognition. *See* Borden, *supra* note 76, at 3B. Cubas became notorious for acquiring visas from Latin American nations to obtain free agency for his clients. *See id.* *See generally* Gonzalez Echevarria, *supra* note 13, at 268-70 (describing the efforts of Joe Cambria, who successfully recruited Cuban talent for the now defunct Washington Senators from the 1930s until Castro's 1960 ban on professional sports). Gonzalez Echeverria characterizes Cubas as a modern-day Cambria. *See id.* at 390.

109. *See* Ramirez, *supra* note 108, at D5 (detailing Cubas' role in the defection of Cuban baseball players). Cubas assisted the majority of Cuban baseball defectors during the 1990s. *See id.* Additionally, just six of his clients alone signed MLB contracts worth approximately \$30 million. *See id.* Bill Clark, Atlanta Braves international scouting supervisor, summed up Cubas' importance to these Cuban defectors by claiming: "[h]e's made himself to Cuban baseball basically what Don King is to the fight game. He is the self-appointed commissioner and God and everybody all rolled into one." *Id.*

110. *See* Murray Chass, *Cubans Take New Route to Majors*, FORT WORTH STAR-TELEGRAM, Dec. 7, 1995, at 10, available in 1995 WL 9306871 (recogniz-

Cubas rejects the Draft variants utilized to absorb players such as Arocha, Cabreja, and Estrada into MLB.<sup>111</sup> Alternatively, Cubas applies MLB's Rules regarding foreign baseball players to Cuban baseball defectors.<sup>112</sup> The agent directs his players to establish residency in a country other than the United States or Cuba, and then enter the United States under either an "O" or a "P" visa.<sup>113</sup> Thus, while these Cuban players defect, they enter MLB like other foreign baseball players and avoid the Draft provisions of Rule 4.<sup>114</sup> More importantly, however, Cubas' players join MLB as wealthy baseball players because they can negotiate with all the MLB teams as free agents.<sup>115</sup>

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ing Cubas' ability to assist Cuban players' defections, both logistically and financially). Cubas insists that his efforts are legal, and that he acts in a manner that is advantageous to his clients. *See id.*; *see also* Anderson, *supra* note 60, at C31 (detailing Cubas' recent efforts to pluck two more players from the Cuban National team, as well as his anti-Castro stance).

111. *See supra* notes 77-107 and accompanying text (explaining the early 1990's models of Cuban baseball immigration). These models consisted of players coming to the United States, obtaining political asylum, and then becoming residents under the CAA. *See id.* Once these players established residency, MLB's Rules 3 and 4 applied, and they gained exposure to the Draft. *See id.*

112. *See supra* notes 57-60 and accompanying text (illustrating how MLB's Rule 3(a)(1)(B) enables foreign baseball players to sign as free agents and avoid the June Draft).

113. *See supra* notes 22-49, 61-65 and accompanying text (providing the applicability of the "O" and "P" visas to foreign baseball players); *cf. United and Antwerp in Deal to Nurture Young Talent* (last modified Mar. 27, 1999) <<http://www.soccernet.co.za/english/1981116antwerp.htm>> (illustrating that the Cubas method of utilizing a third country to obtain residency for his foreign athlete clients is not confined to international baseball players). In November, 1998, England's Manchester United soccer team and Antwerp, the Belgian second division team, signed a co-operation agreement to loan players between the two teams. *See id.* Under this co-operation deal, Manchester United can take advantage of the liberal work permit laws of Belgium, and obtain non-E.U. foreign talent from Africa and South America via Antwerp. *See id.* If Non-E.U. players desired to directly go to England to play soccer, the players must prove that they represent the best professional talent and possess international experience to obtain an English work permit for soccer. *See id.* Like the "El Duque" model, the deal between Manchester United and Antwerp enables foreign athletes to meander around residency laws.

114. *See supra* notes 60-65 and accompanying text (detailing how foreign baseball players avoid the June Draft by complying with the provisions of MLB's Rule 3).

115. *See* Chass, *supra* note 110, at 10 (commenting on Cubas' ability to garner

Cubas' successful clients reveal the impact of individual baseball players upon MLB and international relations.<sup>116</sup> During the 1997 and 1998 seasons, Cubas' clients and half-brothers Livan and Orlando "El Duque" Hernandez won the World Series with their respective teams.<sup>117</sup> While Livan's quick success highlighted the notion that opportunity exists for Cuban baseball players in America, "El Duque's" romanticized defection<sup>118</sup> provided a highly publicized narrative among the increasing number of Cuban defections.<sup>119</sup> Additionally,

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large contracts for his clients). See generally Richard Justice, *New Nation, Old Feelings: Cuban Defector Arrojo Reflects on Previous Career*, WASH. POST, May 2, 1999, at D10 (explaining Cuban defector Arrojo's mixed reaction to the Orioles-Cuba games, and detailing his adherence to the "El Duque" model which permitted him to receive a \$7 million signing bonus on his contract with the Devil Rays).

116. See Larry Rohter, *Marlins Pitcher Is A Popular Hero Cuba Must Ignore* (last modified Oct. 19, 1997) <<http://www.latinolink.com/life/life97/1019LBAS.HTM>> (noting that the same week Cuba honored the 30th anniversary of 1960s revolutionary Che Guevara's burial, millions of proud Cubans instead focused on Livan Hernandez' playoff performance in MLB).

117. See Jennifer Frey and Mark Maske, *Marlins' Hernandez Celebrates a Mother and Child Reunion*, WASH. POST, Oct. 27, 1997, at D4 (commenting on Livan Hernandez' World Series success in 1997, which enabled him to win the World Series Most Valuable Player award); see also George Diaz, *El Duque's American Story Turning Into Really Big Mess*, ORLANDO SENTINEL, Dec. 4, 1998, at C3, available in LEXIS, News Library (noting that "El Duque" pitched the Yankees to another World Championship, and commenting on the veracity of his defection story).

118. See Wertheim & Yaeger, *supra* note 18, at 61 (questioning the truth behind "El Duque's" defection from Cuba); see also Eric Nunez, *Fellow Refugee Disputes "El Duque's" Escape Tale; Were Threat of Sharks, Size of Boat the Stuff Legends are Made of?*, BUFFALO NEWS, Dec. 6, 1998, at 8D, available in LEXIS, News Library (highlighting the differences between "El Duque's" accounts of the voyage and those of Juan Carlos Romero, who recently filed an \$800,000 breach of oral contract suit against "El Duque" for not helping his fellow defectors). See generally Pilot of "El Duque's" Escape Boat Says the Story Doesn't Hold Water, SAN DIEGO UNION-TRIB., Dec. 5, 1998, at D2, available in LEXIS, News Library (disputing "El Duque's" version of his voyage, and contrasting the pitcher's financial success with those of his co-defectors). In fact, many of the details regarding "El Duque's" defection may have to do more with a still pending movie deal than with what really happened. See Phil Rogers, *Livan Hernandez's Brother Reportedly Going to Angels*, CHI. TRIB., Feb. 8, 1998, at C5, available in LEXIS, News Library (describing "El Duque's" movie deal negotiations with the Disney Company).

119. See Sue Anne Pressley, *Faster Boats Carry Cubans, Haitians to Florida*, WASH. POST, Dec. 31, 1998, at A2 (describing the plight of Cubans who defect by boat). The year before "El Duque's" highly celebrated journey, the United States

“El Duque’s” voyage illustrated the favorable treatment afforded to athletic defectors<sup>120</sup> despite the bilateral changes regarding Cuban

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Coast Guard repatriated 406 Cubans. *See id.* By contrast, the year after “El Duque’s” successful voyage the Coast Guard repatriated 1,025 Cubans. *See id.* Many attribute the increased number of attempted defections to the financial ability of previously successful defectors to pay professional smugglers to assist their relatives. *See id.* These numbers, however, only include the Cubans detected by the Coast Guard, and do not indicate the number of successful Cuban defections. *See id.* *See generally* Mildrade Cherfils, *Smugglers Cash In On Fleeing Cubans*, ASSOCIATED PRESS, July 22, 1999, available in WL, APNEWS (describing the June 29<sup>th</sup> incident where the Coast Guard attempted to prevent fleeing Cubans from reaching the United States shore to prevent them from taking advantage of the CAA). The Coast Guard intercepted approximately 1,137 Cubans at sea during the first seven months of 1999, compared with 1,047 Cubans during the entire year of 1998. *See id.* To stem the tide of defections, and to crack down on smugglers, the Cuban government announced steep fines for those who use boats for illegal smuggling. *See* Anita Snow, *Cuba Curbs Immigrant Smuggling*, ASSOCIATED PRESS, July 22, 1999, available in WL, APNEWS (explaining that the new Cuban law is designed to prevent smuggling and another mass exodus). *See generally* Marcus, *infra* note 121 (explaining that some South Florida smuggling rings charge as much as \$9,000 to smuggle in one person).

120. *See* Dominczyk, *supra* note 49, at 181-84 (describing the special treatment afforded talented athletes by the United States); *see also* Wertheim & Yaeger, *supra* note 18, at 62-63 (detailing the sea voyage made by “El Duque,” and the special assistance provided by the United States Coast Guard). Presumably because of his international reputation as a fantastic pitcher, “El Duque’s” defection received fortuitous, if not favorable treatment from the United States to hurt the Castro regime. *See id.*; *see also* Kaufman, *infra* note 122 (castigating the United States for its favorable treatment of immigrating athletes); Moffett, *infra* note 122 (explaining the favorable treatment afforded to Cuban baseball players over other Cubans, and over other Latin American refugees because of the damaging political implications to the Castro government); *cf.* Bonnie DeSimone, *Future Uncertain for Cuban Defectors*, CHI. TRIB., May 3, 1998, at C7, available in LEXIS, News Library (describing the immigration accord between the Bahamas and Cuba, which holds that the Bahamas will repatriate Cuban defectors, unless the United Nations High Commission on Refugees rules that the defectors are victims of political persecution). *See generally* Harold Hongju Koh, *America’s Offshore Refugee Camps*, 29 U. RICH. L. REV. 139, 156-57 (1994) (describing that under the terms of the 1994 Clinton-Castro Communique, the Coast Guard repatriates Cubans attempting to defect by sea). *See* Joint Communique on Migration, Sept. 9, 1994, United States-Cuba, *reprinted in* 71 Interpreter Releases 1236 (Sept. 12, 1994). Thus, when the Coast Guard rescued “El Duque” and his group from being stranded on an island while repatriating three other Cubans, “El Duque” feared repatriation as well. Wertheim & Yaeger, *supra* note 18, at 62. Instead of repatriating “El Duque” and his fellow defectors, the Coast Guard secretly shifted the group to another ship that eventually rerouted the group to Freeport, in the Bahamas. *See id.* After receiving this auxiliary assistance from the Coast Guard, the group flew to the Carmichael Road Detention Facility in Nassau. *See id.*

immigration to the United States.<sup>121</sup> More importantly, however, “El Duque’s” prominent defection epitomized that the connection between United States immigration laws and MLB’s Rules<sup>122</sup> can lead

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121. See David L. Marcus, *Legal Chaos Leaves Cuban Refugees Adrift*, BOSTON GLOBE, Aug. 2, 1998, at A1, available in LEXIS, News Library, Bglobe File (explaining that, after more than 30,000 Cubans travelling by raft arrived in the summer of 1994, the Clinton Administration sought changes in the absorption of Cuban refugees); see also Koh, *supra* note 120, at 156 (describing the safe haven facilities used for absorbing Cuban and Haitian refugees and the initial changes with respect to Cuban defections after the 1994 Clinton-Castro Communique). Instead of allowing Cuban defectors to enter the United States, this bilateral effort sent the Cuban defectors to detention centers. See *id.* See generally *INS Announces Third Special Cuban Migration Program* (last modified June 5, 1998) <<http://www.usia.gov/regional/ar/us-cub/lotrel.htm>> (detailing the eligibility and registration requirements for the Special Cuban Migration Program [“SCMP”] that allows Cubans to legally register for migration to the United States). The SCMP stems from the 1994 United States-Cuban migration agreement that enables the legal migration of 20,000 Cubans to the United States per year. See *id.* Under the terms of the 1995 Cuban Migration Agreement, however, the treacherous boat defections became even more difficult for prospective Cuban defectors. See generally Wasem, *supra* note 74, at 8. Under this agreement, the United States immediately repatriates Cubans travelling by sea instead of placing them in safe haven camps. See *id.* Still, the United States continues its efforts to issue 20,000 visas to Cubans each year. See *id.*; see also Tom Maloney, *Cuban Could Prove AL Answer To Nomo*, SAN DIEGO UNION-TRIB., July 1, 1995, at D2, available in LEXIS, News Library (describing how the immigration policy annually allowing 20,000 Cuban refugees to emigrate to the United States assisted Cuban National Team pitcher Ariel Prieto’s April, 1995 defection). Once Prieto legally came to the United States, he established residency, and the Commissioner’s Office placed him in the June Draft where the Oakland Athletics selected the pitcher. See *id.* Prieto’s path to MLB provides another example how changes in United States immigration policy can affect the players available to MLB teams. See *id.*

122. See *supra* notes 61-65 and accompanying text (noting that MLB teams utilize international scouting programs to sign the best foreign baseball players, since MLB’s Rules permit these players to enter MLB as free agents); see also Wertheim & Yaeger, *supra* note 18, at 63 (disclosing the reasoning behind “El Duque’s” refusal of an American humanitarian parole visa). While some believe that “El Duque” refused the humanitarian visa because his friends were not offered the same opportunity, many others claim that he rejected the humanitarian visa for the chance to sign a large contract with a MLB team. See *id.* See generally Sashi Kaufman, *Multi-Million Dollar Immigration Exception*, (visited Jan. 27, 1998) <<http://www.coha.org/opeds/BASEBALL.html>> (chastising the United States for offering “El Duque” an humanitarian visa because of his pitching prowess, and asserting that favorable immigration treatment to athletes makes a mockery of United States immigration laws); Dan Moffett, *Baseball Skills Seem to Grant Cuban Immigrants Preference*, COX NEWS SERVICE, (last modified Mar. 24, 1998) <<http://www.latinolink.com/news/news98/0324nimi.htm>> (explaining that within the al-

to a lucrative free agent contract.<sup>123</sup>

Both “El Duque’s” pitching performances and his circuitous arrival to the United States illustrate his penchant for navigating his way through difficult situations.<sup>124</sup> While many American players emulate his pitching style, many Cuban players emulate his path into MLB.<sup>125</sup> For these Cuban baseball players, “El Duque’s” path provides a model for success.<sup>126</sup> While the specifics of defection remain difficult and dangerous, players opting to defect no longer choose the Arocha

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ready politically favored group of Cuban immigrants who rely on the CAA, a newly developed subgroup of baseball players receives further favorable treatment). According to lawyers with the Florida Immigrant Advocacy Center in Miami, the humanitarian parole visa rejected by “El Duque” is an extremely rare method of entry that allows refugees to quickly enter the United States to escape persecution. *See id.*; *see also Editorial: Our Effective, Intelligent and Calm Response*, (visited August 1, 1999) <<http://www.granma.cu/ingles/julio5/037-i.html>> (explaining the Cuban government’s assertion that the CAA encourages Cubans to defect, and is part of a continuing effort by the United States to undermine the Cuban government).

