
Addressing Human Trafficking in the Context of Major League Baseball and the Cuban Baseball Federation

Sarah Hanlon

Follow this and additional works at: <https://via.library.depaul.edu/jslcp>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Sarah Hanlon, *Addressing Human Trafficking in the Context of Major League Baseball and the Cuban Baseball Federation*, 16 DePaul J. Sports L. & Contemp. Probs. (2020)

Available at: <https://via.library.depaul.edu/jslcp/vol16/iss1/3>

This Notes and Comments is brought to you for free and open access by the College of Law at Digital Commons@DePaul. It has been accepted for inclusion in DePaul Journal of Sports Law by an authorized editor of Digital Commons@DePaul. For more information, please contact digitalservices@depaul.edu.

Addressing Human Trafficking in the Context of Major League Baseball and the Cuban Baseball Federation

Cover Page Footnote

Sarah Hanlon, J.D. Candidate, DePaul University College of Law, 2021; B.A. Political Science, DePaul University, 2014.

I. U.S.-CUBA RELATIONS: A BRIEF HISTORY

In 1895, Cuban revolutionaries sought independence from Spanish control and fought hard to achieve that goal.¹ With this conflict came instability in Cuba, subsequently catching the attention of the United States, given its proximity to the conflict.² The United States officially became intertwined in the issue when the U.S.S. Maine battleship exploded and then sank in a Havana harbor in February of 1898.³ An investigation suggested that the ship sunk after coming into contact with a mine placed in the water by Spain.⁴ By April of 1898, the United States Congress formally waged war against Spain initiating the Spanish-American War of 1898.⁵

The War ended with the signing of the Treaty of Paris in December of 1898.⁶ Under this Treaty, Spain surrendered control of Cuba, marking the beginning of a close relationship between the United States and Cuba, as well as a period in which the United States was recognized as a superpower.⁷ With this recognition came enhanced responsibility. The United States was no longer an isolationist power and committed itself to fostering democracy across the globe.⁸

To do so, the United States promoted capitalism and specifically denounced socialist and communist regimes. This became apparent during the Cold War after the Soviet Union became a highly-competitive superpower.⁹ At first, the Cold War was a political fight with both the United States and the Soviet Union pushing their political agendas throughout the world.¹⁰ As the United States and the Soviet Union attempted to sway other countries in one direction over another, the political fight became increasingly militaristic.¹¹

Militarization of the Cold War culminated in 1949, when the Soviet Union displayed its nuclear weapon capabilities.¹² This meant that the United States was no longer the only country with nuclear bombs.¹³ The fear that arose from the United States' loss of this monopolistic power was tremendous. In the years following, people in the United States lived in fear of a Communist takeover.

In 1959, fear of a Communist takeover grew substantially when Fidel Castro rose to power in Cuba and instituted a socialist state.¹⁴ Under the socialist state, Castro nationalized all

¹ *The Spanish American War, 1898*, Office of the Historian, <https://history.state.gov/milestones/1866-1898/spanish-american-war> (last visited Mar. 27, 2020).

² *Id.*

³ *Id.*

⁴ *The USS Maine Explodes in Havana Harbor*, History, (Feb. 12, 2020), <https://www.history.com/this-day-in-history/the-maine-explodes>.

⁵ *Supra* note 1.

⁶ *Id.*

⁷ *1898: The Birth of a Superpower*, Office of the Historian, <https://history.state.gov/departmenthistory/short-history/superpower> (last visited Mar. 27, 2020).

⁸ *Id.*

⁹ *Cold War History*, History, (Oct. 27, 2009), <https://www.history.com/topics/cold-war/cold-war-history>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Cold War*, Encyclopedia Britannica, (Feb. 3, 2020), <https://www.britannica.com/event/Cold-War>.

¹³ *Id.*

¹⁴ *U.S.-Cuba Relations*, Council on Foreign Relations, (Mar. 27, 2020), <https://www.cfr.org/backgrounder/us-cuba-relations>.

foreign controlled assets in the country, including American-owned banks.¹⁵ In response, President Dwight D. Eisenhower initiated the Cuban embargo and cut the Cuban sugar import quota.¹⁶ Despite these strategic moves by President Eisenhower, Castro remained in power. President Eisenhower then planned an offensive attack. President Eisenhower left office before initiating the attack, so he passed his plans – known as the Bay of Pigs Invasion – on to President John F. Kennedy.¹⁷

The Bay of Pigs Invasion occurred on April 17, 1961, when President Kennedy sent a group of Cuban exiles, backed and trained by the CIA, into Cuba to overthrow the regime.¹⁸ Not only did the invasion fail, but it strengthened ties between Castro and the Soviet Union. President Kennedy responded by issuing a complete trade embargo.¹⁹

In 1962, the Soviet Union identified Cuba as an advantageous location for nuclear missiles due to the country's proximity to the United States and began nuclear armament in Cuba.²⁰ Once the United States learned of the Soviet Union's advancements in Cuba, fears in the United States reached an all-time high.

This head-to-head, nuclear weapons faceoff marked the period known as the Cuban Missile Crisis.²¹ During this period, both the United States and the Soviet Union feared each other, but leaders of both nations knew that any use of nuclear weapons by either side would result in mutually-assured destruction.²² In other words, both superpowers knew that any military initiation would be met with an equally-destructive counter-attack, rendering the initial attack obsolete. The Cuban Missile Crisis was an exceptionally fearful time in American history. Nevertheless, President Kennedy was prepared to fight. "On October 26, Kennedy told his advisors it appeared that only a U.S. attack on Cuba would remove the missiles, but he insisted on giving the diplomatic channel a little more time. The crisis had reached a virtual stalemate."²³

Keeping the diplomatic channel open proved to be one of the best decisions made during this period. Later that day, the Kremlin reached out to President Kennedy via John Scali, a news correspondent for ABC News.²⁴ Scali informed the White House that the Kremlin advised him that they would pull out of Cuba so long as the United States did not initiate an attack.²⁵ Shortly thereafter, the Kremlin sent President Kennedy a message directly. "‘If there is no intention,’ he said, ‘to doom the world to the catastrophe of thermonuclear war, then let us not only relax the forces pulling on the ends of the rope, let us take measures to untie that knot. We are ready for

¹⁵ *Timeline: U.S.-Cuba Relations*, Council on Foreign Relations, <https://www.cfr.org/timeline/us-cuba-relations> (last visited May. 4, 2020).

