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Cuban ballplayers special part of immigration question

In recent years, federal investigations regarding the smuggling of Cuban baseball players into the United States have begun to unfold in the mainstream media.

Historically, Cuba has not let their baseball players leave the country freely. MLB-bound baseball players defecting from Cuba take huge risks fleeing their country and enlisting the assistance of human smugglers to get them out of Cuba and eventually into the United States.

Pursuant to MLB rules, in order to become free agents and avoid the amateur draft, they must first establish residence in a country other than the United States before coming here. As free agents they are able to obtain big money contracts.

It is unclear why the federal government decided to crack down specifically on this group of immigrants, which could presumably prevent Major League Baseball from reaping benefits of many talented Cuban athletes whom fans grow to know and love.

Some MLB all-stars included in a wave of talent from Cuba who successfully defected to pursue MLB careers include Yoenis

Céspedes, Jose Abreu and Yasiel Puig.

This year, we mourned the abrupt passing of former Miami Marlins' pitcher Jose Fernandez. His story gained significant media attention and detailed how he made it to the U.S. after four attempts to defect from Cuba. On his final and successful defection attempt via boat, his mother fell overboard and he jumped in to save her.

Free agent closer Aroldis Chapman also defected from Cuba in 2009 by walking out of a Dutch hotel with his passport, while visiting Rotterdam with the Cuban national team for a

tournament. He never looked back. Chapman played a major part in the Chicago Cubs' World Series championship this season.

Although it may feel right to simply turn a blind eye to the wrongful processes that these men undertake to make it here, especially in those cases where a specific player helps your team break a 108-year curse, is it wrong to be passive on this issue?

Current events have shed light on how Cuban baseball players often embark on dangerous and complex journeys to make it to the big leagues. Some of these journeys involve enlisting the services of human traffickers, which as a result, directly involve, or at least associate the players with, violence, lies, kidnapping, fraud and even murder.

Because of their potential worth, Cuban baseball players are treated as special cargo by the traffickers, costing much more to move them into the country than the average defector and requiring continuing fees drawn from their MLB earnings.

Last week, the United States government disclosed 77 witnesses, including Chicago White Sox first baseman Jose Abreu and free agent Yoenis Céspedes, in a federal criminal court case regarding sports agent Bartolo ("Bart") Hernandez for his alleged role in a smuggling ring that traffics foreign baseball players into the United States to play professional baseball.

In February, Hernandez was arrested and criminally charged in the U.S. District Court for the Southern District of Florida with two counts of conspiracy for knowingly encouraging and smuggling Leonys Martin, a Seattle Mariners outfielder, out of Cuba and into the United States. He is the first sports agent to face charges regarding smuggling Cuban athletes since



Amy N. Schiller is an attorney at Schiller, DuCanto & Fleck LLP where she practices family law with a strong focus on property issues and the complex financial and custody matters facing professional athletes and entertainers. She can be reached at aschiller@sdflaw.com.

the 2007 conviction of Gus Dominguez.

In the case, Hernandez faces up to 20 years in prison (10 years per count). The U.S. Attorney's Office is also seeking to recover \$1.5 million from Hernandez. It is alleged that Hernandez extracted this amount from Martin's 2011 contract with the Texas Rangers.

The government agents allege Hernandez played a role in a conspiracy that paid boat captains to smuggle baseball players out of Cuba, supplied fake documentation to migrants and demanded they lie to law enforcement officials about how they left Cuba and, further, relied on fake documentation to get them into the U.S.

Prosecutors will have the burden of proving that Hernandez knowingly and with reckless disregard induced Martin to come to the United States with the intent of obtaining private financial gain, in violation of Title 8, United States Code, Section 1324.

Not helpful to Hernandez is that back in 2012, Martin was sued for breach of contract by two of Hernandez's alleged co-

conspirators, saying he owed them 35 percent of his Major League contract (5 percent of which would go to Hernandez).

In response, Martin filed a countersuit against a Mexican-based company whose principals included the two co-conspirators, alleging he was coerced by fear and held hostage by Hernandez and his accomplices after leaving Cuba while his contract with the Rangers was being negotiated and finalized. This suit exposed Hernandez publicly to the allegations of involvement in a smuggling ring.

The court cases and federal investigations surrounding Martin's and other Cuban baseball players' defections highlight the question of whether MLB should continue welcoming Cuban defectors and whether those that help smuggle these players into the United States should be criminally punished.

Over the years, MLB teams have collectively spent hundreds of millions of dollars on contracts with Cuban baseball players. The league has seemingly positioned itself as a passive recipient of these players, despite how they may have made it into the country and despite the fact that smugglers may be rewarded significant percentages of the players' contract.

Given how the United States has generally handled undocumented immigrants from Cuba, the answer to these questions is unclear.

To be specific, this month marks the 50th anniversary of the 1966 Cuban Adjustment Act. The act allows Cubans to apply to become permanent U.S. residents, even if they arrive without a visa or are smuggled into the country, if they remain present in the United States for at least one year.

The United States also has a

“wet foot, dry foot” policy. This policy allows Cuban citizens who successfully make it onto United States soil to remain in the United States. However, those who are caught at sea attempting to defect are sent back to Cuba.

In Martin’s case, the Hernandez defense lawyers take the position that if the act and related policy allows Cubans to legally remain in the U.S. once they have reached our shores, then the idea of charging someone for helping them cross a border cannot necessarily

be illegal. Therefore, without having committed a crime, there cannot be a conspiracy.

Based upon the 1966 act and the wet foot, dry foot policy, it could appear that MLB’s looking the other way may not be inconsistent with the United States’ policy of generally welcoming of migrants from Cuba who make it here by any means.

However, in the wake of the recent presidential election, there is much speculation surrounding the issue of whether there will be

changes to United States laws and policies toward illegal immigration.

Donald Trump’s stated positions on immigration may not necessarily mesh with the current United States’ law and policy of essentially welcoming Cuban defectors who successfully make it here.

If there are changes, it is likely that baseball players from Cuba who wish to play baseball in the United States will have even larger hurdles to overcome in order

to do so.

In the meantime, the MLB is reportedly pushing to set up an international drafting process in its next collective bargaining agreement in order to prevent some of the corruption surrounding immigrant players like those from Cuba.

As a part of this concept, MLB is proposing possibly giving the players in the international draft signing bonuses comparable to what those players in the standard draft receive.