123. *See* Rogers, *supra* note 118, at C5 (characterizing “El Duque’s” work in Cuba prior to his defection). “El Duque’s” refusal of the American visa makes financial sense. *See id.*; Phil Rogers, “*El Duque*” Showcases Quality of Cuban Baseball, CHI. TRIB., June 14, 1998, at C5, available in LEXIS, News Library (explaining that in retribution for his half-brother’s defection, Cuba suspended “El Duque” from baseball). During his suspension, “El Duque” toiled for over a year as a janitor at a mental hospital, making roughly \$10 a month. *See id.*; *Cuban Baseball Player Accepts Japan’s Offer of Asylum*, OTTAWA CITIZEN, Apr. 3, 1998, at B2, available in LEXIS, News Library (illustrating that by becoming a free agent, “El Duque” received a considerable raise by signing a \$6.6 million dollar contract with the New York Yankees).

124. *See* William Gildea, *Yankees Try to Do One Better: Clemens Gives Boost to Champs*, WASH. POST, Mar. 1, 1999, at D9 (discussing the Yankees’ addition of pitcher Roger Clemens, and “El Duque’s” important pitching performances during critical junctions in the 1998 playoffs).

125. *See* Tom Farrey, *Traitor to the Heart*, (last modified Feb. 24, 1998) <<http://espn.go.com/gen/columns/farrey/01121832.html>> (explaining the difficult journey of Maikel Jova and four other Cuban defectors to MLB, and the players’ continued adherence to the “El Duque” model after initial failures).

126. *See* Sue Anne Pressley, *Five More Baseball Players Leave Cuba: Defections Come on Castro’s Birthday*, WASH. POST, Aug. 15, 1998, at A3 (recognizing that subsequent Cuban defectors will follow the “El Duque” model for large free agent contracts and commenting that recent defectors sought to maximize Castro’s embarrassment by defecting on the Cuban leader’s birthday). *See generally* Farrey, *supra* note 125 (averring that the worsening conditions of Cuban baseball infuriate many Cuban players, and cause further resentment among Cuban fans toward the Castro government).

model of direct defection from Cuba to the United States.<sup>127</sup> Instead, by adhering to the “El Duque” model,<sup>128</sup> these defecting players<sup>129</sup> will seek residency in a third country to avoid the United States’ conferral of residency under the CAA<sup>130</sup> and the subsequent exposure to MLB’s Rule 4 Draft.<sup>131</sup> Forgoing MLB’s Draft provides players the opportunity to quickly sign a multi-million dollar contract with the team of their choice.<sup>132</sup> By escaping Cuba, the CAA, and MLB’s Rule 4 Draft, however, these players subject themselves to MLB’s own economic thicket.<sup>133</sup> Thus, while following “El Duque’s” model enables these players to alleviate their own financial problems, it also serves to exacerbate the fiscal problems plaguing MLB.

#### D. HOW THE “EL DUQUE” MODEL HURTS MLB

*La Manera Cubana* represents a reaction to the deepening economic crisis in Cuba.<sup>134</sup> For Cuban baseball players mired in the middle of a sagging economy, the lure of a well paid career in MLB

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127. See *supra* notes 83-95 and accompanying text (defining the Rene Arocha model, and illustrating that players under this model directly defect to the United States, and become exposed to all MLB teams through the Draft).

128. See *supra* notes 109, 122-24 and accompanying text (asserting that players can sign large free agent contracts with MLB teams by following the “El Duque” model).

129. See Anthony Breznican, *Teen-Age Cuban Player Defects*, ASSOCIATED PRESS, April 16, 1999, available in WL, APNEWS (detailing the defection of Cuban catcher Bryan Pena, and his adherence to the “El Duque” model).

130. See Wasem, *supra* note 74, at 1-5 (explaining that under the CAA, Cuban defectors can achieve United States residency after one year).

131. See *supra* notes 51-55 and accompanying text (describing the application of the Rule 4 Draft).

132. See *supra* notes 57-60 and accompanying text (detailing the ability of international players to immediately sign large contracts as free agents, rather than limiting their bargaining rights to one team, which occurs when the player is subject to the Draft).

133. See *infra* note 140-145 and accompanying text (discussing the financial state of MLB, and asserting that only a few wealthy teams can afford the talent necessary to compete).

134. See *supra* notes 77-80 and accompanying text (commenting on the relationship between deteriorating economic conditions in Cuba, and the desire of Cuban baseball players to compete in MLB).

proves tempting.<sup>135</sup> While Arocha's pioneering step began a new wave of Cuban baseball immigration, the "El Duque" model found a way to meander through the United States immigration laws and MLB's Rules.<sup>136</sup> In so doing, the "El Duque" model widens the gap between the wealthy and less profitable baseball teams.<sup>137</sup>

Future defecting Cuban players will seek to parallel both the on-the-field and financial success of the Cuban players who defected before them.<sup>138</sup> Many defecting Cuban players carefully decide where to play, yet, even before these players defect, many MLB teams are left out this decision.<sup>139</sup> Unfortunately, while all MLB teams are aware of the abundance of talent in Cuba, only a few of them possess the financial ability to sign Cuban players.<sup>140</sup>

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135. See *supra* notes 77-81 and accompanying text (detailing the struggling Cuban economy and the desires of Cuban players to improve their own financial condition); see also Bjarkman, *Cuba: Four Decades*, *supra* note 15, at 14 (explaining that the large salaries of MLB players provide an appealing alternative for the many amateur Cuban baseball players who are poorly paid despite possessing MLB skills).

136. See *supra* notes 108-110, 113-115 (explaining how agent Joe Cubas uses the "El Duque" model to provide large free agent contracts for Cuban defectors by weaving between MLB's Rules and United States immigration laws).

137. See Sean McAdam, *The Rich Get Richer and . . .* (last modified Feb. 4, 1999) <<http://espn.go.com/mlb/state/daythree.html>> (describing the correlation between victories and team payroll, and explaining the difficulties that small-revenue teams have in competing).

138. See *supra* notes 77-132 and accompanying text (describing the manner and reasons behind the defection of Cuban baseball players). When faced with the stark choice between remaining with their family and country, or gaining financial stability and a place on an MLB team, many players opt for the latter choice. See *id.*

139. See *infra* notes 140-145 and accompanying text (describing how teams without vast financial resources or nearby Cuban communities face enormous obstacles in their attempts to sign Cuban free agents).

140. See Lockwood, *supra* note 19, at D5 (discussing the disparity between the wealthy and less profitable MLB teams in their ability to sign free agents); see also Staudohar, *supra* note 104, at 6 (explaining that the widening gap between wealthy and poor teams, and the their ability to sign free agents, does not necessarily conform to the geographically-based dichotomy between large-market and small-market teams). See generally McAdam, *supra* note 137 (observing that in the 1998 off-season, the first thirty free agents received on average a 64% salary raise). Only eight teams, however, accounted for over three-quarters of the raises, illustrating the ability of wealthy teams to exclude poorer teams from signing free agents. See *id.*

This financial and competitive disadvantage also extends to the international scouting efforts of MLB teams.<sup>141</sup> The few teams with the financial ability to readily locate international talent, such as the Atlanta Braves, Los Angeles Dodgers, and New York Yankees, continually drive up the already hyper-inflated free agent market.<sup>142</sup> The financial ability of these MLB teams to find the best international talent also enables them to sign more free agents.<sup>143</sup> Without the fi-

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141. See Beaton, *supra* note 82, at 22C (illustrating that at least five MLB organizations cannot afford to operate extensive Latin American scouting or development programs); see also Lockwood, *supra* note 19, at D5 (commenting on the importance of international scouting programs, and noting the inability of poorer MLB teams to compete with the international efforts of wealthier teams). See generally McAdam, *supra* note 137 (supporting the notion that poorer teams are at a financial disadvantage in international scouting efforts). Terry Ryan, General Manager for the struggling Minnesota Twins, bemoaned that the dramatic increase in international signing, scouting, and development costs in the past decade magnifies the disparity between wealthy and poor teams. See *id.* According to Ryan, wealthy teams can spend more than three times what poorer teams spend to scout and sign the best international talent. See *id.*

142. See Mark Maske, *Orioles to Pay Most in Luxury Tax*, WASH. POST, Jan. 9, 1999, at D1 (explaining the luxury tax system used by MLB). In 1996, after the MLB owners failed to implement a salary cap on team payrolls, they agreed to utilize a payroll-taxation system to provide spending restraints. See *id.* The money generated from the payroll tax goes to MLB's central revenue fund, and is redistributed in an effort to level the financial disparity among MLB teams. See *id.*; see also Paul H. Staudohar, *Salary Caps in Professional Team Sports, COMPENSATION & WORKING CONDITIONS*, Spring 1998, at 9 [hereinafter Staudohar, *Salary Caps in Professional Team Sports*] (explaining that in 1998, teams paid a 35% tax on payrolls exceeding \$55 million). In 1999, teams will pay a 34% tax on team payrolls exceeding \$58.9 million. See *id.* There will be no luxury tax on salaries, however, in the 2000 season. See *id.* Part of the revenue-sharing agreement implemented by the negotiators for MLB and the MLB Players Association also included a 2.5% tax on individual player salaries. See *id.* MLB officials anticipate that this individual player salary tax, coupled with the revenues gained from the luxury tax and the partial sharing of local broadcasting revenues from large-market teams, should redirect about \$70 million to 13 small-market teams to bolster their competitiveness. See Staudohar, *supra* note 104, at 9. But see Kurt Badenhausen & William Sicheri, *Baseball Games*, FORBES MAGAZINE, May 31, 1999, at 112, 117 (stating that MLB's revenue-sharing system punishes teams with high payrolls who attempt to win, yet rewards teams with low payrolls and no chance of winning). Ironically, teams like the Mets and Dodgers, who increased their payrolls in an effort to bolster their competitiveness, lost money through the revenue-sharing system. See *id.* at 116. Meanwhile, teams like the Marlins and Expos netted profits, despite drastically reducing their payrolls. See *id.*

143. See Bill Shaikin, *Angels Take Small International Step: The Inroad into*

nancial ability to pay for these international free agents, however, the ability of poorer teams to sign Cuban ballplayers hinges solely upon the appeal of a nearby Cuban community for the individual player.<sup>144</sup> Thus, with many Cuban players going to the highest bidders, or to teams in areas with large Cuban populations, the potential Cuban talent pool will continue to remain confined to only a limited number of teams.<sup>145</sup> This can only serve to diminish the competitiveness of MLB, and widen the gulf between the wealthy and poor baseball teams.<sup>146</sup> By further damaging the ability of many small market teams

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*Mexico Doesn't Overcome Their Developmental Absence in Other Latin American Countries*, THE RIVERSIDE PRESS-ENTER., Sept. 10, 1996, at D1, available in 1996 WL 10301000 (detailing the importance of successful international programs for several MLB teams, and explaining that signing bonuses given to some players by wealthy teams can exceed the entire international scouting budget of poorer clubs).

144. See 1990 Census Data (visited Aug. 7, 1998) <<http://www.Census.gov/population/socdemo/hispanic/cps97/tab01-1.txt>> (disclosing the Cuban population in American cities and states). A breakdown of Cuban population by state illustrates that the California, Florida, Illinois, New York, and Texas teams garner support from their respective Cuban populations, and consequently, the teams in these areas likely possess a cultural edge in signing Cuban players. See *id.* Previous free agent Cuban players signed either with rich baseball clubs, or leaned towards the areas with large Cuban populations. See Peter Bjarkman, *Myth and Mystery Are Bywords of Cuban Baseball*, INT'L BASEBALL RUNDOWN, Aug. 1998, at 11 (detailing MLB teams that signed free agent defectors in the 1990s). Because Cuban players frequently seek to play in cities with a large Cuban populace, the presence of a nearby Cuban population is important for MLB teams seeking to sign Cuban defectors. See Beard, *supra* note 74, at C4 (detailing the defections of Cuban athletes at the Central American and Caribbean Games and explaining that the defectors chose certain cities based upon their Spanish speaking community). Livan Hernandez found Miami's large Cuban population an integral factor in his decision to sign with the Florida Marlins. See Dick Kaegel, *Livan Living It Up: Two World Series Victories Make Florida's Hernandez a Hero in the U.S. and Cuba*, KAN. CITY STAR, Oct. 25, 1997, at D1, available in LEXIS, News Library. See also Shaw, *supra* note 94, at C5 (describing the importance of Florida's Cuban community to Arrojo's decision to sign with the Devil Rays).

145. See Bjarkman, *supra* note 144, at 11 (noting the teams that signed Cuban free agents in the 1990s); see also McAdam, *supra* note 137 (explaining that both money and a local Cuban community affect a Cuban players' choice when deciding where to sign).

146. See McAdam, *supra* note 137 (concluding that wealthy teams are immediately placed in an advantageous position with respect to free agent signings). Wealthy teams are able to sign expensive free agents, scout the world for the top talent, and retain their best players through contract extensions. See *id.* By contrast, small market teams struggle to keep their best players, and they are ill-equipped to find the best prospects to fill the place of their departed high-priced players. See *id.*

to compete,<sup>147</sup> the net appeal of MLB suffers.<sup>148</sup>

Enabling all MLB teams to display the world's best baseball talent can produce profound implications beyond the playing field. Jackie Robinson's 1947 entry into MLB broke baseball's invidious exclusion of African-Americans,<sup>149</sup> and years later permitted African-Americans to compete throughout MLB.<sup>150</sup> Off the field, Robinson's heroic struggle eventually changed the political landscape and sparked legislation that re-evaluated race-relations in American society.<sup>151</sup> Forty-four years after Robinson's pioneering entry into MLB, Rene Arocha's defection from an economy ravaged by the demise of

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147. See McAdam, *supra* note 137 (delineating that during the last eight seasons, the correlation between payroll and won-loss records became more apparent).