¹⁶ *Id.*

¹⁷ David Greenberg, *Beware the Military Industrial Complex*, Slate, (Jan. 14, 2011), <https://web.archive.org/web/20110119121008/http://www.slate.com/id/2281124/pagenum/all/>.

¹⁸ *Supra* note 15.

¹⁹ *Id.*

²⁰ *Supra* note 12.

²¹ *Id.*

²² *Limited nuclear options*, Encyclopedia Britannica, (Dec. 29, 2015), <https://www.britannica.com/topic/limited-nuclear-options>.

²³ *The Cuban Missile Crisis, October 1962*, Office of the Historian, <https://history.state.gov/milestones/1961-1968/cuban-missile-crisis> (last visited Mar. 27, 2020).

²⁴ *Id.*

²⁵ *Id.*

this.”²⁶ One day later, a U.S. military plane was shot down over Cuba.²⁷ At the same time, the Kremlin sent another message making additional requests for the U.S., including the removal of U.S. Jupiter missiles from Turkey.²⁸ Tensions between the two countries immediately rose again, and any hope that the United States had in pursuing a peaceful resolution was lost.

Nonetheless, President Kennedy made one last effort to resolve the tension diplomatically. He ignored the Kremlin’s second message but acknowledged the first one and confirmed he was willing to comply with the Kremlin’s proposal to remove missiles from Cuba so long as the U.S. refrains from attacking.²⁹ Attorney General Robert Kennedy, acting on his own, met with the Soviet Ambassador to the United States.³⁰ Robert Kennedy told the Ambassador that the U.S. was planning on removing its missiles from Turkey regardless of the Kremlin’s request, but that this removal could not be part of the public’s understanding of the resolution between the Kremlin and President Kennedy.³¹

On October 28, the Kremlin announced its intention to remove its missiles from Cuba.³² The Cuban Missile crisis was officially over. Although the Cuban Missile Crisis was diverted, the United States remained fearful of Cuba. Cuba was still operating as a socialist state, so President Kennedy’s full embargo seeking to isolate Cuba was still in force.³³

The full embargo was composed of two major features: travel restrictions and economic sanctions. The travel restrictions virtually banned all travel between the United States and Cuba.³⁴ Likewise, the economic sanctions restricted all trade between the United States and Cuba.³⁵

II. POST-CUBAN MISSILE CRISIS RELATIONS

In September 1965, Castro announced to his people that they no longer had to sneak out of Cuba to go to the United States.³⁶ President Lyndon B. Johnson responded by welcoming Cubans to the United States and giving immigration preference to those with family ties in the United States.³⁷ Cubans were also permitted to pursue permanent residency one year after reaching the United States.³⁸

Diplomatic ties between the United States and Cuba continued to grow in the years following the Cuban Missile Crisis. In 1977, President Jimmy Carter and Castro agreed to a

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Supra* note 14.

³⁴ *About the U.S. Embargo on Cuba*, Engage Cuba Coalition, <https://www.engagecuba.org/embargo> (last visited May 4, 2020).

³⁵ *Full U.S.-Cuba embargo is announced*, History, (Feb. 5, 2020), <https://www.history.com/this-day-in-history/full-us-cuba-embargo-is-announced>.

³⁶ *Supra* note 15.

³⁷ *Id.*

³⁸ *Id.*

limited diplomatic exchange.³⁹ Under this exchange, both countries would send a small group of diplomats, called “interest sections” to each other’s countries.⁴⁰ The United States’ interest section in Cuba would operate within the Swiss Embassy and Cuba’s interest section in the United States would operate within the Czech Embassy.⁴¹ The goal was to open dialogue between the two countries directly. Opening reciprocal embassies was not yet an option because neither the U.S. nor Cuba were ready to call each other allies.⁴²

In 1982, however, hostility reappeared after President Ronald Reagan labeled Castro and his government a “terrorism sponsor” in response to Castro’s support to several communist groups in African and Latin American countries.⁴³ A few years later, in 1985, Castro halted emigration of Cubans to the United States as well as the repatriation of Cubans living in the United States.⁴⁴

The collapse of the Soviet Union in 1991 signaled to the United States an opportunity to promote democracy in Cuba. In 1992, the United States enacted the Cuban Democracy Act under President George H.W. Bush to tighten and strengthen sanctions against Cuba.⁴⁵ In 1996, under President Bill Clinton, the United States enacted the Cuban Liberty and Democratic Act, otherwise known as the Helms-Burton Act, after two American civilian planes were shot down by the Cuban military.⁴⁶ The Act codified the embargo regulations.⁴⁷ Additionally, the Act allowed only for the removal of sanctions under a limited set of circumstances: (1) neither Castro nor his brother, Raul Castro, could be in office; and (2) Cuba needed to make steps towards democracy.⁴⁸

Another major shift in attitude towards Cuba began in 2008, when Castro officially stepped down as president and gave the position to Raul Castro due to his declining health.⁴⁹ In 2009, President Obama began to loosen restrictions with Cuba by allowing Cuban-Americans to send money to Cuba and by allowing Americans to visit Cuba, although only for very limited religious and educational purposes.⁵⁰

With the help of Pope Francis, President Barack Obama and Raul Castro held secret discussions; and after 18 months, the two leaders decided to restore diplomatic ties between the United States and Cuba.⁵¹ With this commitment to restore diplomatic ties came the continued loosening of sanctions and restrictions, known as the Cuban Thaw.⁵² Under this thaw came three

³⁹ *Id.*

⁴⁰ Graham Hovey, *U.S. and Cuba Ready to Announce A Limited Exchange of Diplomats*, N.Y. Times, (June 6, 1977), <https://www.nytimes.com/1977/06/03/archives/us-and-cuba-ready-to-announce-a-limited-exchange-of-diplomats-us.html>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Supra* note 15.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Dianne E. Rennack & Mark P. Sullivan, *Cuba Sanctions: Legislative Restrictions Limiting the Normalization of Relations*, Congressional Research Service, (May 4, 2018), <https://fas.org/sgp/crs/row/R43888.pdf>.

⁴⁸ *Supra* note 15.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Supra* note 14.