148. See *id.* (cautioning that a grave situation exists for MLB when over half the teams cannot provide the possibility of fielding a contending team).

149. See Peter Bjarkman, *History's Many Shades: Tracking Jackie's Latino Predecessors*, PRIMERA FILA, Oct. 1997, at 12, 13 (discussing the incredible opportunities that Robinson's efforts provided for future minority baseball players). Although Robinson is credited with breaking baseball's odious color barrier in 1947, several Latino players preceded him in MLB, yet have received little recognition for their efforts. See *id.*

150. See James R. Devine, *The Past as Moral Guide to the Present: The Parallel Between Martin Luther King, Jr.'s Elements of a Nonviolent Civil Rights Campaign and Jackie Robinson's Entry onto the Brooklyn Dodgers*, 3 VILL. SPORTS & ENT. L. FORUM 489, 514 (1996) (remarking that MLB was extremely slow to integrate); see also ARTHUR ASHE, *A HARD ROAD TO GLORY: A HISTORY OF THE AFRICAN-AMERICAN ATHLETE SINCE 1946* 3-4 (1993) (commenting on the slow pace of integration within MLB). From 1947 to 1953, the National League added African American players at a dismal rate of three players every two years, while the American League was even slower by adding one player every two years. See *id.* As late as 1959, twelve years after Robinson began his career with the Dodgers, an unwritten limit on the number of African-American players per team still existed. See *id.* at 44-45. But see *Baseball Notes: Minority Push*, WASH. POST, Apr. 25, 1999, at D12 (explaining that MLB Commissioner Selig seeks to increase minority hiring for general manager and manager positions).

151. See J. Gordon Hylton, *American Civil Rights Laws and the Legacy of Jackie Robinson*, 8 MARQ. SPORTS L.J. 387, 388-89 (1998) (discussing Robinson's effect upon Civil Rights legislation). Shortly after Robinson's signing, President Truman formed the Committee on Civil Rights, which had the power to investigate violations of African American's rights and recommend legislation to rectify similar abuses. See *id.* at 388. Furthermore, Truman desegregated the United States Armed Forces in 1948. See *id.* Eventually, these efforts and many others culminated in the groundbreaking Voting Rights Act of 1965. See Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. secs. 1971, 1973 to 1973bb-1(1994)).

the Cold War rekindled a Cuban presence in MLB.<sup>152</sup> The establishment of the "El Duque" model, however, prevents any significant future Cuban presence throughout MLB because of MLB's own economic conditions and the hostile international relations between the United States and Cuba.<sup>153</sup> Accordingly, MLB must pitch an effective Baseball Diplomacy to change the "El Duque" model.<sup>154</sup> The incentive for MLB to implement an effective Baseball Diplomacy depends on whether such a proposal can fairly distribute Cuban talent<sup>155</sup> to address MLB's own economic problems of disparity,<sup>156</sup> and whether the proposal provides MLB the historic opportunity to address the larger issue of United States-Cuba relations.<sup>157</sup>

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152. See *supra* notes 83-97 and accompanying text (describing Arocha's motivations for defecting and his pioneering role as the first Cuban baseball player to defect in the 1990's).

153. See *supra* notes 3-5, 76, 135-148 and accompanying text (examining the heightened tensions between the United States and Cuba, and explaining how the "El Duque" model exacerbates MLB's economic conditions and further sours United States-Cuba relations).

154. See *infra* notes 221-266 and accompanying text (setting forth four components of an effective Baseball Diplomacy).

155. See *infra* note 172 and accompanying text (asserting that within both the Kuhn Directive and its 1991 amendments, MLB expressed a desire to create a system that permits all MLB teams to have equal access to Cuban players).

156. See *supra* notes 137-148 and accompanying text (explaining that the "El Duque" model exacerbates the differences between wealthy and poor MLB teams in terms of signing and scouting international talent, and competing in the standings).

157. See Joseph A. Manero, *Play Ball With Cuba?*, WASH. POST, Mar. 24, 1999, at A27 (criticizing President Clinton for failing to cancel the Orioles-Cuba exhibition series, as well as MLB Commissioner Selig's view of the series). Commissioner Selig expressed his hopes that through the exhibition series, MLB could transcend baseball by promoting productive ties between Cubans and Americans. See *id.*; see also *infra* notes 167-171, 173 and accompanying text (illustrating MLB's efforts to forge a better relationship with Cuba through Baseball Diplomacy); *supra* notes 5, 14 (discussing the use of the Orioles-Cuban National Team series as a creative way to increase contacts between the Cuban and American people). See generally *supra* notes 149-151 and accompanying text (explaining that despite MLB's slow pace of integration, enabling Robinson to compete allowed MLB to spark changes in American race relations). The effective Baseball Diplomacy proposals discussed in Section IV aim to similarly improve relations between the United States and Cuba through MLB. See *infra* notes 221-266 and accompanying text (detailing the four steps of an effective Baseball Diplomacy).

### III. BASEBALL AND UNITED STATES-CUBA RELATIONS

#### A. EARLY BASEBALL DIPLOMACY

Almost a century before Fidel Castro took power, the relationship between the United States and Cuba bonded through baseball when American-educated Cuban students and United States Marines brought baseball equipment to Cuba.<sup>158</sup> Since those first games in Cuba, baseball became a common ground that continues to connect the Cuban and American people.<sup>159</sup> Despite this common ground, however, rancorous political differences continue to stymie United States-Cuban relations,<sup>160</sup> and keep the populations of the two nations apart.

This enmity arose in early 1960, when the Cuban government nationalized all United States business and commercial properties in Cuba.<sup>161</sup> That same year, the Castro government banned Cuban ath-

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158. See Gonzalez Echevarria, *supra* note 13, at 82-90 (demonstrating how the American-schooled Cuban Nemesio Guillot brought baseball equipment to Cuba in 1864, and how the United States Marines helped spread the game throughout Latin America). The popularity of baseball in Cuba grew because of the close socio-economic relations with the United States, and because the game provided a way of rejecting the vestiges of Spanish authority. See *id.* at 111-12.; Rob Neyer, *Timeline: Baseball and Cuba* (last modified Mar. 26, 1999) <<http://www.espn.go.com/mlb/features/01181193.html>> (describing that the first baseball game in Cuba with Cuban participation took place in 1866).

159. See Serge Kovaleski, *Cuba's Major League Welcome: Nation Embraces Visiting Orioles*, WASH. POST, Mar. 29, 1999, at A6 (asserting that baseball links the people of the United States and Cuba); see also Beaton, *supra* note 19, at 22C (listing the current players of Cuban heritage within MLB organizations); Serge F. Kovaleski, *Diplomacy On A Smaller Scale: Despite Losses to Cuban Youths, Area's Young Athletes Savor Trip*, WASH. POST, Mar. 29, 1999, at B1 (describing the trip of 80 Washington-Baltimore area young baseball players to Cuba, and the personal exchanges with their Cuban counterparts).

160. See *supra* note 3 and accompanying text (characterizing the political polarization within the United States regarding relations towards Cuba); see also *supra* note 4 and accompanying text (detailing the United States' political responses to the Castro government, including a brief examination of the Helms-Burton Act); *supra* note 17 and accompanying text (identifying the key events in United States-Cuba relations since 1959).

161. See *supra* note 4 and accompanying text (explaining the history of the United States embargo against Cuba); see also *Where Are We Heading?*, *supra*

letes from competing in professional sports,<sup>162</sup> which effectively ended the prominence of new Cuban-trained talent in MLB<sup>163</sup> until Arocha's defection.<sup>164</sup> Before Arocha's defection, however, the United States made several attempts in the 1970s to improve relations with Cuba through baseball.<sup>165</sup> These attempts revealed the internal divisions and political differences within both MLB and the United States government, which ultimately caused early Baseball Diplomacy efforts to fail.<sup>166</sup>

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note 9, at 2-5 (statement of Michael Ranneberger) (describing the Clinton Administration's proposals to increase bilateral people-to-people contacts in an effort to promote democratic change). The United States implemented an embargo against Cuba when the Cuban government confiscated the property of thousands of American individuals and companies, and failed to provide compensation. *See id.* at 5 (indicating that the United States Foreign Claims Settlement Commission certified 5,911 valid claims against the Cuban government by United States nationals). *See generally* *Alejandre v. Cuba*, No. 96-10126, 96-10127, 96-10128, 1999 U.S. Dist. LEXIS 4137, at \*16 (discussing the Treasury Department's Office of Foreign Assets Control promulgation of the Cuban Assets Control Regulations which implemented the embargo pursuant to the Trading With the Enemy Act of 1917).

162. *See* Baxter & Dominguez, *supra* note 15, at 12 (relating that Castro's ban on professional sports prevented Cubans from competing in MLB).

163. *See supra* notes 15, 80 and accompanying text (describing the history of Cuban players in MLB history).

164. *See supra* notes 80-100 and accompanying text (describing Arocha's defection, and MLB's initial treatment of defecting Cuban baseball players).

165. *See* Milton Jamail, *Orioles Not First To Seek Showcase Visit To Cuba* (last modified Mar. 29, 1999) <<http://usatoday.com/sports/baseball/bbw/v53/bbw5319.htm>> (delineating the attempts at Baseball Diplomacy during the 1970s). Similar attempts to forge closer ties between Cubans and Americans occurred before the Orioles exhibition game in Havana. *See generally* *Secret Cuba Visit: Sliding Under the Radar*, SPORTS ILLUSTRATED, Mar. 22, 1999, at 36 (describing the clandestine trip of a Long Island softball team that played several Cuban softball teams in early March 1999); Mark Alan Teirstein, *Local Teams Beat Orioles To Cuba: Greeley, Eastchester Played Series of Games On Visit in '83*, JOURNAL NEWS Mar. 27, 1999, at 2C (describing the games played by the first high school baseball teams to visit Cuba since the 1959 revolution).

166. *See* Jamail, *supra* note 165 (describing the efforts by four MLB teams to play in Cuba during the 1970s). In 1971, the San Diego Padres' Cuban-born manager, Preston Gomez, sought to bring a MLB All-Star team to compete in Cuba, but the United States State Department denied his request. *See id.* In 1976, Secretary of State Henry Kissinger cancelled a United States-Cuba game in Havana because of Cuba's military participation in the Angolan civil war. *See id.* In 1977, however, the Houston Astros surreptitiously held baseball clinics in Cuba and scouted Cuban players. *See* Telephone Interview With Milton Jamail, *infra* note

Prior to issuing the 1977 Directive that forbids scouting Cuban baseball players, former MLB Commissioner Bowie Kuhn promoted the idea of Baseball Diplomacy to the State Department.<sup>167</sup> Kuhn's correspondence suggested that the Cubans desired to compete within MLB, and that baseball could provide the appropriate medium for promoting American values to the Cuban people.<sup>168</sup> Internal State Department memoranda indicated that, much like the 1971 Ping-Pong Diplomacy with China,<sup>169</sup> baseball games with Cuba could

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193; see also Milton Jamail, FULL COUNT: AN INSIDE VIEW OF CUBAN BASEBALL AND THE UNITED STATES (forthcoming Spring, 2000) (detailing the early attempts at Baseball Diplomacy and the 1977 visit by the Astros). In 1977, MLB also issued the Kuhn Directive, which prohibited MLB teams from interacting with Cuban players. Kuhn Directive, *supra* note 69. This MLB policy stemmed in part from the Los Angeles Dodgers' objection to the rival Yankees' attempts to play in Havana. Jamail, *supra* note 165. See generally Justice, *supra* note 6, at D4 (explaining that MLB invited all 30 teams to send a representative to Havana during the Orioles exhibition game to prevent any possible advantage that the Orioles stood to gain in signing future defectors). But see *Speaking Out*, WASH. POST, Mar. 28, 1999, at D3 (providing the suggestion of one MLB team owner that Orioles owner Peter Angelos' only interest in the exhibition games with Cuba lay in a desire to sign Cuban defectors and establish a niche within Cuba for this purpose).

167. See Letter from Bowie K. Kuhn, Commissioner, MLB, to Secretary of State Henry Kissinger (Jan. 14, 1975) (visited Mar. 29, 1999) <<http://www.seas.gwu.edu/nsarchive/NSAEBB/NSAEBB12/docs/01-01.htm>> (relaying early efforts to organize an exhibition baseball series, having both home and away games, with the Cuban government's sports agency, *Instituto Nacional de Deportes Educacion Fisica y Recreacion* ["INDER"]).

168. See Briefing Memorandum from William D. Rogers, Department of State to the Secretary of State (Jan. 21, 1975)(visited Mar. 29, 1999)<<http://www.seas.gwu.edu/nsarchive//SAEBB/NSAEBB12/docs/04-01.htm>> (detailing Rogers' correspondence and conversations with Kuhn, and Kuhn's strong desire to see Baseball Diplomacy materialize). Kuhn felt that "Cuban players [want] to look forward to the opportunity to play some day in our major leagues." *Id.* Additionally, Kuhn sought to use baseball's "magic value in projecting a positive image of the U.S." *Id.*

169. See Memorandum from William D. Rogers & Culver Gleysteen, Department of State, *Additional Talking Points on Sending a Baseball Team to Cuba* (Feb. 19, 1975)(visited Mar. 29, 1999) <<http://www.seas.gwu.edu/nsarchive/NSAEBB/NSAEBB12/docs/09-01.htm>> [hereinafter Rogers & Gleysteen Memorandum] (discussing the parallel of playing baseball with Cuba to the Ping-Pong Diplomacy efforts with China). Additionally, Rogers and Eagleburger suggested that a baseball game could promote better relations with Cuba by "bridging the gap between the Bay of Pigs and a new relationship with Castro." *Id.* See generally Ramsey, *supra* note 16 (asserting that Ping-Pong Diplomacy helped the United States and China overcome their bilateral hostility).

forge a new relationship with the Cuban people,<sup>170</sup> and remain distinct from the political relations between Washington and Havana.<sup>171</sup> Despite Kuhn's efforts to organize games in Cuba,<sup>172</sup> however, the State Department rejected the Baseball Diplomacy proposal.<sup>173</sup> Instead of seizing the opportunity in the 1970s to improve United States-Cuba relations through baseball, the high profile defections of Cuban players in the 1990s allowed baseball to embitter bilateral relations.<sup>174</sup>

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170. See Bowie K. Kuhn, *Outline of Cuban Exhibition Game Proposal* (June 13, 1975) (visited Mar. 29, 1999) <<http://www.seas.gwu.edu/nsarchive/NSAEBB/NSAEBB12/docs/15-01.htm>> (articulating Kuhn's proposal for exhibition baseball games between the United States and Cuba). Kuhn believed that the games would promote better relations between MLB and Cuban baseball in a non-political manner that would reach the people of the two nations. See *id.*

171. See *id.* (discussing the non-political nature of the proposed baseball games); see also Letter from William D. Rogers, Department of State to Henry K. Kissinger, Secretary of State, *Kuhn's Efforts Continue* (Feb. 13, 1975) (visited Mar. 29, 1999) <<http://www.seas.gwu.edu/nsarchive/NSAEBB/NSAEBB12/docs/06-01.htm>> (explaining that any possible games between the United States and Cuba could be separated from United States relations with Cuba); Rogers & Gleysteen Memorandum, *supra* note 169 (suggesting the difficulty that Cuban exiles and Cuban-Americans would encounter if they protested the proposed games). Nonetheless, the two officials asserted that baseball games could help eradicate Cuban hatred of America, as well as reestablish relations with the Castro government. See *id.*

172. See Kuhn Directive, *supra* note 69, at 1 (explaining the Kuhn Directive that became MLB policy after the failed attempts at Baseball Diplomacy). The Kuhn Directive expresses Kuhn's hopes of modifying MLB's policy regarding Cuban players, provided that such a system permits fair access to Cuban players. See *id.*; see also Memorandum from William A. Murray, *supra* note 70 (suggesting that if changes in the United States embargo permit modifications in MLB's Cuban policy, they will occur in an equitable fashion).

173. See Secret/NODIS/Eyes Only Briefing Memorandum from William D. Rogers, Department of State, Henry K. Kissinger, Secretary of State (Feb. 24, 1975) (visited Mar. 29, 1999) <<http://www.seas.gwu.edu/nsarchive/NSAEBB/NSAEBB12/docs/10-01.htm>> (explaining that Rogers canceled the proposed Baseball Diplomacy at Kissinger's behest because the Ford Administration did not want to squander political support for their policy towards Cuba). According to the memorandum, Kuhn realized the political problems behind the proposal, but remained hopeful for a future attempt. See *id.*

174. See *supra* notes 82-85, 116-119 and accompanying text (discussing the defections of Cuban baseball players in the 1990s and Castro's animosity towards these defectors).

## B. UNITED STATES-CUBA RELATIONS AFTER AROCHA

Rene Arocha's foray into MLB followed the tenor of existing United States-Cuban relations.<sup>175</sup> The larger forces of Cuba's struggling economy,<sup>176</sup> coupled with the appeal of lucrative MLB salaries,<sup>177</sup> heavily influenced Arocha's defection and the desires of other Cuban baseball players to defect.<sup>178</sup> This rebirth of a Cuban-trained presence in MLB coincided with several external events that drastically affected United States-Cuban relations.<sup>179</sup>

Following the arrival of these Cuban players, legislative developments in the United States hastened the collapse of the Cuban econ-

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175. See *supra* notes 3-4 and accompanying text (explaining the hostile nature of the bilateral relations between Cuba and the United States during the last forty years).

176. See *supra* notes 78-79 and accompanying text (asserting that the end of Soviet support led to a drastic decline in the Cuban economy). See generally *U.S.-Cuba Commission: U.S.-Cuba History*, *supra* note 78 (noting the termination of Soviet support); *Where Are We Heading?*, *supra* note 9, at 2 (statement of Michael Ranneberger) (discussing the dismal state of the Cuban economy due to the low prices of nickel and sugar, and the reduced value of exports). But see *Cuba Announces 6.1 Percent Growth*, ASSOCIATED PRESS, July 7, 1999, available in WL, APNEWS (relaying Cuban Vice President Carlos Lage's assertion that the improved sugar and tourism industries bolstered Cuba's economy in the first half of 1999).

177. See *Yankees Payroll Tops \$85 M*, (last modified Apr. 6, 1999) <<http://espn.go.com/mlb/news/1999/990406/01196184.html>> (identifying that baseball's average salary for 1999 is 19% higher than 1998's average salary, at a record \$1,720,050 per year).

178. See Baxter & Dominguez, *supra* note 15, at 12 (discussing the defections of Cuban baseball players and their hopes of playing in MLB); see also Horn, *supra* note 101, at 7 (describing the defections of various Cuban players).

179. See *supra* notes 120-121 (explaining the bilateral agreements regarding Cuban boat defectors). See generally *Where Are We Heading?*, *supra* note 9, at 2 (statement of Michael Ranneberger) (asserting that the United States cooperates with the Castro regime on law enforcement and migration matters when it benefits United States' interests). The migration of boat defectors during 1996 became part of a momentous event in United States-Cuba relations. See *Alejandro v. Cuba*, 996 F. Supp. 1239, 1242 (S.D. Fla. 1997). The Cuban Air Force shot down an unarmed anti-Castro exile group plane, killing four people performing a humanitarian mission to assist boat defectors floating between the Florida Keys and Cuba. See *id.* at 1242-43; see also Dhooze, *supra* note 4, at 576 (explaining that the outrage over this event led to the enactment of the Cuban Liberty and Democratic Solidarity (Libertad) Act within two weeks of the downing of the planes).

omy,<sup>180</sup> and subsequently encouraged further baseball defections.<sup>181</sup>

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180. See Cuban Liberty and Democratic Solidarity (Libertad) Act secs. 102, 201, 301, 22 U.S.C. secs. 6032, 6061, 6301 (1996) (enacting a policy to strengthen international sanctions against the Castro government, promote a democratic Cuba, protect the property rights of United States nationals, and exclude certain aliens involved in the confiscation or trafficking of property owned by a United States national). Title I codifies the existing embargo on Cuba, in effect until a democratic transition occurs in Cuba. See *id.* Title II authorizes assistance for a democratic transition by providing food and medical supplies for the Cuban people. See *id.* Title III enables a United States national to sue persons that knowingly benefit from use of confiscated American property. See *id.* Title IV denies visas to aliens who confiscate or traffic in such property confiscated from Americans. See *id.*; Cuban Democracy Act of 1992, 22 U.S.C. sec. 6001 et. seq. (using sanctions against Cuban government and contacts with the Cuban people to spur democratic transition and economic growth in Cuba); see also MICHAEL RANNEBERGER, TULANE SPEECH ON CUBAN TRANSITION PROCESS (Nov. 9, 1998) (*reprinted in* USIA: THE UNITED STATES AND CUBA 3 (visited Mar. 27, 1999) <<http://www.usia.gov/regional/ar/us-cuba/ran9.htm>> (explaining that the United States emphasis on supporting the Cuban people stems from the passage of the Cuban Democracy Act). Accordingly, the United States seeks to increase the information exchanged with the Cuban people, promote people-to-people contacts, and encourage independent groups to advance such interactions. See *id.* The Cuban Democracy Act established sanctions against nations that assist Cuba, increased restrictions on humanitarian aid, restricted remittances to Cubans, and refused entry to any vessel that visited Cuba in the last 180 days. See *U.S.-Cuba Commission: U.S.-Cuba History*, *supra* note 176; see also Cuban Democracy Act sec. 3(7). The United States will maintain sanctions on the Castro government until it moves towards greater democratization and respects human rights. See *id.* Carefully weighed reductions in sanctions will take place once the Castro government makes positive changes. See *id.*; *A Report On the Immediate Impact of The Cuban Liberty & Democratic Solidarity Act (Libertad)* (last modified July 12, 1996) <<http://canfnet.org/english/press/e960712a.htm>> [hereinafter *Report on Libertad*] (discussing the retarding effect of United States legislation on foreign investment in Cuba). Many international companies either ended operations or are reassessing their operations in Cuba since the enactment of the Helms-Burton Act). See *generally supra* note 4 and accompanying text (discussing the purpose of the Helms-Burton Act within the overall history of the United States embargo against Cuba). The Helms-Burton Act strengthens the Cuban Democracy Act of 1992 by increasing international pressure on the Castro government to create democratic change and improve its human rights record. See STUART EIZENSTAT, Under Secretary of State for Economic, Business, and Agricultural Affairs, HELMS-BURTON TITLE III WAIVER (July 16, 1998), *reprinted in* USIA: THE UNITED STATES AND CUBA (visited Mar. 27, 1999) <<http://www.usia.gov/regional/ar/us-cuba/eizen16.htm>> (discussing President Clinton's decision to suspend Title III of the Helms-Burton Act in an effort to hasten a democratic transition in Cuba); see *generally also Fact Sheet: Suspension of Title III 'Libertad' Provisions*, USIS WASHINGTON FILE (last modified Jan. 19, 1999) <<http://www.usia.gov/regional/ar/us-cuba/fact199.htm>> (explaining that the President suspended Title III of the Helms-Burton Act to fur-

Unlike Jackie Robinson's pioneering entry into MLB, that eventually enabled societal changes regarding race relations,<sup>182</sup> the legislative developments following Arocha's arrival additionally aggravated the relations between the United States and Cuba.<sup>183</sup> Ultimately, by encouraging further defections, this legislation extended animosity to the baseball diamond.<sup>184</sup>

### C. UNITED STATES-CUBA RELATIONS AND THE "EL DUQUE" MODEL

Whether through direct or indirect methods, during the past forty years the United States repeatedly attempted to depose Fidel Castro.<sup>185</sup> By defiantly retaining power, the Castro government infuriates the powerful Cuban-American lobby<sup>186</sup> and the United States government because of its communist ideology, rampant human rights

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ther develop a coherent multilateral effort to promote democracy and human rights within Cuba).

181. See *supra* notes 82, 96-123 and accompanying text (explaining the defections of other Cuban baseball players, and how better economic opportunities in MLB encouraged the defections).

182. See Devine, *supra* note 150, at 489 (stating that after Jackie Robinson's entry into MLB, both the President and Congress implemented changes designed to improve race relations in the United States).

183. See *Report on Libertad*, *supra* note 180 (noting that the Castro regime abhors the Helms-Burton Act). Castro seeks to rally global opposition to the law because it harms Cuba's economy by depriving it of international investment); see also *U.S.-Cuba Commission: U.S.-Cuba History*, *supra* note 176 (explaining Castro's successful efforts to create international opposition to the Helms-Burton Act and the United States embargo). For the seventh consecutive year, the United Nations General Assembly drafted a resolution calling for an end to the embargo. See *id.*

184. See Borden, *supra* note 76, at 3B (emphasizing that the success and notoriety achieved by Cuban baseball defectors infuriates Castro).

185. See Kiger, *supra* note 3 *passim* (discussing the various attempts of the United States to depose Castro, including military invasion, assassination, and the evolving economic embargo); see also Pascal Fletcher, *Cuba Claims Record Number of Anti-Castro Plots*, REUTERS NEWS SERVICES, July 19, 1999 (disclosing Cuba's assertions that the United States attempted to assassinate Fidel Castro 637 times in the last 40 years). See generally *Where Are We Heading?*, *supra* note 9, at 2-4 (Statement of Jorge Mas) (calling for the United States to strengthen efforts to depose Castro).

186. See *Where Are We Heading?*, *supra* note 9, at 2-4 (Statement of Jorge Mas) (discussing CANF's role in formulating the United States policy towards Cuba).

abuses,<sup>187</sup> and the visceral issue of confiscated American property.<sup>188</sup> After Arocha's defection, the hostile relations between the United States and Cuba further extended this bilateral animosity to the world of baseball by producing the "El Duque" model.

The poor economic conditions within Cuba, exacerbated by the lack of Soviet assistance<sup>189</sup> and the strengthened United States embargo,<sup>190</sup> increased the allure of MLB's skyrocketing salary structure<sup>191</sup> for Cuban baseball players.<sup>192</sup> To immediately obtain these ap-

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187. See *Cuba Country Report on Human Rights Practices for 1998*, United States Department of State, Bureau of Democracy, Human Rights, and Labor (last modified Feb. 26, 1999) <<http://www.usia.gov/regional/ar/us-cuba/hr98.htm>> (indicating Cuba's dismal human rights record that includes systematic violations of Cubans' civil and political rights); see also *Where Are We Heading?*, *supra* note 9, at 2-3 (statement of Michael Ranneberger) (discussing United States' efforts to compel Cuba to improve upon human rights conditions through economic sanctions and people-to-people contacts). But see Nidia Diaz, *Helms-Burton Act's Third Anniversary: Economic and Political Warfare is Continuing and Becoming More Brazen* (visited Mar. 3, 1999) <<http://www.granma.cu/granma/ingles/marzo3/alarcon-i.html>> (contending that Cuba's recent legislation is an effort to protect Cuba's sovereignty and independence from the hostile United States). Cuba also castigates the United States for its own human rights abuses. See *id.* See generally U.N.H.R.C., 55th Sess., 50th mtg., U.N. Doc. HR/CN/99/54 (1999) (expressing the Commission on Human Rights' displeasure with the adoption of the Law for the Protection of National Independence and Economy of Cuba and other repressive measures regarding Cuba's human rights situation).

188. See *Where Are We Heading?*, *supra* note 9, at 5 (statement of Michael Ranneberger) (discussing the animosity generated by the Cuban government's confiscation and use of American property). See generally *supra* note 4 and accompanying text (discussing the enactment of the Helms-Burton Act and the provisions that penalize persons dealing with confiscated American property within Cuba).

189. See *supra* notes 78-79 and accompanying text (noting how the cessation of Soviet assistance to Cuba exacerbated the economic conditions of Cuban baseball).

190. See *supra* note 180 and accompanying text (discussing the Cuban Democracy Act of 1992, as well as the Helms-Burton Act, which strengthened the United States embargo against Cuba).

191. See Lockwood, *supra* note 140, at D5 (indicating the disparity between wealthy and less profitable teams); see also *Yankees Payroll Tops \$85 M*, *supra* note 177 (discussing the rise in MLB salaries).