⁵² *Id.*

major developments. First, President Obama eliminated Cuba's designation as a "terrorist sponsor."⁵³ Second, President Obama and Raul Castro reinstated diplomatic relations and reopened embassies.⁵⁴ Third, the United States rolled back the embargo regulations in an effort to promote an increase in trade and travel between the two countries.⁵⁵ However, President Obama could not actually lift the embargo without a change in legislation since the embargo was codified under the Helms-Burton Act.⁵⁶

During the Obama presidency, the United States and Cuba both supported the steps being taken to restore relations. As Cuba continued to liberalize its economic and political processes, the United States continued to loosen its restrictions.⁵⁷ Symbolic of this progress was President Obama's trip to Cuba in 2016.⁵⁸ The last sitting president to visit Cuba was President Coolidge in 1928.⁵⁹ Another major symbol of the progress was the creation of commercial airline services between the two countries, which had been non-existent for the prior 50 years.⁶⁰

President Obama's final move before leaving office was the elimination of the "wet foot, dry foot" policy implemented in 1995.⁶¹ Under this policy, unauthorized Cubans arriving in the United States could pursue permanent residency, thus distinguishing Cuban migrants from other migrants.⁶² While repealing this policy initially appears to hurt Cuban migrants, the repeal supports the broader goal of normalizing relations with Cuba.⁶³ In the past, Cuba was unwilling to accept Cubans removed from the United States.⁶⁴ Now, Cuba is willing to accept deported Cubans, allowing the United States to maintain a more uniform immigration policy towards Cuba and other nations.

When President Donald Trump took office, the Obama era thaw came to an end. While President Trump vowed to maintain diplomatic relations with Cuba, he tightened many of the restrictions loosened under President Obama.⁶⁵ President Trump feared the Cuban government was reaping the benefits of the loosened restrictions rather than the people.⁶⁶ He declared that the sanctions would not be lifted until Cuba implemented specific democratic practices, such as freedom of expression and free and fair elections.⁶⁷

More recently, the Cuban National Assembly elected Miguel Diaz-Canel as President after Raul Castro chose not to run in the election.⁶⁸ The election of Miguel Diaz-Canel marked

⁵³ *Supra* note 47.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Supra* note 14.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Alan Gomez, *Obama ends 'wet foot, dry foot' policy for Cubans*, USA Today, (Jan. 12, 2017),

<https://www.usatoday.com/story/news/world/2017/01/12/obama-ends-wet-foot-dry-foot-policy-cubans/96505172/>.

⁶⁵ *Supra* note 15.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

the first time in the last 60 years that Cuba has not been under the rule of a Castro.⁶⁹ Nevertheless, the United States, under President Trump, is bolstering its hardline approach with Cuba, especially following the mysterious injuries suffered by American diplomats at the Embassy in Havana.⁷⁰ It remains unknown whether or not President Trump will reintroduce Cuba's designation as a "terrorism sponsor."⁷¹

III. U.S.-CUBA RELATIONS' IMPACT ON AMERICA'S PASTIME

While U.S.-Cuba relations have gone through a lot over the last 100 years, younger generations are familiar with Cuba as a communist country with whom the United States has had conflict with, but do not live in the same fear of prior generations. In other words, the younger generations are spared the fear that existed during the Cold War. However, one major area of American life that continues to suffer from prior, contentious U.S.-Cuba relations is America's pastime—baseball.

Cuba is known for producing some of the best baseball players in MLB history.⁷² Luis Tiant, "El Tiante," known for his exotic pitching windup, helped the Boston Red Sox win the World Series in 1975.⁷³ For MLB, he was a star player. For Cuba, he was a defector who left shortly after the Bay of Pigs Invasion.⁷⁴ As a result, he was not allowed to return home and went 14 years without seeing his family.⁷⁵

Other famous MLB players from Cuba include Tony Perez, Jose Conseco, Minnie Minoso, and Leo Cardenas.⁷⁶ Current MLB players from Cuba include Aroldis Chapman, Yoenis Céspedes, and Yasiel Puig.⁷⁷ MLB fans know these individuals because of their extraordinary skill. What most don't know, however, is the path they endured to make it into MLB.

In April 2012, Yasiel Puig made one of the biggest decisions of his life at the age of 21.⁷⁸ He could either remain in Cuba and continue his baseball career there, or he could escape with the goal of playing for an MLB team.⁷⁹ After 30 hours of hiking without sleep to a deserted Cuban beach, Puig and three others were extracted from the Bay of Pigs in a cigarette boat by *lancheros* – boatmen in the business of smuggling people out of Cuba.⁸⁰ Puig, a well-known baseball player throughout Cuba, Yunior Despaigne, a well-known boxer in Cuba who was travelling with Puig, and the two others with them finally thought they were free as the boat sped

⁶⁹ *Id.*

⁷⁰ *Supra* note 14.

⁷¹ *Id.*

⁷² Will Leitch, *12 Best Cuban-born players in MLB history*, MLB News, (Mar. 11, 2019), <https://www.mlb.com/news/best-cuban-baseball-players-of-all-time-c302073552>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Scott Eden, *No One Walks Off the Island*, ESPN, (April 17, 2014), http://www.espn.com/espn/feature/story/_/id/10781144/no-one-walks-island-los-angeles-dodgers-yasiel-puig-journey-cuba.

⁷⁹ *Id.*

⁸⁰ *Id.*

away.⁸¹ Little did they know, however, the lancheros were affiliated with Los Zetas, a Mexican cartel, and listed on several law enforcements' most wanted lists.⁸²

After 36 hours, they arrived at a little island off the coast of Cancún in Mexico.⁸³ Puig and his three companions were brought to a boarding house full of other Cuban defectors by the lancheros.⁸⁴ The lead lanchero, known as Tomasito, was a Cuban-born criminal operating his business from Cancún, Mexico.⁸⁵ He wound up in Mexico after posting bail in Florida and fleeing to avoid charges of grand larceny and aggravated assault of a police officer with a weapon.⁸⁶

Tomasito's business was typically procured by relatives in the United States willing to pay to have their remaining relatives in Cuba brought to the United States.⁸⁷ Tomasito charged, on average, \$10,000 per regular Cuban civilian.⁸⁸ When families could not pay, Tomasito and his lancheros would keep the smuggled Cubans until money was produced.⁸⁹