192. See Bjarkman, *Cuba: Four Decades*, *supra* note 15, at 31 (discussing the appeal of large salaries to Cuban baseball players). See generally *supra* notes 110-133 and accompanying text (describing how the "El Duque" model makes large salaries available).

pealing salaries or play in front of a Cuban-American crowd,<sup>193</sup> however, players must follow the “El Duque” model and defect to a third country.<sup>194</sup> The internal Cuban and MLB policies, which stem from poor bilateral relations, leave defecting Cuban players without any feasible alternatives to this mode of Cuban baseball player immigration.<sup>195</sup> Consequently, the “El Duque” model continues to taint the common ground between the United States and Cuba because of its circuitous path around the laws that compelled its creation.<sup>196</sup>

Instead of continuing to allow this method of immigration to make baseball yet another area that fuels the burning animosity between the United States and Cuba, implementing significant changes regarding the “El Duque” model can allow baseball to bring the two nations closer together.<sup>197</sup> Recent developments indicate a willingness to utilize baseball in this direction.<sup>198</sup>

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193. See *supra* note 144 and accompanying text (maintaining that Cuban baseball defectors frequently choose to play for MLB teams with a Cuban-American fan base).

194. See *supra* notes 108-133 and accompanying text (detailing Joe Cubas' efforts to assist Cuban baseball defectors, and how the “El Duque” model allows them to sign large free-agent contracts by sending them to establish residency in a third country).

195. See *supra* note 15 and accompanying text (discussing Castro's ban of professional sports); see Kuhn Directive, *supra* note 69, at 1 (prohibiting the signing of players within Cuba).

196. See *supra* note 180 and accompanying text (discussing both the Cuban Democracy Act of 1992 and the Helms-Burton Act, which further compounded the economic problems of Cuban baseball and encouraged defections); see also *supra* notes 82-86 and accompanying text (relating Cuban defections); *supra* notes 124-126 and accompanying text (discussing the manner in which the “El Duque” model circumvents Castro's 1960 ban, the Kuhn Directive, the CAA, and how such baseball defections harm United States-Cuba relations).

197. See Boswell, *supra* note 85, at D1 (emphasizing the importance of baseball within Cuba); *infra* notes 214-266 and accompanying text (discussing the importance of baseball within both nations, and the proposals of an effective Baseball Diplomacy that can ameliorate bilateral relations).

198. See Lippman, *supra* note 5, at A1 (discussing the use of the Orioles-Cuban National Team series as a way to increase contacts between the Cuban and American people).

#### D. A NEW HOPE: UNITED STATES-CUBA RELATIONS THE ORIOLE WAY

In addition to other efforts that increased contacts with the Cuban people,<sup>199</sup> the exhibition games between the Orioles and the Cuban National team illustrated baseball's power to bring the Cuban and American people closer together.<sup>200</sup> Although both nations asserted that the games only represented people-to-people contacts, and not an attempt to normalize relations,<sup>201</sup> the potential exists for baseball to forge closer ties between the two nations without abandoning their principles.<sup>202</sup> For such an effective Baseball Diplomacy to occur,

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199. See Andrew Cawthorne, *U.S. Boats Pour Into Havana After Race from Tampa*, REUTERS NEWS SERVICES, June 1, 1999 (reporting on the record number of American boats in the Tampa Bay to Havana Cup regatta). The regatta served as part of the continuing effort to increase contacts between the Cuban and American people. See *id.*; *Philadelphia Boys Choir to Perform in Cuba*, PHILADELPHIA BOYS CHOIR AND CHORALE PRESS RELEASE, Mar. 22, 1999 (reporting that the non-profit Philadelphia Boys Choir will perform in Havana to achieve diplomacy through music); see also *U.S. Pop Stars Arrive in Cuba*, ASSOCIATED PRESS, Mar. 22, 1999, available in WL, APNEWS (discussing the Music Bridge Around the World Festival, which allowed Cuban and American musicians to collaborate in an effort to bring the two cultures closer together); see generally Andrew Cawthorne, *Cuba's Catholic Church Enjoys Easter Freedom*, REUTERS NEWS SERVICES, Apr. 4, 1999 (recognizing greater freedoms and open celebrations enjoyed by Cuban Roman Catholics after Pope John Paul II's 1998 visit).

200. See Kohm, Jr., *supra* note 2, at 1231-33 (commenting on the importance of baseball to American society); see also Baxter & Dominguez, *supra* note 15, at 12 (discussing the even greater emphasis placed on baseball in Cuban society); Lippman, *supra* note 5, at A1 (discussing the Clinton Administration's proposals for greater people-to-people contacts through the Orioles-Cuban National Team series). But see Michael E. Ruane & Scott Wilson, *Cuban Pitching Coach Defects in Baltimore: Ex-Player Sought Help After Orioles Game*, WASH. POST, May 5, 1999, at A1 (detailing the defection of Cuban pitching coach, and former National Team player, Rigoberto Betancourt Herrera, which slightly marred the exhibition series between the Orioles and Cubans).

201. See Serge F. Kovaleski, *For U.S. and Cuba, It Was Just a Game: Baseball Fosters Goodwill, No Policy Gains*, WASH. POST, Mar. 30, 1999, at A8 (stressing that United States and Cuban officials agree that the exhibition baseball games are merely people-to-people contacts and do not represent an effort to normalize diplomatic relations). State Department spokesman James P. Rubin suggested that baseball games with MLB and little league teams provided an opportunity for the Cuban people to view the diversity of America. See *id.*

202. See Pascal Fletcher, *Cuba Says Sport, Music Show Normal U.S. Ties Possible*, REUTERS NEWS SERVICES, Mar. 29, 1999 (explaining the statements of Cuban National Assembly President Ricardo Alarcon, who stated that the potential exists

however, MLB, the United States, and Cuba must eliminate the problematic "El Duque" model that exacerbates existing problems within MLB<sup>203</sup> and United States-Cuba relations.<sup>204</sup>

#### IV. EFFECTIVE BASEBALL DIPLOMACY: A DOUBLE PLAY FOR MLB AND UNITED STATES-CUBA RELATIONS

The drain of talent from Cuba to MLB provides a source of international embarrassment to Cuban President, and baseball fan, Fidel Castro.<sup>205</sup> Castro's distaste for these defections embitters United

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for a peaceful relationship between the United States and Cuba as long as it remains respectful); *see also* *Where Are We Heading?*, *supra* note 9, at 8 (statement of Michael Ranneberger) (setting forth the United States' policy that seeks to support the Cuban people while pressuring the Cuban government to change); *see id.* at 11 (statement of Otto J. Reich, President, U.S.-Cuba Business Council) (calling for creative actions to directly communicate with the Cuban people in an effort to expose the abuses of the Cuban government). *See generally* *Siena Plans Cuba Baseball Trip* ASSOCIATED PRESS, May 12, 1999, available in WL, APNEWS (explaining that Siena College recently sought the approval of the Treasury Department to play Cuban collegiate teams in Cuba to continue efforts at Baseball Diplomacy).

203. *See supra* notes 135-148 and accompanying text (explaining that under the "El Duque" model, defecting Cuban baseball players choose either to sign with teams with nearby Cuban populations, or with teams that can afford to sign them to large free agent contracts). This model exacerbates the ability of poorer MLB teams to compete because it furthers their financial disadvantage. *See id.*

204. *See* Fletcher, *supra* note 202 (explaining Alarcon's position on the possibility of more Cuban baseball players playing in MLB). According to Alarcon, Cuban players could potentially play in MLB if the United States or MLB did not pressure the players to defect. *See id.* *But see* Telephone Interview with Milton Jamail, Ph.D., University of Texas (Apr. 13, 1999) (asserting that despite Alarcon's statements, the Cuban government would be unable to deal with wealthy Cuban MLB players returning to live in Cuba).

205. *See* SAMUEL O. REGALDO, *VIVA BASEBALL!* 14 (1998) (describing Castro's interest in the 1958 World Series during his efforts to foment revolution); *see also* Lee Michael Katz & Daniela Deane, *Orioles May Step Up To Bat In Cuba - 'A Lot Of Talent' Found On Island, Sportswriter Says*, USA TODAY, Jan. 5, 1999, at 13A (describing Fidel Castro as an animated baseball fan and a former pitching prospect); *see also* Borden, *supra* note 76, at 3B (explaining that the "El Duque" model, and the efforts of Cubas personally hurt Castro); Andrew Cawthorne, *Cuba Baseball Stragglers Come Home, Pledge Loyalty*, REUTERS NEWS SERVICES, May 7, 1999 (quoting Cuban Sports Minister Humberto Rodriguez Gonzalez, who described baseball as "Fidel's sport"). *But see* Bjarkman, *supra* note 73, at 65-68 (dismissing the stories regarding Castro's pitching ability as mere myth, and em-

States-Cuba relations, and is strikingly similar to many MLB teams' distaste for the departure of free agent players to rival teams.<sup>206</sup> While the original defectors did not represent Cuba's best talent,<sup>207</sup> the subsequent defections of pitchers Osvaldo Fernandez and the Hernandez brothers illustrated that the top-tier players also desired to leave Cuba for MLB.<sup>208</sup> To prevent further defections, the touring National Team suspended several players suspected of defecting, and shuffled its roster to exclude some of the best players.<sup>209</sup> Many baseball scouts

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phasizing that MLB teams never considered him a prospect).

206. See David Schoenfield, *Success, But At What Price?* (last modified Feb. 3, 1999) <<http://espn.go.com/mlb/features/01079734.html>> (describing the inability of some teams to pay for their free agent players). Less profitable teams are resentful towards wealthier teams that sign their former players. See *id.* A compensation system, however, exists for teams that lose players to other teams via free agency. See Sean McAdam, *Looking For Answers*, (last modified Feb. 5, 1999) <<http://espn.go.com/mlb/state/solutions.html>> (discussing the MLB compensation system for teams that lose players to free agency). At the June Draft, MLB provides the compensatory "sandwich picks," which come in between the first and second round for teams that lose players as free agents. See *id.*; see also Kohm, Jr., *supra* note 2, at 1245 (setting forth the National Football League's compensation system for teams that lose players to free agency). The system provides that when a player's contract expires with one team, and that player signs with another, the new team must provide the player's former team with compensation either in the form of a draft pick, money, or additional players. See *id.*

207. See David Germain, *Cuban Baseball Players Defecting But None Are Among the Best Prospects*, DAYTON DAILY NEWS, July 14, 1993, at 6D, available in 1993 WL 5272988 (noting that many Cubans considered defecting players, such as Ordonez and others who did not start for the Cuban National Team, as second rate baseball players); Steve Wulf, *Cuba's Arms Shipment: Two of the Island Nation's Premier Pitchers Took a Walk and Are Now Striking Out on Their Own in Major League Baseball*, TIME, Mar. 11, 1996, at 77 (describing the efforts to dismiss the early defectors as disgruntled second-rate players).

208. See *id.*, at 77 (maintaining that the successful performances of defecting Cuban players made such dismissals difficult). See generally Bjarkman, *Lifting the Iron Curtain of Cuban Baseball*, *supra* note 15, at 33 (explaining that the Cuban National Team's dominance of Olympic, World Cup, and Pan American Games competitions illustrated the depth of Cuban talent). These Cuban National Teams won both Olympic gold medals, fifteen of the eighteen world amateur titles since 1969, and every Pan American Games gold medal since 1963. See *id.*, at 33-34. But see Livan's Brother: *Ace or Wild Card?* (last modified Dec. 31, 1997) <<http://www.sportingnews.com/baseball/articles/19980114/38950.html>> (claiming that defecting Cuban players, such as Rene Arocha, Osvaldo Fernandez, and Ariel Prieto enjoyed limited success in MLB).

209. See Michael E. Ruane & Scott Wilson, *Cubans Meet The Orioles In Historic Matchup: Game Seen as Tool To Ease Hostility*, WASH. POST, May 4, 1999,

claim that this drastic rearrangement represents the beginning of Castro's effort to prevent further baseball defections to America.<sup>210</sup> Rather than witness these players defect to the United States, several scouts believe that Castro will sell the rights<sup>211</sup> to the players cleared for the 2000 Olympics to the Japanese League.<sup>212</sup>

Preventing talented Cuban baseball players from competing on the National Team, or sending them to Japan, only balks at the possibility to improve the relations between the United States and Cuba through Baseball Diplomacy.<sup>213</sup> The recent changes in the embargo against Cuba indicate the United States' willingness to seek greater contacts between the people of these two nations.<sup>214</sup> Moreover, Fidel Castro's recent international agreements recognize the importance of

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at A4 (reporting that Cuba left talented shortstop German Mesa off their roster for the May 3rd game in Baltimore because of suspicions that he planned to defect); see also Maloney, *supra* note 121, at D2 (remarking that the Cuban National Team suspended pitcher Ariel Prieto because of his desire to defect); Larry Rohter, *No Joy in Cuba, as Its Baseball Team Strikes Out*, N.Y. TIMES, Nov. 3, 1997, at A41 (observing that Cuban baseball fans are confounded because some of their best players are not on the National Team roster). See generally Gonzalez Echevarria, *supra* note 13, at 386 (explaining that suspensions provide roster spots for younger players because the Cuban economy precludes expanding the number of teams).

210. See Peter Gammons, *Much Trade Talk to Contend With*, BOSTON GLOBE, July 14, 1996, Sports 56, available in LEXIS, News Library, Bglobe File (explaining the possibility that rights to Cuban players may be sold to teams in Japan after the 2000 Olympics).

211. See Bjarkman, *Cuba: Four Decades*, *supra* note 15, at 31 (speculating that Castro will sell the rights of Cuban players to other baseball leagues around the world because the Cuban League is struggling financially). See generally *supra* note 59 and accompanying text (outlining the MLB policy on retaining the rights of a player).

212. See Gammons, *supra* note 210, at Sports 56 (discussing Castro's potential strategy with his baseball players for the 2000 Olympics); see also Bjarkman, *Cuba: Four Decades*, *supra* note 15, at 31 (relaying the rumored plans about selling the rights of Cuba's best players to Japan).

213. See Brown, *supra* note 81, at 109 (explaining the politicization of Cuban baseball and Castro's efforts to use baseball as a diplomatic tool). The travelling Cuban National Team played against Nicaragua to benefit flood victims, and played against Japan to fortify the two nations' trading policies. See *id.*

214. See Statement on United States Policy Toward Cuba, *supra* note 5, at 7-8 (noting United States efforts to increase contacts between the Cuban and American people as a means of fostering better relations).

forging political and economic ties to ease Cuba's economic crisis.<sup>215</sup> Consequently, changes regarding Cuban baseball immigration can provide the impetus for creating the greater contacts and economic ties desired by both nations.<sup>216</sup> Thus, the incentive exists for Castro to permit Cubans to compete in MLB if such a policy could both rectify the deteriorating conditions of Cuban baseball,<sup>217</sup> and enable the peo-

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215. See Serge F. Kovaleski, *Cuba Rolls Out Welcome Mat To Counter Embargo's Effects*, WASH. POST, Feb. 28, 1999, at A21 (explaining Cuba's efforts to form closer ties with other nations to ease the crippling effects of the United States embargo and the disappearance of Soviet subsidies); see also Andrew Cawthorne, *Cuba Keen But Selective On Foreign Investment*, REUTERS NEWS SERVICES, May 14, 1999 (interviewing Cuban Foreign Investment Minister Ibrahim Ferradaz, who stated that Cuba attracted over \$2 billion in foreign investment during the 1990s to offset the economic crisis brought about by the termination of Soviet assistance); *British Minister Welcomes BA London-Havana Flight*, REUTERS NEWS SERVICES, Apr. 10, 1999 (discussing British Airways' new London to Havana direct flight program, which is part of an effort to increase British investment and trade relations with Cuba); *Portuguese Group Signs New Cuba Investment Deals*, REUTERS NEWS SERVICES, Apr. 10, 1999 (explaining the new bilateral trade, investment, and tourism agreements between Cuba and Portugal). But see Cuban Comm. For Human Rights v. Bank of America, No. 9915148CAO1, (Fla. Cir. Ct. filed June 24, 1999) (seeking to prevent further international investment within Cuba). This class action suit accuses 40 multinational companies of conspiring with the Cuban government to discriminate against Cuban nationals by denying them access to premises used by tourists. See Ana Aclé, *Exile Lawsuit: Foreign Firms Discriminate Against Cubans*, June 25, 1999, MIAMI HERALD, at 1B, available in LEXIS, News Library (describing that the Cuban exile groups seek to receive \$1.35 billion in compensatory damages, and desire to address the civil rights abuses within Cuba).

216. See Pascal Fletcher, *Cuba May Consider U.S. Moves If Not 'Subversive,'* REUTERS NEWS SERVICES, Feb. 18, 1999 (indicating Cuba's receptiveness to modifications of the United States embargo that increase bilateral exchanges as long as they do not occur in a way that subverts the rule of the Cuban government); see also Statement on United States Policy Toward Cuba, *supra* note 5, at 7-8 (describing that the United States implemented changes to the embargo to foster bilateral communication); cf. Robert Jablon, *U.S. Musicians to Work With Cubans*, ASSOCIATED PRESS, Feb. 15, 1999, available in WL, APNEWS (indicating the willingness to forge closer cultural ties between the United States and Cuba through the "Music Bridges Over Troubled Waters" program). Similar efforts in the former Soviet Union, Indonesia, Romania, and Ireland produced music despite the respective political differences. See *id.* But see Pascal Fletcher, *Cuba Defends Anti-Crime, Anti-Subversion Laws*, REUTERS NEWS SERVICES, Feb. 17, 1999 (characterizing the new Cuban legislation designed to check internal dissent, in light of the United States' recent changes in the embargo).

217. See *supra* notes 175-178, 205-208 and accompanying text (explaining that the deteriorating economic conditions of Cuban baseball are compounded by the defections and suspensions of potential defectors).

ple-to-people contacts needed to energize the relationship between the United States and Cuba.<sup>218</sup>

Recent statements from Cuban officials indicate a willingness by Cuba to allow its players to compete in MLB, provided that any new arrangement respects Cuban socialist sports.<sup>219</sup> Continued adherence to the "El Duque" model will only serve to intensify the many problems that stem from this model.<sup>220</sup> Adhering to a four-step process, however, can alleviate these problems, and create an effective Baseball Diplomacy to improve the quality of MLB and United States-Cuba relations.

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218. See Statement on United States Policy Toward Cuba, *supra* note 5, at 7-8 (remarking on United States' efforts to increase people to people contacts); see also Kovaleski, *supra* note 215, at A21 (stating that Cuba seeks greater economic ties to rectify its faltering economy).

219. See Luis Varela, *Cuba May Make Deal With Baseball*, ASSOCIATED PRESS, Oct. 30, 1998, available in WL, APNEWS (quoting Cuban Sports Minister Rodriguez Gonzalez' statement regarding Cuba's openness towards allowing Cuban players to join MLB); see also Fletcher, *supra* note 202 (indicating Alarcon's willingness to allow Cuban players to compete in MLB). *But see* Miguel Hernandez, *Provocative Maneuvers Denounced* (visited Aug. 6, 1999) <<http://www.granma.cu/ingles/agosto/fernandezi.html>> (relating the Cuban Olympic Committee's outrage over the recent Pan American Games). Despite winning their eighth straight gold medal in baseball, Cuban relief pitcher Danys Baez defected, which brought the total number of Cuban defectors at the 1999 Pan American games to eight. See Brian Trusdell, *Defections Is Focus at Pan Am Games*, ASSOCIATED PRESS, Aug. 3, 1999, available in WL, APNEWS (explaining that the attention afforded to these defections humiliated the Cuban delegation, and soured the international baseball climate).

220. See Baxter & Dominguez, *supra* note 15, at 12 (emphasizing that, although defecting Cuban baseball players may enjoy high salaries in MLB, they must both renounce their nation and abandon their families to receive such pay); see also *supra* notes 140-148 and accompanying text (explaining that Cuban talent increasingly becomes confined to wealthy teams, or to those cities with Cuban populations, which ultimately damages MLB's competitive balance); Rohter, *supra* note 209, at A41 (detailing that the suspensions of many talented players who are suspected of defecting aggravates the deteriorating conditions of Cuban baseball). See generally Pressley, *supra* note 126, at A1 (commenting on the use of the "El Duque" model for defection, and how recent defectors intended to embarrass Castro). See also Farrey, *supra* note 125 (providing the account of recent defector Maikel Jova, who asserts that Cuban players and fans no longer want their baseball ruined by suspensions and loans of players to other countries against their will). Jova condemns Castro and states that players no longer want to play for the Cuban President. See *id.*

## A. FIRST BASE: ENDING EXCLUSIONARY PRACTICES

To facilitate changes in Cuban baseball player immigration, MLB, Cuba, and the United States must first abandon their policies of exclusion. For this to occur, MLB must abandon former Commissioner Kuhn's 1977 Directive, which prevents MLB teams from scouting or signing Cuban players.<sup>221</sup> Such a change will bring MLB closer to Kuhn's ultimate goal of utilizing baseball to improve bilateral relations between Cuba and the United States.<sup>222</sup> In addition, Castro must remove the 1960 ban on Cubans competing in professional sports, which discourages Cuban participation in MLB.<sup>223</sup>

For the United States, however, changes in Cuban baseball immigration require neither abandoning the economic embargo against

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221. See *supra* notes 69-72 and accompanying text (discussing the 1977 Kuhn Directive); Telephone Interview with William A. Murray, *supra* note 70 (asserting that the revisions to the 1977 Kuhn Directive compelled MLB scouts to comply with the United States embargo against Cuba). Murray indicated that changes to MLB's exclusionary policy would only correlate with changes in United States' laws or policy towards Cuba. See *id.* Accordingly, the 1991 revisions to the Kuhn Directive recommended establishing "an orderly procedure" for signing and scouting Cuban players if such changes in United States laws or policy occur. See Memorandum from William A. Murray, *supra* note 70 (suggesting that the Commissioner will inform MLB teams of changes in MLB's Cuba policy if appropriate changes within United States laws or policies occur); see also H.R. 262, 106th Cong. sec. 2(a) (1999) (proposing a modified application of each of sec. 620(a) of the Foreign Assistance Act of 1961, sec. 5(b) of the Trading with the Enemy Act, and sec. 203 of the International Emergency Economic Powers Act, to allow Cuban baseball players to compete in MLB). Additionally, sec. 2(b) and (c) call for policy changes regarding the application of sec. 212(f) of the Immigration and Nationality Act and sec. 102(h) of the Helms-Burton Act to provide entry of Cuban baseball players to MLB. See generally *infra* note 225 and accompanying text (detailing how these provisions modify the United States embargo to permit the enactment of the Baseball Diplomacy Act).

222. See *supra* notes 167-173 and accompanying text (describing Kuhn's efforts to organize Baseball Diplomacy in the 1970s).

223. See Gonzalez Echevarria, *supra* note 13, at 363 (describing the effects of Castro's ban on professional sports). While Castro imposed the ban to prevent the exploitation of athletes, Cuba's baseball elite continues to receive extremely favorable treatment. See *id.* at 361-64.; see also Bjarkman, *Cuba: Four Decades*, *supra* note 209, at 14 (discussing the current state of the Cuban League). In contrast to baseball players, the Cuban government already permits volleyball and soccer stars to join professional leagues around the world. See *id.* See generally Garcia, *supra* note 83 (noting that Cuba and Japan agreed to permit pitcher Victor Mesa to compete as a professional in the Japanese league).

Cuba, nor the overall policy that seeks people-to-people contacts to hasten a democratic transition.<sup>224</sup> Such changes merely require precise modifications of portions of the embargo to permit an effective Baseball Diplomacy to begin.<sup>225</sup> These changes will indicate a will-

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224. See Statement on United States Policy Toward Cuba, *supra* note 5, at 7 (stating the United States policy to encourage people-to-people contacts between Cubans and Americans).

225. See H.R. 262, sec. 2 (calling for modifications to the United States embargo to permit Cuban baseball players to compete in MLB). The Baseball Diplomacy Act seeks to utilize sec. 620(a) of the Foreign Assistance Act of 1961, which prohibits furnishing assistance to the Cuban government. See Foreign Assistance Act of 1961 sec. 620(a)(1), Pub. L. No. 87-195, 22 U.S.C. sec. 2370 (1997). To effect this policy, the President may institute a complete embargo on all trade between the United States and Cuba. See *id.* The President may waive the prohibition on assistance for national security or humanitarian reasons. See *id.* at 620A(d); Statement on United States Policy Toward Cuba, *supra* note 5, at 7 (explaining that President Clinton's decision to increase people-to-people contacts drew from his decision to waive sec. 620(a) for the humanitarian reasons of bringing the Cuban and American people closer together). Section 2 of the Baseball Diplomacy Act also seeks to modify the application of the embargo against Cuba with respect to sec. 5(b) of the Trading with the Enemy Act. See H.R. 262, sec. 2(a) (seeking to modify the application of sec. 5(b) of the Trading with the Enemy Act so that it will not interfere with permitting the immigration of Cuban baseball players); Trading with the Enemy Act of 1917 sec. 5(b), Pub. L. No. 65-91, amended by 50 U.S.C. sec. 1601, Pub. L. No. 95-223 (1977) (empowering the President to prohibit, regulate, or investigate residents of either the United States or Cuba who conduct transactions within Cuba). Enabling Cuban baseball players to sign contracts with MLB teams will insure that MLB makes these players comply with sec. 5(b), which calls for compulsory testimony and document production by residents of either nation in regards to such transactions. See *id.* See generally *infra* notes 227-234 and accompanying text (calling for the application of an orderly system that exposes Cuban players to the June Draft, and permits these players to sign contracts with MLB teams). The Baseball Diplomacy Act also calls for modifications in the application of sec. 203 of the International Emergency Powers Act. See H.R. 262 *infra* note 252, sec. 2(a) (seeking to forestall the application of sec. 203 of the International Emergency Powers Act from preventing the enactment of the Baseball Diplomacy Act); International Emergency Economic Powers Act sec. 203, Pub. L. 95-223, 50 U.S.C. sec. 1701 (granting the President the authority to require persons conducting transactions with Cuba to maintain and produce documentation detailing their transactions). Furthermore, the President may regulate the donations of articles and materials intended to relieve human suffering if such donations impair or undermine the President's ability to maintain the embargo against Cuba). This section applies to the Cuban baseball players who will return to Cuba with money from MLB, and their possible efforts to contribute to the welfare of Cuban society. See generally Telephone Interview With Milton Jamail, *supra* note 194 (explaining the potential inability of the Cuban government to cope with rich and famous Cuban baseball players who return to their homeland and seek to assist

ingness to allow Cuban baseball players to join MLB, and allow Baseball Diplomacy to reach First Base.

## B. SECOND BASE: DRAFTING CUBAN PLAYERS

To remain close to the Cuban government's desire to respect the principles of Cuban sports<sup>226</sup> and to bolster the competitive balance

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their countrymen). Additionally, the Baseball Diplomacy Act seeks to modify the application of sec. 515.564 of Title 31, of the Code of Federal Regulations to permit Cuban baseball players to return to Cuba with their earnings from MLB. *See* H.R. 262 *infra* note 252, sec. 2(a)(1) (seeking to preclude the application of Cuban Assets Control Regulations from preventing the enactment of the Baseball Diplomacy Act); Cuban Assets Control Regulations, 31 C.F.R. sec. 515.564 (1994) (prohibiting the authorization of any property or financial assistance to blocked accounts within Cuba, and generally detailing the requirements that permit basic travel and remittances to Cuba); *see generally* Statement on United States Policy Toward Cuba, *supra* note 5 (increasing the amount of remittances by U.S. residents to specific Cuban nationals from \$500 to \$1,200 a year). Modifying the application of the Cuban Assets Control Regulations to permit Cuban players to return to Cuba with their earnings would appease Alarcon, who claims that these regulations prevent Cuban players from joining MLB. *See* Garcia, *supra* note 83 (remarking that with the current application of the Cuban Assets Control Regulations, Cuban MLB baseball players who conducted transactions in Cuba would encounter stiff fines and jail sentences upon their return to the United States). *But see* Telephone Interview With Milton Jamail, *supra* note 194 (arguing that by blaming the statute, Alarcon seeks to avoid discussing Cuba's fears of celebrated rich baseball players, further exposing the dichotomy between the freedom of opportunity in America and the Castro regime's faltering economy). Additionally, sec. 2(b) of the Baseball Diplomacy Act anticipates the authority granted in sec. 212(f) of the Immigration and Nationality Act that can prevent Cuban baseball players from receiving the visas necessary to compete within MLB. *See* H.R. 262 *infra* note 252, sec. 2(a)(1) (seeking to impede the application of sec. 212(f) of the Immigration and Nationality Act from preventing the enactment of the Baseball Diplomacy Act); Immigration and Nationality Act sec. 212(f) (as amended by 8 U.S.C. sec. 1182(f), 1185(a)(1)) (authorizing the President to suspend the entry of any class of aliens as he may deem appropriate). Finally, the Baseball Diplomacy Act seeks to prevent the codified economic embargo against Cuba from inhibiting Cuban baseball players from improving bilateral relations. *See* H.R. 262 *infra* note 252, sec. 2(c) (explaining that the Baseball Diplomacy Act applies notwithstanding sec. 102(h) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996); *see* Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 sec. 102(h), 22 U.S.C. 6021 (strengthening the economic embargo against Cuba by codifying it into law). *See generally supra* note 180 (detailing the provisions of the LIBERTAD Act).