For someone like Puig, who is not your traditional, regular Cuban civilian, the price to smuggle is much more. Raul Pacheco, a Miami-resident born in Cuba, instructed Yunior Despaigne to convince Yasiel Puig to defect and hired the lancheros to facilitate.⁹⁰ Pacheco was thus responsible for making the payment to Tomasito. According to Despaigne, Pacheco was aware of Puig's MLB potential and saw bringing Puig to the United States as a business opportunity.⁹¹ According to Pacheco, bringing Puig to the U.S. was Despaigne's idea and Pacheco's involvement was just to provide the financial support needed to get Puig across the border.⁹² Either way, it was clear that Pacheco was responsible for making the payment to Tomasito.⁹³ Until Pacheco paid \$250,000, Puig was not going to be allowed to leave the boarding house.⁹⁴ After speaking with Pacheco, Puig learned that he did not yet have the funds but was working on gathering enough to get them out.⁹⁵

Puig, Despaigne, and the two others were guarded in the boarding house.⁹⁶ Escaping control from the lancheros was not an option because neither Puig nor his companions had Mexican pesos and getting apprehended by Mexican authorities would likely result in their deportation back to Cuba and subsequent imprisonment.⁹⁷ After time passed with no payment from Pacheco, Tomasito raised the release price to \$400,000.⁹⁸ In the meantime, another human-

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

trafficking ring got wind of Puig's potential to sign a multimillion dollar contract to play baseball in the U.S.⁹⁹ This ring, which had connections to Tomasito and the operations in Cancún, began scrambling for money with the hopes of acquiring Puig.¹⁰⁰ Pacheco was then approached by this ring to partner up in finding a way to release Puig from Tomasito's grip.¹⁰¹ Pacheco bought some time with Tomasito while the ring reached out to El Comando de Cancún, a man with connections in the Cancún Police Department.¹⁰²

Pacheco then spoke with Puig and the others and advised them to be ready to escape in the middle of the night.¹⁰³ That night, two men came to the boarding house and successfully snuck Puig and his companions out of Tomasito's captivity.¹⁰⁴ After a likely bribe from El Comando, Puig and his companions flew to Mexico City without any passports.¹⁰⁵

Before Puig could sign with an MLB team, Puig had to establish residency outside of Cuba before the U.S. Department of the Treasury would permit an MLB team to sign a Cuban national.¹⁰⁶ What is typically a lengthy process surprisingly only lasted about 15 days for Puig and cost \$20,000 in additional bribes.¹⁰⁷ Puig then signed with the Los Angeles Dodgers for \$42 million.¹⁰⁸ Signing with the Los Angeles dodgers was not the end of his story.¹⁰⁹ Puig had one more obstacle. He had to physically enter the United States. Without a passport and in an effort to cover the tracks of the smugglers, Puig was advised to present himself at the border as a Cuban national and seek asylum under the Cuban Adjustment Act of 1966.¹¹⁰ Puig was then paroled into the United States and no one thought twice about how he got there.¹¹¹

Although Puig's story is unique, many other athletes have been smuggled out of Cuba. The underground market for smuggling baseball players out of Cuba is known as the "bolsa negra," which translates to the black bag, and represents the black-market operation.¹¹² The existence of this underground network is what prompted MLB and FCB to negotiate an agreement.

IV. MLB-CUBA AGREEMENT

To combat the "bolsa negra," MLB and FCB reached an agreement in December 2018.¹¹³ According to MLB, the goal of the agreement was to end the need for Cuban players to defect

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Jeff Passan, *White House Scuttles MLB's Cuban Agreement*, ESPN, (Apr. 8, 2019), https://www.espn.com/mlb/story/_/id/26472986/white-house-scuttles-mlb-cuban-agreement.

and to prevent the human trafficking involved in the process.¹¹⁴ Talks of this agreement were made possible after President Obama initiated the Cuban Thaw. After three years of negotiation, due to FCB's reluctance to release players to MLB, the agreement came to fruition.¹¹⁵

Under the agreement, Cuba would allow players over the age of 25 and who have played in Cuba for at least 6 years to sign with teams in MLB.¹¹⁶ For players under 25, FCB held discretion in releasing these players.¹¹⁷ In exchange for allowing players to sign with an MLB team, FCB would receive a transfer fee.¹¹⁸ The agreed transfer fee would be between 15% and 20% of the player's contract.¹¹⁹

V. TERMINATING THE AGREEMENT

Approximately four months after the agreement was reached, when the first set of players were ready to be released, President Trump eliminated the agreement.¹²⁰ The Office of Foreign Assets Control ("OFAC"), which operates under the U.S. Department of the Treasury, sent a letter to MLB insisting that they halt all activity under the agreement.¹²¹ In the letter, Acting Assistant Director for Licensing with OFAC, Nikole Thomas, advised MLB that the previously-issued general license was no longer authorized.¹²² According to OFAC, any payment to FCB would be a payment to the Cuban government and therefore illegal under the embargo.¹²³

Needless to say, the MLB community was shocked. Cuban athletes and MLB alike were deeply disappointed.¹²⁴ Aroldis Chapman, a pitcher for the New York Yankees, stated through a translator, "I just feel bad for those young ballplayers who are probably not going to have the same chance to play here. It's definitely difficult for a lot of Cuban players who are not playing at this level here in the States. But the way we got here, it was tough -- to say the least."¹²⁵

According to President Trump and other opponents, the agreement would have subjected Cuban players to human trafficking by the Cuban government and would have permitted the

¹¹⁴ *Id.*

¹¹⁵ Dave Sheinin & Karen DeYoung, *MLB, Cuban Baseball Federation Reach Agreement; Trump Administration Signals it has Issues with Deal*, *The Washington Post*, (Dec. 19, 2018), <https://www.washingtonpost.com/sports/2018/12/19/mlb-cuban-baseball-federation-reach-agreement-that-will-eliminate-need-players-defect/>.

¹¹⁶ *Cuban Baseball Federation, MLB Sign Historic Player Agreement*, World Baseball Softball Confederation, (Dec. 21, 2018), <https://www.wbsc.org/news/cuban-baseball-federation-mlb-sign-historic-player-agreement>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Supra* note 113.

¹²¹ *Id.*

¹²² Letter from Nikole Thomas, Acting Assistant Director for Licensing, Office of Foreign Assets Control, to Laura Fraedrich and Chase Kaniecki, Attorneys for Jones Day, concerning MLB General License, (Apr. 5, 2019), https://static1.squarespace.com/static/563a4585e4b00d0211e8dd7e/t/5caca2784e17b64f3f97da4b/1554817657817/MLB_letter.pdf.

¹²³ *Supra* note 113.

¹²⁴ *Id.*

¹²⁵ *Id.*

Cuban government to take advantage of the players.¹²⁶ The Trump administration holds the agreement invalid on the grounds that the Obama administration incorrectly concluded that FCB operates apart from the Cuban government.¹²⁷

Acting under the Trump administration, the U.S. Department of the Treasury agreed that FCB is indeed a government actor.¹²⁸ More specifically, the U.S. Department of the Treasury holds that FCB belongs to the National Sports Institute and therefore is a government entity.¹²⁹ Therefore, any business with FCB – such as the agreement between MLB and FCB – equates to doing business with Cuba and thus is illegal under the rules of the Cuban embargo.¹³⁰ Despite Cuba’s declaration that FCB is not a government entity, the U.S. Department of the Treasury’s determination stands in the way of the historic agreement.¹³¹

VI. U.S. DEPARTMENT OF THE TREASURY

The U.S. Department of the Treasury was created in 1789 by Congress, operates under the executive branch, and is charged with handling the United States’ financial matters.¹³² According to the U.S. Department of the Treasury’s website, its mission is to, “...maintain a strong economy and create economic and employment opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combating threats and protecting the integrity of the financial system, and manage the U.S. Government’s finances and resources effectively.”¹³³ While the focus is largely domestic, the U.S. Department of the Treasury’s involvement in foreign affairs is substantial, given that foreign affairs can have a significant impact on the United States’ economy and national security. One of the most prominent devices for combatting threats to the economy and national security is through the implementation of economic sanctions.¹³⁴

These economic sanctions are implemented through OFAC – a division of the U.S. Department of the Treasury. Economic sanction is the blanket term for an assortment of strategies used to combat economic and security concerns spawning from foreign countries. These sanctions include, but are not limited to, freezing assets, prohibiting payments, and prohibiting services to countries, countries’ governments, and individuals within countries.¹³⁵

¹²⁶ Matt Spetalnick, *U.S. Nixes Deal for Major League Baseball to Sign Cuban Players*, Reuters, (Apr. 8, 2019), <https://www.reuters.com/article/us-cuba-usa-baseball/u-s-blocks-deal-for-major-league-baseball-to-sign-cuban-players-idUSKCN1RK27U>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Jonathan Adams, *Department of the Treasury*, George Washington’s Mount Vernon, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/department-of-the-treasury> (last visited May 4, 2020).

¹³³ *Role of the Treasury*, U.S. Department of the Treasury, <https://home.treasury.gov/about/general-information/role-of-the-treasury> (last visited Mar. 27, 2020).

¹³⁴ *Id.*

¹³⁵ *Treasury Department’s Office of Foreign Asset Control (OFAC)*, William & Mary, <https://www.wm.edu/offices/techtransfer/ExportControls/Regulations/OFAC/index.php> (last visited May 4, 2020).

Because OFAC operates under the U.S. Department of the Treasury, an executive department, OFAC derives most of its power to issue sanctions from the President's national emergency powers and relevant legislation.¹³⁶ In 1917, during World War I, Congress passed the Trading with the Enemy Act ("TWEA").¹³⁷ The purpose of this Act was to grant the President power to control trade between the United States and its enemies during war.¹³⁸ In the 1930s, Congress increased the President's power by extending this control beyond wartime to include times of peace, so long as a national emergency was declared.¹³⁹

In 1976 and 1977, the National Emergencies Act ("NEA") and subsequent International Emergency Economic Powers Act ("IEEPA") were passed, respectively, to limit the President's powers.¹⁴⁰ NEA terminated all current national emergency declarations and added more structure to and review of a President's declaration of a national emergency.¹⁴¹ Within NEA is the IEEPA, which added more restrictions to the President's power. The IEEPA requires that a President consult with Congress before declaring a national emergency and provide Congress with reports every six months following the declaration.¹⁴² The report is intended to explain the circumstances and why those circumstances warrant a national security response.¹⁴³ Failure to present a report results in automatic discontinuation of the national emergency declaration and the President's powers under that designation.¹⁴⁴

Although the NEA and IEEPA were designed to restrict the President's power, actual limitations on Presidential power has been minimal. Less than ten years after its enactment, the NEA took a major hit in the groundbreaking, immigration case, *INS v. Chadha* in 1985.¹⁴⁵ Prior to *Chadha*, a national emergency declaration could be terminated by a concurrent resolution in Congress.¹⁴⁶ A concurrent resolution only requires passage by the Senate and House of Representatives.¹⁴⁷ Following *Chadha*, which held that legislative vetoes violate the separation of powers and are unconstitutional, the NEA was amended to require a joint resolution – which requires a President's signature – in order to terminate a national emergency declaration.¹⁴⁸

Experts in the field contend that the NEA and IEEPA are formalities, leaving the President otherwise unrestricted in declaring a national emergency and reaping the subsequent associated powers derived under TWEA.¹⁴⁹ Presidents have continuously derived authority from

¹³⁶ *About*, U.S. Department Of The Treasury, <https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx> (last visited Mar. 27, 2020).

¹³⁷ *Explainer: What Tools Could Trump Use to get U.S. Firms to Quit China*, Reuters, (Aug. 23, 2019), <https://www.reuters.com/article/us-usa-china-trade-options-explainer/explainer-what-tools-could-trump-use-to-get-u-s-firms-to-quit-china-idUSKCN1VE00X>.

¹³⁸ *Id.*

¹³⁹ *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, Congressional Research Service, (Mar. 20, 2019), <https://fas.org/sgp/crs/natsec/R45618.pdf>.

¹⁴⁰ *Id.* at 2, 8.

¹⁴¹ *Id.* at 8.

¹⁴² *Id.* at 10-11.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 11.

¹⁴⁵ *Id.* at 35.

¹⁴⁶ *Id.* at 8.

¹⁴⁷ *Concurrent Resolution*, Merriam-Webster Dictionary, [https://www.merriam-webster.com/dictionary/concurrent resolution](https://www.merriam-webster.com/dictionary/concurrent%20resolution) (last accessed May 4, 2020).

¹⁴⁸ *Supra* note 139 at 35 (citing *INS v. Chadha*, 462 U.S. 919 (1983)).

¹⁴⁹ *Id.* at Summary.