226. *See supra* note 219 and accompanying text (reporting that Cuban officials would allow Cuban players to join MLB as long as the method used does not promote defection or violate principles of Cuban sports).

within MLB, Baseball Diplomacy requires further proactive efforts. Accordingly, MLB must implement a system that exposes Cuban players who desire to play in MLB to the June Draft, instead of allowing these players to follow the "El Duque" model.<sup>227</sup> Drafting Cuban players will comply with Kuhn's desire to establish an orderly system that allows for the fair distribution of Cuban players.<sup>228</sup> Such a change will spread the rich Cuban talent around the thinning MLB rosters, and instill pride in the hearts of Cubans throughout the northern hemisphere.<sup>229</sup> Moreover, drafting Cuban players will allow poorer MLB teams to acquire some of the best international talent that they currently cannot obtain.<sup>230</sup> Consequently, drafting Cuban

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227. See *supra* notes 92-128 and accompanying text (explaining the various models of Cuban entry into MLB, including the utilization of the June Draft to absorb players such as Alvarez and Fernandez in 1994). Changing MLB's Rules to expose Cuban players in the June Draft will also eliminate the need to apply the provisions of the CAA to Cuban players, since obtaining residency will no longer pose a problem. See *supra* notes 74, 89-92 and accompanying text (explaining the applicability of the CAA to Arocha's defection). Moreover, this may lead to a more equitable application of the CAA to non-athlete defectors. See Moffett, *supra* note 122 (explaining that Cuban baseball players receive favorable treatment over the already politically favored group of Cuban immigrants who rely on the CAA).

228. See Kuhn Directive, *supra* note 69, at 1 (expressing Kuhn's desire to establish a fair system, which enables all MLB teams to gain access to Cuban players).

229. See Peter Bjarkman, *Dandy, Sandy, and the Summer of '65*, ELYSIAN FIELDS Q., Winter 1998, at 49-51 (describing the career of Jewish three time Cy Young Award winner, Sandy Koufax); Scott Bordow, *In Cubs' Camp, Same Old Sammy: NL MVP Remains Enthusiastic, Gracious After Busy Offseason*, WASH. POST, Mar. 2, 1999, at D4 (describing the charitable and diplomatic efforts of Dominican 1998 National League MVP, Sammy Sosa); see also *Martinez Bids Farewell*, WASH. POST, Feb 7, 1999, at D2 (reviewing the career of Nicaraguan pitcher Dennis Martinez, who holds the record for most wins by a Latin American pitcher). Allowing such a draft can enable Cuban players to receive accolades from their fellow countrymen, much the same way Sandy Koufax, Sammy Sosa, and Dennis Martinez receive support from their respective religious, national, or ethnic groups. See *id.* Moreover, such a Cuban draft provides a creative avenue to increase people-to-people contacts between the Cuban and American people. See *Where Are We Heading?*, *supra* note 9, at 8 (statement of Michael Ranneberger) (discussing that the implementation of the United States' Cuba policy requires creative ways to maintain pressure on the Cuban government for democratic changes, while seeking to promote contacts between the people of the two nations).

230. See *supra* notes 136-148, 153 and accompanying text (explaining the difficulty that poor MLB teams encounter when attempting to sign the best international players); see also McAdam, *supra* note 206 (calling for a world-wide draft to allow all MLB teams the same chance to obtain the world's best talent).

players will provide the opportunity for these teams to enjoy increased fan support, media interest, attendance levels, and television and radio ratings that can buoy their financial solvency.<sup>231</sup>

To do so, MLB must amend both Rule 4(a) and Rule 3(a)(1) to permit the drafting of Cuban players, and allow these newly drafted players to sign contracts with the teams that draft them. An amended Rule 4(a) should read, "For purposes of this Rule 4, 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. *Additionally, for the purposes of this Rule 4, a player may be eligible to sign if said player resides within the Republic of Cuba.*"<sup>232</sup> Moreover, Rule 3(a)(1)'s provisions for the First-Year Draft should include this amended language to enable the signing of Cuban players.<sup>233</sup>

Drafting Cuban baseball players, however, will not deprive these players of the ability to command large contracts. In fact, the amendments will allow Cuban players to be treated like all the other MLB players who are entitled to salary arbitration after three years of service within MLB, and who can obtain free agency after six years with the same team.<sup>234</sup> The drafted Cuban baseball players will

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McAdam's admirable draft proposal will allow players from Asia, Australia, and Europe to enter MLB, but lies beyond the scope of the Baseball Diplomacy advocated in this paper. *See id.*

231. *See* Martin J. Greenberg & James T. Gray, *Citizenship Based Quota Systems In Athletics*, 6 MARQ. SPORTS L.J. 337, 337-39 (1996) (recognizing the benefits that foreign players can provide for sports leagues). *See generally supra* note 15 and accompanying text (discussing the popularity of Cuban baseball stars in MLB history).

232. *See* Major League Baseball Rules, *supra* note 50, Rule 4(a) (determining which baseball players are eligible for the June Draft [Additions are indicated in italics]).

233. *See* Major League Baseball Rules, *supra* note 50, Rule 3(a)(1). The amended language of this Rule should read: "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. *Additionally, for the purposes of this Rule 4, a player may be eligible to sign if said player resides within the Republic of Cuba.*" (Additions are indicated in italics).

234. *See* Kohm, Jr., *supra* note 2, at 1253 (arguing that changes in collective bargaining rendered MLB's reserve clause, which previously indentured players to one team for their careers, moot). Now, players can achieve free agency after six

receive these conditions as well. Drafting Cuban players, therefore, will allow Baseball Diplomacy to move halfway towards its goals, and advance to Second Base.

### C. THIRD BASE: A CUBAN CONTRACT TAX TO SUPPORT CUBAN BASEBALL

To support the Cuban League that will provide MLB with Cuban talent, MLB should impose a moderate tax on teams that sign Cuban players. Much like the payroll and player salary taxes that go to baseball's central revenue fund,<sup>235</sup> MLB teams should pay a tax on the contracts signed by Cuban players into a MLB fund designed to support both the Cuban baseball infrastructure,<sup>236</sup> and the Cuban scouting efforts of all thirty MLB teams.<sup>237</sup> This tax will apply to those Cuban players that continue to pursue the "El Duque" model, as well as Cuban players that naturally become free agents after six seasons with the same team. If a 2.5% tax<sup>238</sup> exists the next time a

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years of service and improve their contracts through salary arbitration. *See id.*

235. *See* Staudohar, *Salary Caps in Professional Sports*, *supra* note 142, at 8-9 (explaining MLB's luxury and player salary tax systems, which utilize funds from both wealthy teams and player salaries to help poorer teams).

236. *See* Green, *supra* note 14 (reporting that proceeds from the Orioles-Cuban National Team exhibition series will be used to support baseball and other sports in the United States and Cuba). The enactment of a Cuban player salary tax pursuant to the Foreign Assistance Act of 1961 would also assist Cuban baseball. *See* Foreign Assistance Act of 1961 sec. 620A(d), 22 U.S.C. sec. 2370 (1997). The President may waive the prohibition on assistance to Cuba for humanitarian purposes, such as forging greater people-to-people contacts sought by the Baseball Diplomacy Act. *See id.* A tax on Cuban baseball imposed in order to encourage such contacts would comport with the humanitarian purposes of the waiver provision of the Foreign Assistance Act. *See id.* Moreover, because the taxed funds would be solely controlled by MLB and not used to assist the Cuban government, the humanitarian waiver will not denigrate the ultimate intent of the law to promote democratization. *See id.* Finally, such a tax that assists Cuban baseball will comply with the Cuban government's desire to attract foreign investment. *See* Cawthorne, *supra* note 215 (explaining Foreign Investment Minister Ferradaz' desire to attract foreign investment to counter Cuba's economic crisis).

237. *See supra* notes 64, 141 and accompanying text (detailing the inability of several MLB teams to adequately conduct international scouting efforts, which will be rectified by the establishment of a Cuban player contract tax to support international scouting within Cuba).

238. *See* Staudohar, *Salary Caps in Professional Team Sports*, *supra* note 142, at 9 (noting that under the 1996 collective bargaining agreement, a 2.5% tax on in-

Cuban player like "El Duque" signs a \$6.6 million contract, that player's team will pay \$150,000 into a MLB fund that supports Cuban baseball and the scouting efforts of all MLB teams within Cuba.<sup>239</sup> Thus, while the United States will absorb talented Cuban players, the success of these players will assist the development of future Cuban stars by improving the infrastructure of Cuban baseball through better equipment and training.<sup>240</sup> This money will not go to the Cuban government,<sup>241</sup> but rather will remain under the auspices of MLB while directly going to the Cuban people through baseball.<sup>242</sup>

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dividual player salaries is contributed to MLB's central revenue fund to assist small-market teams). Under this Third Base proposal, the 2.5% Cuban player salary tax will assist the Cuban baseball infrastructure.

239. See Gonzalez Echevarria, *supra* note 13, at 47-49 (explaining that in 1947, the former Cuban League signed an agreement with the National Association of Professional Baseball Leagues, the organization that oversaw minor league baseball in the United States, to ultimately supply MLB with Cuban talent). Despite subsequent problems for the Cuban League, this agreement provides at least a pre-revolutionary precedent for the Third Base proposal to establish a MLB presence in Cuba.

240. See Brown, *supra* note 81, at 109 (identifying the Cuban government brand *Batos*, which makes Cuban baseball equipment). Money from MLB can provide Cuban baseball with the latest technologies and advances in equipment. See generally Baxter & Dominguez, *supra* note 15, at 12 (explaining that shortages caused by the lack of Soviet sponsorship makes the rather respectable Cuban baseball equipment industry suffer).

241. See Green, *supra* note 14 (stressing that receipts from the Orioles-Cuban National Team exhibition series will fund Cuban baseball and other sports activities, not the Castro regime).

242. See Peter Bjarkman, *Best and Worst of Times in Cuban League*, INT'L BASEBALL RUNDOWN, Oct. 1998, at 14 (emphasizing that Cuba's dire economic conditions led to a drop in attendance for Cuban League games). Since the faltering of Cuba's economy, the Cuban League began charging an admission fee for games, whereas previously all games were free. See *id.* Additionally, Cuba's poor economy makes transportation to baseball games difficult. See *id.*; see also Ben Walker, *Big League Baseball Returns to Cuba*, ASSOCIATED PRESS, Mar. 27, 1999, available in WL, APNEWS (explaining that a box seat ticket for a Cuban baseball game now costs about 10¢, while the average monthly income in Cuba is about \$11). Creating a Cuban baseball fund that draws taxes from the contracts of MLB's Cuban players can improve these conditions, and allow the Cuban people to enjoy the baseball in Cuba, while rooting for their countrymen in MLB. See generally Peter Bjarkman, *Cuba: Four Decades*, INT'L BASEBALL RUNDOWN, Sept. 1998, at 15 (reviewing the changing structure of the Cuban League, and describing that the season stretches from early November to late April). Players that depart Cuba to play in MLB could feasibly come back to Cuba to participate in the Cuban League's season since the length of the respective seasons barely overlap. See *id.*

Additionally, this tax can provide Castro the opportunity to redirect funding previously earmarked for Cuban baseball<sup>243</sup> towards alleviating the rampant conditions of poverty that plague the Cuban people.<sup>244</sup>

Enacting the policies of Baseball Diplomacy from First to Third Base will decrease the incentives for Cuban players to follow the "El Duque" model.<sup>245</sup> Moreover, the economic reasons for players to defect will dissipate.<sup>246</sup> Although some Cuban players may still seek to immediately command lucrative contracts under the "El Duque" model, most of the Cuban talent will still remain available to the majority of MLB teams through the Draft.<sup>247</sup> Such a draft system will not eliminate the dichotomy between rich and poor teams. It will, however, afford poorer teams access to Cuban players by allowing them to scout, draft, and trade these players for greater financial and competitive success.<sup>248</sup> Thus, a Cuban Draft and a tax on Cuban con-

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Thus, Cuban players could assume a player-ambassador role by playing in the Cuban League for their winter baseball assignments from MLB.

243. See Robb, *supra* note 83, at C4 (discussing the defection of Arocha, and the favorable treatment afforded to Cuban players by the Castro government). Roberto Valdes Perez, sports director for the Cuban town of Regla, said that the Cuban government provides higher salaries and special treatment that begins at age eight for Cuban baseball players. See *id.*

244. See Hernandez, *supra* note 3, at A24 (describing the poor economic conditions within Cuba).

245. See *supra* notes 124-132 and accompanying text (discussing the "El Duque" model and its appeal to Cuban baseball players).

246. See *supra* notes 83-84 and accompanying text (conveying the reasons behind the defections of Cuban baseball players).

247. See *supra* notes 108-133 and accompanying text (concluding that adherence to the "El Duque" model can result in large free-agent contracts prior to competing in MLB). By contrast, the Baseball Diplomacy proposals will enable Cuban players to gain the possibility of a large free agent contract after six seasons in MLB. See Kohm, Jr., *supra* note 2, at 1253 (asserting that players can achieve free agency after six years of service with the same team, and can improve their contracts through salary arbitration). Moreover, Baseball Diplomacy permits Cuban baseball players to directly move to the United States to play MLB, as opposed to the circuitous path of the "El Duque" model, which requires establishing residency in a third country. See *supra* notes 113-114 and accompanying text (asserting that for the "El Duque" model to work, it requires establishing residency in a third nation other than Cuba and the United States).