TWEA to issue sanctions against countries such as Vietnam, Cambodia, and, unsurprisingly, Cuba.¹⁵⁰

In addition to TWEA, and specifically regarding its policy toward Cuba, the executive branch derives authority from an array of legislation. In 1961, Congress passed the Foreign Assistance Act (“FAA”).¹⁵¹ The FAA prohibits the United States from offering assistance to any communist country.¹⁵² President Kennedy referenced the FAA when he directed the Secretary of the Treasury and the Secretary of Commerce to prohibit imports and exports, respectively, with Cuba.¹⁵³

Two years later, in 1963, the Cuban Assets Control Regulations (“CACR”) were issued under TWEA, which further authorized sanctions with Cuba.¹⁵⁴ “The sanctions froze all Cuban assets in the USA and mandated the U.S. Treasury Department to regulate all commercial transactions with Cuba, including authorized travel to Cuba by U.S. nationals.”¹⁵⁵ These sanctions also had a major impact on travel between the two countries by restricting all commercial transactions, including those related to travel such as hotel and airline bookings.¹⁵⁶

Even after the end of the Cold War, additional legislation has been passed to support the Executive’s authority to impose economic restrictions against Cuba. In 1992, the Cuban Democracy Act (“CDA”) was enacted under President George H.W. Bush.¹⁵⁷ The CDA, also known as the Torricelli Act, bolsters the United States’ strategy with Cuba by imposing sanctions on any country that provides assistance to Cuba.¹⁵⁸ However, the CDA includes an exception for humanitarian assistance.¹⁵⁹ The CDA also prevents U.S. nationals from sending remittances to Cuba while also prohibiting any subsidiaries of U.S. companies from engaging in transactions with Cuba.¹⁶⁰

In 1996, under President Clinton, the Cuban Liberty and Democratic Solidarity Act (Libertad), also known as the Helms-Burton Act, was passed.¹⁶¹ “This act further wrote into law the sanctions against Cuba. In particular, it sought to ‘strengthen international sanctions against the Castro government’, and to ‘plan for support of a transition government leading to a democratically elected government in Cuba.’”¹⁶² The overall goal of the Act was to push Cuba to consider a democratic government, and it did so by reinforcing the United States’ sanctions against Cuba.

¹⁵⁰ *Id.* at 5.

¹⁵¹ *The US Embargo Against Cuba, Its Impact on Economic and Social Rights*, Amnesty International, (2009), <https://www.amnesty.org/download/Documents/44000/amr250072009en.pdf>.

¹⁵² *Id.* at 8.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 9-10.

¹⁶⁰ *Id.* at 10.

¹⁶¹ *Id.*

¹⁶² *Id.* (citing Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996).

In sum, there is no shortage of authority keeping the executive branch, the U.S. Department of the Treasury, and OFAC from remaining stern with Cuba.

VII. OFAC AND MLB

As the Obama administration began to rollback sanctions against Cuba, opportunities between Cubans and Americans became available. MLB and FCB seized this opportunity and developed the aforementioned agreement. FCB players no longer had to defect from Cuba, and in exchange for their approval to leave FCB and play for MLB, FCB was paid a transfer fee from MLB.

What made this agreement legal was the general license made available under the Obama administration in 2016.¹⁶³ Licenses are issued by OFAC and grant permission to an individual or entity to engage in business with another individual or entity that may otherwise be illegal under imposed sanctions.¹⁶⁴ However, as previously stated, permissions were quickly eliminated under the Trump administration. Out of fear that FCB was an entity of the Cuban government, and in line with the administration's hardline approach on Cuba, the U.S. Department of the Treasury withdrew MLB's license.¹⁶⁵

Without a license, MLB can no longer legally engage with FCB. This put the agreement on hold and placed the players back in limbo. Because FCB already had a list of players ready to be released, MLB tried to keep the agreement alive. According to the New York Times, MLB "...was prepared to base its argument on the fact that the Obama administration had given it a license in 2016 to do business with the Cuban baseball federation, and that a Trump-era national security presidential memorandum published on June 16, 2017 promised the agreement would be grandfathered in."¹⁶⁶ Nevertheless, the Trump administration has continued to withhold permission previously granted under the license.

VIII. LEGAL REMEDIES

Depending on a President's approach to U.S.-Cuba Relations, American citizens' and entities' freedom to engage with Cuba greatly varies. What does not change, however, is the embargo. Because the embargo has been written into law through a series of the aforementioned legislation, lifting the embargo requires the will of Congress; the President cannot do so alone. Therefore, the first and most aggressive avenue MLB can take in moving forward with their agreement would involve lifting the embargo. This entails convincing the American people, or more realistically their respective representation in Congress, that the embargo should be lifted. To convince Congress, MLB would have to exert serious lobbying efforts, likely with an emphasis on the humanitarian concerns of players like Yasiel Puig. Although baseball is

¹⁶³ David Waldstein & Michael Tackett, *Trump Ends Deal Between M.L.B. and Cuban Baseball Federation*, N.Y. Times, (Apr. 8, 2019), <https://www.nytimes.com/2019/04/08/sports/mlb-cuba-donald-trump.html>.

¹⁶⁴ *Resource Center*, US Department of the Treasury, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx (last visited Mar. 27, 2020).

¹⁶⁵ *Supra* note 163.

¹⁶⁶ *Id.*

America's pastime, it would still be hard, if not impossible, for MLB to convince Congress to lift the embargo. Promoting America's pastime is an effort many can support, but by itself, it is not enough to justify lifting the embargo that summarizes years of history with Cuba.

With no end in sight for the embargo, MLB is stuck navigating through the executive branch if it wishes to continue to act upon its agreement with FCB. A remedy within this branch of government would be a license, which again permits a party to engage in a transaction with a Cuban entity that would otherwise be prohibited by sanctions.¹⁶⁷ This is what MLB previously held. However, the revocation of their general license does not prevent MLB from applying for a specific license.

Because OFAC determined that the proposed transactions between MLB and FCB were not authorized under § 515.571(e) of the CACR, and revoked the general license, MLB's next move would be to apply for a specific license.¹⁶⁸ "A general license authorizes 'a particular type of transaction for a class of persons without the need to apply for a license.' A specific license 'is a written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license application.'"¹⁶⁹

In order to obtain a specific license, MLB must convince OFAC that FCB is not an entity of the Cuban government and that money paid by MLB to FCB would not benefit the communist regime. Moreover, an application for a license does not take the shape of a typical application; it is not merely a form to be completed.¹⁷⁰ Rather, the bulk of the application consists of the applicant's written argument in favor of granting the license and all relevant information regarding the transactions that would take place under the license.¹⁷¹ To help assemble the application, applicants are advised to turn to the Code of Federal Regulations.¹⁷² However, the regulations essentially just encourage applicants to be thorough with their proposed transactions and transparent with the parties involved.¹⁷³

The application is then sent to OFAC for consideration. "OFAC provides scant public information about the approval process for licenses. OFAC broadly states that its licensing determinations are 'guided by U.S. foreign policy and national security concerns' and may involve coordination with other federal agencies, including the U.S. Department of State and the U.S. Department of Commerce."¹⁷⁴ In short, there is no list enumerating which factors OFAC weighs heavily, which factors OFAC weighs lightly, or which factors OFAC even takes into consideration.

In the application for MLB, it is important to stress the humanitarian concerns. Taxing accounts of players like Yasiel Puig demonstrate the harm young athletes endure to pursue their dreams of playing professional sports in the United States. This is precisely the type of problem that the license seeks to prevent. Additionally, MLB's application must alleviate concerns that

¹⁶⁷ *Supra* note 164.

¹⁶⁸ *Supra* note 122.

¹⁶⁹ *OFAC Licensing, Counterterrorism and Humanitarian Engagement Project 3* (Mar. 2013), <http://blogs.harvard.edu/cheproject/files/2012/10/CHE-Project-OFAC-Licensing.pdf>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 3-4.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 4.

FCB is an entity of the Cuban government. After all, the sanctions are intentionally imposed to the detriment of the Cuban government.

Despite the strong arguments that could be made in favor of granting the license, OFAC is likely to issue a denial, especially in the wake of revoking MLB's prior license issued under the Obama administration.

Once denied, options moving forward are limited. According to the U.S. Department of the Treasury, "[a] denial by OFAC of a license application constitutes final agency action. The regulations do not provide for a formal process of appeal. However, OFAC will reconsider its determinations for good cause, for example, where the applicant can demonstrate changed circumstances or submit additional relevant information..."¹⁷⁵ In this case, it is presumed that MLB has already laid everything out in their application for the license. Unless new information comes to light, there are likely no available avenues for reopening the application based on good cause, changed circumstances, or having additional relevant information not already provided. Thus, MLB is left with one more branch of government – the Judiciary.

MLB's final option is to obtain a review of OFAC's decision under the Administrative Procedure Act ("APA"). The APA was created in 1946 and was designed as a safeguard against agencies acquiring too much power.¹⁷⁶ "An agency was defined as any authority of the United States excluding Congress, the courts, and the governments of territories, possessions, or the District of Columbia."¹⁷⁷ Agencies, like the U.S. Department of the Treasury, operate under the executive branch and often reflect the will of the President. Moreover, these agencies and their decisions often operate outside of the normal system of checks and balances, thus granting additional powers to the President.

While many argue this is unconstitutional, there are many practical benefits to allowing agencies to handle matters without the legislative and judicial branches. As an example, the U.S. Department of Agriculture determines the guidelines and regulations for businesses selling animal products for human consumption. The agency is entrusted with the task of setting such safety standards, as the agency is staffed with highly qualified experts in the field. By allowing the agency to handle matters in this area, the U.S. government does not have to exhaust resources that could be used elsewhere. Agencies promote efficiency and expertise with highly-technical matters in areas that the government, in broad terms, does not have the time or energy to manage.

Nevertheless, agencies should not be free to operate unrestrained just because they are experts in their respective fields. After the creation of the APA, agencies no longer have free reign to do whatever they choose. "The purposes of the act were: (1) to ensure that agencies keep the public informed of their organization, procedures, and rules, (2) to provide for public participation in the rule-making process, (3) to prescribe uniform standards for. . . adjudicatory proceedings, and (4) to restate the law of judicial review."¹⁷⁸

Most relevant to MLB's dilemma is the APA's power to review final agency decisions, such as OFAC's final agency decision not to issue the license. When judicial review of agency

¹⁷⁵ *Supra* note 164.

¹⁷⁶ Cynthia Schoepner, *Administrative Procedure Act*, Encyclopedia Britannica, (Dec. 1, 2017), <https://www.britannica.com/topic/Administrative-Procedures-Act>.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

action is afforded, courts most frequently apply the “arbitrary and capricious” standard.¹⁷⁹ *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Company* offers an explanation for this standard of review:

In *State Farm*, the Court explained that in applying this ‘narrow’ standard of review,¹⁸⁰ ‘a court is not to substitute its judgment for that of the agency.’ Rather, a court should only invalidate agency determinations that fail to ‘examine the relevant data and articulate a satisfactory explanation for [the] action including a “rational connection between the facts found and the choice made.”’ When reviewing that determination, courts must ‘consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.’¹⁸¹

Therefore, all that matters is whether the agency considered all of the relevant facts and made a logical decision based on those facts. Where this is the case, it is highly likely that the agency’s decision will stand.

The U.S. Department of the Treasury revoked MLB’s license in a letter to MLB’s attorneys. The letter stated that the agency decided to revoke the license after new facts were brought to the agency’s attention.¹⁸² The agency did not disclose the facts in question but cited to § 515.571(e) of the CACR.¹⁸³ Under this section, hiring Cuban nationals to work in the United States in a non-immigrant status may be permitted so long as no payments are made to the Cuban government in relation to the hiring of the Cuban national.¹⁸⁴ Therefore, a Cuban baseball player may be hired and permitted to play with MLB so long as no payments in relation to their employment are paid to the Cuban government. Where the agreement runs counter to § 515.571(e) of the CACR, according to the letter, is in the proposed payments to FCB.¹⁸⁵ As previously mentioned, OFAC concluded that FCB is an entity of the Cuban Government. This means that payments paid to FCB are payments made to the Cuban Government and thus prohibited under § 515.571(e) of the CACR.¹⁸⁶

This determination by OFAC is where MLB may plausibly make an “arbitrary and capricious” argument. For MLB, this entails presenting evidence that OFAC arbitrarily concluded that FCB is an entity of the Cuban Government. To make a showing that the Trump administration arbitrarily revoked the license, MLB should turn to the 2020 Caribbean Series. Every winter, a handful of teams throughout Latin America compete in the Caribbean World Series after their national seasons end. Participating teams typically come from Mexico, Puerto

¹⁷⁹ Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, Congressional Research Service (Mar. 27, 2017), <https://fas.org/sgp/crs/misc/R41546.pdf> (citing 5 U.S.C. § 706(2)(A)).

¹⁸⁰ A standard of review is the approach courts take when evaluating an agency decision. When a court applies a narrow standard of review, the court gives more deference to the agency.

¹⁸¹ *Supra* note 179 (citing *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-44 (1983)).