248. See *supra* notes 137-142, 145-147 and accompanying text (detailing the conditions that make it difficult for poor MLB teams to compete). Baseball Diplo-

tracts supporting the Cuban baseball infrastructure will assist the struggling economies of both MLB and Cuban baseball, and will enable Baseball Diplomacy to safely move to Third Base.

#### D. HOME PLATE: CHANGING UNITED STATES IMMIGRATION LAWS

These changes by MLB and Cuba, however, will not succeed unless efforts begin at home. The United States must change its immigration policies to look beyond the current Cuban communist government, and instead seek to reach out to the Cuban people through baseball.<sup>249</sup> Prior to the enactment of the Helms-Burton Act<sup>250</sup> and the establishment of the "El Duque" model, New York Congressman Jose Serrano first introduced legislation designed to permit Cuban baseball players to play in the United States.<sup>251</sup> In the 106<sup>th</sup> Congress,

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macy will attempt to rectify these problems. *See supra* notes 227-247 and accompanying text. The first three steps of Baseball Diplomacy seek to rectify MLB's competitive imbalance. *See id.*

249. *See* Wasem, *supra* note 74 (detailing the CAA, and indicating the United States' willingness to absorb Cuban defectors); *see also supra* note 121 (detailing the United States' efforts to allow Cubans to legally migrate to the United States); *Where Are We Heading?*, *supra* note 9, at 2-5 (statement of Michael Ranneberger) (discussing the United States policies of maintaining pressure on the Cuban government for democratic changes, seeking to promote contacts between the people of the two nations, and working with the Castro government in migration and law enforcement issues). *But see supra* notes 3, 11 (discussing the vociferous Cuban-American opposition to any efforts to change the United States policy towards Cuba as long as Castro remains in power). *See generally* Douglas Farah, *Cuba Wages A Lonesome Drug War: Congressional Stance Hampers U.S. Role*, WASH. POST, May 25, 1999, at A1 (detailing Cuba's efforts to prevent drug trafficking, and Congressional resistance to cooperate with the Castro regime in the war against drugs). Despite efforts by Barry McCaffrey, the Clinton Administration's director of national drug control policy, and pleas from the Department of Justice, the Drug Enforcement Administration, and the Coast Guard, Congressional opposition prevents any greater coordination between the United States and Cuba in stemming drug trafficking through Cuba. *See Id.*

250. *See* Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 sec. 102, 22 U.S.C. sec. 6032 (1996) ("Helms-Burton Act") (enacting a policy towards Cuba that seeks to strengthen international sanctions against the Castro government). The Helms-Burton Act also seeks to assist a democratic Cuba. *See id.* at sec. 201, 22 U.S.C. 6061. Additionally, it endeavors to protect the property rights of United States nationals. *See id.* at sec. 301, 22 U.S.C. 301.

251. *See* H.R. 9, 105th Cong. sec. 1 (a)(1)(1997) (providing the original language of Serrano's legislation); *see also* Congressman Jose E. Serrano, *Serrano's Bill Would Open Doors W/ Cuba Through Sports*, NEWS RELEASE, Nov. 5, 1997

this legislation, House Bill 262, remains before the House Subcommittee on Immigration and Claims.<sup>252</sup> Serrano based the aptly titled "Baseball Diplomacy Act" on the ability of sports to unite people from various backgrounds,<sup>253</sup> and provides the impetus for an effective Baseball Diplomacy.

By passing such legislation, Congress will illustrate that the United States no longer will force Cuban baseball players to defect in order to compete in MLB.<sup>254</sup> Moreover, passage of House Bill 262 will illustrate a dynamic approach to United States-Cuba policy by increasing people-to-people contacts<sup>255</sup> through baseball player immigration. Additionally, by permitting targeted modifications in the application of the United States embargo to allow the immigration of Cuban baseball players, House Bill 262 will not drastically depart from the overall United States policy to pressure the Castro government.<sup>256</sup> Subsequent versions of Serrano's proposed legislation, however, should amend Section 1(a)(1) to provide "O-1" or "P-1" visas for Cuban players instead of the current language that calls for pro-

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(discussing the original introduction of the legislation, and proclaiming the benefits of Congressman Serrano's legislation).

252. See H.R. 262, 106th Cong. (1999). See generally H.R. 262, *Detailed Legislative Status*, (visited Apr. 14, 1999) <<http://thomas.loc.gov/cgi-bin/bdqu. . /-bd8yaF:@@L/bss/d106query.html>> (explaining that on February 25, 1999, the Committee on International Relations referred H.R. 262 to the Subcommittee on Immigration and Claims).

253. See H.R. 262, 106th Cong. (1999) (explaining that Serrano's legislation seeks to engage Cubans through the beloved medium of baseball); see also *supra* note 16 and accompanying text (describing the ability of sports in general, and baseball in particular, to effectively unite people of different cultures).

254. See *Bill to Allow Cubans to Play Without Defecting*, BUFF. NEWS, Nov. 2, 1998, at 20S, available in LEXIS, News library (explaining that Serrano's legislation intends to enable Cuban players the chance to play in MLB without defecting).

255. See *Where Are We Heading?*, *supra* note 9, at 2-5 (statement of Michael Ranneberger) (detailing the United States policy of promoting contacts between the people of Cuba and the United States in an effort to cause a democratic transition within Cuba); see also *id.*, *supra* note 9, at 11-12 (statement of the Honorable Otto J. Reich) (calling for creative actions to directly communicate with the Cuban people in an effort to both expose the abuses of the Cuban government, and liberate the Cuban market for American businesses).

256. See *supra* note 225 and accompanying text (detailing the provisions within the United States embargo against Cuba that require a modified application to permit the immigration of Cuban baseball players).

viding "H-2B" visas.<sup>257</sup> Authorizing the appropriate "O" or "P" visas for players and their families will diminish the difficulty of playing in the United States, and will eliminate the need to defect.<sup>258</sup> Furthermore, allowing Cuban baseball players to receive "O" or "P" visas will allow these players to enter the United States the same way as other foreign baseball players.<sup>259</sup>

Admittedly, preventing the Castro government from seizing the salaries of these players may prove difficult. Undoubtedly, supporters and members of the Cuban-American lobby will seek to prevent enactment of House Bill 262 because of their opposition to any interaction with Castro, and because of the possibility that the Cuban President may benefit by seizing the player's salaries.<sup>260</sup> Implementing this legislation, however, will provide the first step towards allowing a Draft that will display Cuban talent throughout MLB.<sup>261</sup> Coupled with a tax on Cuban contracts that will support Cuban baseball, the incentives for seizing players' salaries will diminish.<sup>262</sup>

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257. See H.R. 9, 105th Cong. sec. 1(a)(1)(1997) (providing the original language of Serrano's legislation); see also *supra* note 21 and accompanying text (explaining the original application of "H-2B" visas for foreign athletes, and the modifications that permitted "O" and "P" visas).

258. See *supra* notes 23-49, 61-65 and accompanying text (discussing the applicability of "O" and "P" visas for Cuban baseball players and their families).

259. See *supra* notes 19-49 and accompanying text (discussing the applicability of the "O" and "P" visas for foreign baseball players).

260. See Kiger, *supra* note 3, at 76 (detailing the financial sway of CANF and those involved with Cuban-American activities); see also *supra* note 11 and accompanying text (discussing CANF and Cuban-American opposition to Baseball Diplomacy because of fears that it legitimizes the horrid human rights abuses of the Castro government). But see Al Kamen, *In The Loop: Diamonds Are A Protest's Best Friend*, WASH. POST, May 7, 1999, at A37 (asserting that Jose Cardenas, Washington director of CANF, attended the Orioles-Cuba game in Baltimore, possibly signaling support for an effective Baseball Diplomacy that does not strengthen the Castro regime).

261. See *supra* notes 229-234 and accompanying text (describing the proposal to implement a draft of Cuban baseball players); see also *supra* note 225 and accompanying text (detailing the provisions of the United States embargo against Cuba requiring modifications to enable the Second Base proposals of Baseball Diplomacy to take place).

262. See *supra* notes 236 and accompanying text (discussing the proposal to tax the contracts of Cuban baseball players to provide funds for the Cuban League); see also *supra* note 225 and accompanying text (examining the relevant provisions of the United States embargo against Cuba requiring a modified application to en-

Enacting the four proposals of Baseball Diplomacy requires strong leadership, and a commitment to move around the Base-Path. MLB Commissioner Bud Selig, and Presidents Castro and Clinton must seize the opportunity to catch Baseball Diplomacy.<sup>263</sup> Their efforts to finalize the details of the Orioles-Cuban National Team exhibition series indicates a potential willingness to try Baseball Diplomacy.<sup>264</sup>

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able the Third Base proposals of Baseball Diplomacy to occur).

263. See *Reds hope to sign Quezada* (last modified Feb. 8, 1999) <<http://espn.go.com/mlb/news/1999/990208/01093105.html>> (explaining the agreement between the Commissioners of American and Japanese baseball to allow the Cincinnati Reds to obtain negotiating rights to Alejandro Quezada). The recent agreement signed in January by Commissioner Selig and the Japanese Commissioner's office illustrates MLB's willingness to make international arrangements to obtain the best international talent. See *id.* Prior to this agreement, players in Japan that desired to play in MLB needed to retire from Japanese baseball, allow their Japanese team to release them, allow their Japanese team to sell their rights to a MLB team, or qualify under Japan's rigorous requirements for free agency. See *id.* See generally *Orix players to attend M's camp*, ASSOCIATED PRESS, Feb. 10, 1999, available in WL, APNEWS (detailing the agreement between MLB's Seattle Mariners and Japanese baseball's Orix Blue Wave to exchange players, front office personnel, and coaches for spring training, with the eventual goal of playing exhibition games in both Japan and the United States). The Mariners-Blue Wave agreement enables the Mariners, and their fans to enjoy the play of some quality Japanese players. See *id.* Such an exchange, like the aforementioned proposals for Cuban baseball immigration, functions to bring two vastly different cultures together through their common language of baseball. See *id.*

264. See *Lawmakers ask Fehr to Block Games Against Cuba*, ASSOCIATED PRESS, Feb. 4, 1999, available in WL, APNEWS (discussing the meeting of several lawmakers with the head of the Baseball Players Union, Donald Fehr). Several Members of Congress opposed the exhibition series on human rights grounds, arguing that the series legitimized the Castro regime's terrible treatment of the Cuban people. See *id.* These Members included Florida Republican Representatives Diaz-Balart and Ros-Lehtinen, and New Jersey Democrat Menendez. See *id.* But see *Agent: Nicaragua, Costa Rica Offer Asylum to Baseball Defector's Group*, ASSOCIATED PRESS, Jan. 6, 1998, available in WL, APNEWS (discussing Diaz-Balart's efforts to obtain Nicaraguan residency for "El Duque," indicating his desire to allow Cuban talent to compete in MLB, despite his opposition to the exhibition series). See generally Matthews, *supra* note 14, at A8 (describing the White House's efforts to bridge any discrepancies between the American and Cuban positions on how to direct proceeds from the proposed series). American officials wanted *Caritas*, a Catholic charity, to receive the proceeds, whereas Cuban officials sought to have Cuban doctors acquire the money to help victims of Hurricane Mitch. See *id.* A new American position emerged from a meeting between National Security Advisor Samuel R. Berger and Baltimore Orioles owner Peter Angelos. See *id.* This position focussed on the United States' desire to send the pro-

Despite the political and financial difficulties of organizing these exhibition games,<sup>265</sup> the series reaffirmed the ability to bring the Cuban and American people closer together through baseball.<sup>266</sup>

## CONCLUSION

Like good fundamental baseball, MLB, Cuba, and the United States must move Base-by-Base to succeed. Each time one side decides to move ninety feet to the next Base, the years of animosity and the ninety miles separating Cuba and the United States begins to fade. All three sides stand to gain from the aforementioned proposals of Baseball Diplomacy. Baseball Diplomacy, though, is not a panacea. These small steps will not bridge the ideological gap separating a communist dictatorship from a democratic republic,<sup>267</sup> nor will they allow the Montreal Expos to dethrone the New York Yankees.<sup>268</sup> En-

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ceeds to a cause that helps the Cuban people, as long as the money did not benefit the Castro government. *See id.* *See generally also* Green, *supra* note 14 (explaining that proceeds from the exhibition games benefited Cuban baseball and sports programs, but not the Cuban government).

265. *See* Mark Maske, *O's-Cuba Games Are In Doubt: U.S. Approval Seen Unlikely for Proposal*, WASH. POST, Feb. 11, 1999, at D6 (discussing the political opposition in the United States to the exhibition series, and the contention over the financial proceeds from the exhibition series); Jefferson Morley, *Cubans Arrive For 2<sup>nd</sup> Shot at Baseball Diplomacy*, WASH. POST, May 3, 1999, at B1 (asserting that the United States' initial refusal to provide visas for certain government officials of the Cuban entourage led Cuba to broadcast an official communique stating that the second game would be delayed or cancelled).

266. *See* Mark Maske, *Baseball Mulls O's-Cuba Games*, WASH. POST, Jan. 6, 1999, at D2 (observing Angelos' desire to use the exhibition series as a medium to bring the Cuban and American people closer together).

267. *See* Bernard W. Aronson & William D. Rogers, *Special Report: U.S.-Cuban Relations in the 21<sup>st</sup> Century*, USIA COUNCIL ON FOREIGN RELATIONS TASK FORCE REPORT (visited Mar. 27, 1999) <<http://www.usia.gov/regional/ar/us-cuba/cfr.htm>> (providing five separate "baskets" of recommendations designed to promote United States policy in an effort to hasten the transition to a democratic Cuba). These recommendations include: increased contacts between Cuban-Americans and their families on the island; increased contacts between American and Cuban citizens; extended humanitarian aid to Cubans; enhanced introduction of United States economic activities within Cuba; and augmented cooperation regarding military and law enforcement matters. *See id.*

268. *See* *Yankees Payroll Tops \$85M*, *supra* note 177 (indicating that the Expos opened the season with the lowest payroll in 1999, while the World Champion Yankees seek to defend their title with the highest payroll in MLB history).

acting these policies, however, will act as a catalyst in that direction, and allow the world's baseball fans to collectively cheer for the best baseball available. Ultimately, such changes will insure a true World Series each October.