¹⁸² *Supra* note 122.

¹⁸³ *Id.*

¹⁸⁴ *Id.* (citing 31 C.F.R. § 515.571(e)).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

Rico, Venezuela, the Dominican Republic, Panama, and Cuba.¹⁸⁷ The tournament's location changes year-to-year depending on which Latin American country is hosting.¹⁸⁸ In 2020, the tournament was held in San Juan, Puerto Rico.¹⁸⁹

For the first time in several years, Cuba did not participate.¹⁹⁰ Approximately one month before the tournament, the Caribbean Professional Baseball Confederation, the organization that facilitates the event, announced that Cuba would not be participating in the tournament.¹⁹¹ Because the tournament was hosted in Puerto Rico – a U.S. territory – foreign nationals were required to obtain visas. Accordingly, the Confederation excluded the Cuban players because of issues with obtaining visas.¹⁹² Specifically, the Cuban players were not able to procure visas in time for the tournament due to a late end date of their regular season in Cuba, so the Confederation replaced them with another team.¹⁹³ FCB, on the other hand, contends that the exclusion of Cuban players in the tournament was the result of pressure from the U.S. government on the Confederation.¹⁹⁴

It is not clear whether the Cuban players did not have enough time to apply for visas or whether the U.S. government put pressure on the Confederation to exclude the Cuban team. One thing that is certain, however, is that if FCB were an entity of the Cuban government, the Cuban embargo would outright prevent Cuban nationals from playing in Puerto Rico just like the Cuban embargo prevents Cuban nationals from playing in MLB. This would have made the purported visa issues and alleged government pressure moot.

The Trump administration terminated the agreement between MLB and FCB on the grounds that FCB was an entity of the Cuban government. No such grounds were cited when the FCB was planning on sending players to participate in a tournament in Puerto Rico. This lapse in consistency supports the argument that the Trump administration arbitrarily concluded that FCB is an entity of the Cuban government.

Unfortunately, the name of the entity – the Cuban Baseball Federation – by itself suggests that it may be an entity of the Cuban government. Moreover, neither the Obama administration nor MLB have set forth an explanation showing how they concluded that FCB was not an entity of the Cuban government. Instead, the Obama administration and MLB emphasize human trafficking concerns for pursuing the agreement between the two baseball organizations.

Furthermore, the judicial review is not meant to reevaluate the facts and make a decision whether or not to issue a license. Rather, the judicial review simply reevaluates the agency's decision-making process. Here, it would be hard for any court to conclude that the agency arbitrarily or capriciously denied MLB a license based on its belief that FCB is an entity of the

¹⁸⁷ *5 things to know about 2020 Caribbean Series*, MLB News, (Jan. 31, 2020)

<https://www.mlb.com/news/caribbean-series-changes-for-2020>.

¹⁸⁸ *Serie Del Caribe*, Baseballparks.com, <https://baseballparks.com/essays/seriedelcaribe/> (last visited May 4, 2020).

¹⁸⁹ *Supra* note 187.

¹⁹⁰ *Id.*

¹⁹¹ *Cuba to Skip Caribbean Baseball Championships*, Havana Times, (Jan. 5, 2020),

<https://havanatimes.org/news/cuba-to-skip-caribbean-baseball-championships/>.

¹⁹² *Supra* note 187.

¹⁹³ *Supra* note 191.

¹⁹⁴ *Id.*

Cuban government. Under the narrow standard of review, the court will give substantial deference to the agency. MLB faces an uphill battle. While legal remedies exist, they are unlikely to yield fruitful results. Nevertheless, the future for MLB is not necessarily so bleak.

IX. CONCLUSION

Cuban baseball players share a similar dilemma with Venezuelan baseball players. Like Cuba, Venezuela is under a socialist regime and as of August 2019, is under strong economic sanctions.¹⁹⁵ This undeniably affects young Venezuelan baseball players and their potential to play in Major League Baseball. Like the talent in Cuba, "...players from Venezuela are vulnerable to such dangers due to their high profile and the lucrative contracts they sign."¹⁹⁶ Therefore, agreements like the one between MLB and FCB are more important than ever to protect these young athletes and can serve as a model to help protect players in other countries.

Likewise, these agreements can be used as bargaining chips as part of a larger effort to promote foreign relations. Although President Trump remains stern with his sanctions against Cuba, he is aware that the MLB-FCB agreement is highly desirable for both parties. President Trump also attributes Venezuela's turmoil to Cuba's involvement.¹⁹⁷ In turn, President Trump offered to review his revocation of the MLB-FCB agreement if MLB applies pressure to Cuba to back away from Venezuela.¹⁹⁸ However, President Trump made it clear that changes in Cuba must occur before he makes any reconsiderations regarding the agreement:

'The president taking a meeting with the commissioner of MLB to discuss a topic that the administration recently made a ruling shows that the president is open to seriously considering changing the administration ruling that was recently made,' said Fernando Cutz, a former acting senior director for Western Hemisphere affairs at the National Security Council in the Trump administration. 'That shows the president is willing to at least consider overruling whoever made that ultimate decision underneath him.'¹⁹⁹

In sum, the fate of the agreement predominantly rests on the President and the subsequent reflection of the President's will in executive agencies. With new administrations come new goals and new means to achieve those goals. The next administration's strategy with Cuba will largely impact the future of MLB's relationship with Cuba and FCB. Just as quickly as the Trump administration moved to undue the Cuban Thaw from the Obama administration, the next President may take a more open stance with Cuba. If the next president follows a similar

¹⁹⁵ Michael Crowley & Anatoly Kurmanaev, *Trump Imposes New Sanctions on Venezuela*, N.Y. Times, (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/us/politics/venezuela-embargo-sanctions.html>.

¹⁹⁶ Christian Red, *MLB Players from Venezuela Put a Spotlight on their Home Country's Crisis*, NBC News, (Jan. 19, 2020), <https://www.nbcnews.com/news/latino/mlb-players-venezuela-put-spotlight-their-home-country-s-crisis-n1116616>.

¹⁹⁷ Franco Ordonez, *Trump Will Play Ball with MLB on Cuban Players if League Helps with Venezuela*, NPR, (June 12, 2019), <https://www.npr.org/2019/06/12/731966442/trump-will-play-ball-with-mlb-on-cuban-players-if-league-helps-with-venezuela>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

trajectory with Cuba as President Obama, there is hope for MLB and FCB to eliminate the bolsa negra.