

Student Exam Number: _____

GENERAL INSTRUCTIONS:

1. This is a **partially open-book examination**. You may refer to the assigned statutory supplement for the class, "Immigration and Nationality Laws of the United States: Selected Statutes, Regulations and Forms". Notes and tabs on the statutory supplement are acceptable. You may also use any materials (charts) passed out with the examination, but **you may not use any other written materials**.
2. This exam consists of **one long set of facts** followed by **specific questions to be answered**. Your answer will consist of one long essay with two parts corresponding to the two "clients" described in the statement of facts. In your essay, you should try to answer all of the questions asked. Your essay may be of any length, but you will not receive credit for analyses which are not reasonably related to answering the questions asked. The questions need not be answered in any particular order within each section of your essay. Organize your essay as you see fit. You will receive points for spotting issues and for accurate and detailed analysis. If you are able to spot an issue, but are not sure how to analyze it, make sure you mention it so that I know you spotted it.
3. The total time for the exam is **3 hours**. I would estimate a total of about 1 hour and 45 minutes for Section I (Marta) and 1 hour for Section II (Salvador), with about 15 minutes to check over your work. However, there is no required time allocation for the individual sections. You may divide your time as you see fit. I would advise taking a brief time after reading the facts to outline and organize your answer.
4. Your essay answer must be on blue books or typed. Any information on scrap paper will not be considered in grading your exam. If you are running out of time and want me to consider the issues you spotted in your outline, take the last few minutes to transfer your outline to the bluebook. **There are further instructions following the fact pattern. Please read them carefully.**
5. There are **200 points** available. Section I of your essay will be worth 120 points. Section II is worth 80 points.
6. Write your **exam number** on your exam envelope, all used blue books and at the top of each page of this exam. **Do not use your name, student ID number or Social Security number on any exam materials.**

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FACTS:

Marta was living with her husband, Hugo, in Argentina when she found out he was having an affair. She confronted him and he told her, “you can’t tell me what to do – I am the man and you are the woman.” When she said she’d no longer live with him if he didn’t stop the affair, he punched her and told her he would do worse if she left him. Marta left him anyway and moved to another neighborhood in the same city. After that, she would run into her husband and his girlfriend at the store, in restaurants and on the street. When she did, he would glare at her in a menacing way and once he called her a “whore” as he walked by her on the street. She never felt very safe after she left him because of the threat he’d made. She knew that, since Argentina has such a “macho” culture, she had really broken a taboo by leaving her husband instead of ignoring his affair. She worried that if he tried to harm her, the police might not intervene.

After about a year of this, Marta had an opportunity to visit her sister in the U.S. Marta was out of a job at that time, and she’d heard that it’s hard to get a tourist visa if you don’t have a job to return to and a bank account. Therefore, Marta got a friend at a company to write her a job letter and she had her mother transfer about \$4,000 into her bank account temporarily to beef it up. During the brief period that her mother’s money was in her bank account, she got a letter from the bank stating the amount she had on deposit. With this documentation, she was easily granted a tourist visa. It was good for a year from when issued. Within a month, she left for the U.S. When she arrived at the Los Angeles airport on February 1, 1998, she told the officer she was going to visit her sister in Southern California and go to Disneyland, then travel around with her sister for a couple of months and return to Argentina. The CBP officer told her she could stay for 6 months.

Once Marta saw how “classy” her sister’s life was in Orange County, she swore she’d never go back to Argentina. She stayed with her sister for about three years, and then she decided to try to find a way to “get legal” in the U.S. Since her sister was a United States Citizen (USC), she asked her sister who she could consult to help her find a way to stay. Her sister introduced her to a “notary” who took \$1500 and told Marta he would get her a “work authorization”. Then Marta asked him how she could bring her 12 year old son, Salvador, to the U.S. The notary introduced Marta to a “coyote”, who said she would have to pay \$7500 to bring her son to the U.S. After he put her in touch with the coyote, Marta never saw the notary again. She received a work authorization card in the mail, but it looked a little weird. When she tried to contact the notary to ask about it, he had moved and left no forwarding address and his phone was disconnected.

Marta used the work authorization card received from the notary to start working so she could earn enough money to bring Salvador over to the U.S. In the meantime, Salvador stayed with his grandmother in Argentina. It took about 6 years for Marta finally to earn the \$7500, but by then the price had gone up and she had to work another year. Finally, when Salvador was 19 years old, Marta had him brought over by the coyote. By then,

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she was desperate to get him here because his grandmother had gotten old and senile and could no longer care for him and gangs were rampant in their town. He entered the U.S. illegally on August 12, 2008.

Hugo was not Salvador's father. Salvador's father, Francisco, to whom Marta was never married, had left Marta when Salvador was about 3 years old. The separation was amicable. Francisco had written and called and had occasionally sent support for Salvador, up until the time Francisco left for the U.S. when Salvador was about 8. About the same time, Marta married Hugo. Then, Francisco had stopped regular contact because of Hugo's jealousy, but called every Christmas, and sent Salvador \$1,000 every year for his "college fund". Francisco had become a USC after getting his lawful permanent resident status through marriage to Wilma, to whom he remained married just over two years. It hadn't worked out because Francisco had realized that he was gay. After the conditions were removed from his residency, he and Wilma divorced and he now lives with his husband in Pacifica.

While waiting for Salvador to arrive, Marta met Joe, a USC and a famous plumber who was very charming and opinionated. They hit it off and started dating. Since Marta had two failed relationships, she was not interested in another marriage, but she was having fun with Joe and liked him very much. After dating for a couple of years, Marta found herself pregnant. Joe has hinted that he would marry Marta so she can stay in the U.S., but she wants to be sure it's right before getting married and would rather find another way to stay here.

But then, a couple days after Salvador arrived, Marta got a Notice to Appear in Removal Proceedings in the mail. It seems that the notary had filed an asylum application for Marta without her knowledge and had used his own address as hers, so she had never received the interview notice and her case had been referred to the Immigration Court. To add insult to injury, a few days later Marta, who was by then 8 months pregnant, found out from an ultra-sound that her unborn child suffers from a rare disease which will probably result in his being mentally retarded and needing extensive medical treatment and special education throughout his lifetime. Marta's sister has promised to help her care for the child since Joe is not particularly interested in being a father, even to a "normal child", and has told Marta that, even if they get married, it is "all on her".

A few weeks later, Salvador, who has "fallen in with the wrong crowd" was arrested and pleaded guilty to misdemeanor shoplifting and possession of "poppers", a drug listed in the California Penal Code as a "controlled substance".

Marta and Salvador come to see you to ask your advice as to what they should do about Marta's Removal Proceedings, and how each of them might be able to remain in the United States. Marta tells you she is a little afraid to return to Argentina because of the situation with Hugo, that she doesn't want to be separated from Joe and that she is worried that if Salvador has to go to Argentina, even for a short time, he'll get into trouble with gangs.

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QUESTIONS:

Please answer the following questions about Marta and Salvador in an essay about their legal situations. Assume that they come to ask your advice in December 2008. Please divide your answer into two distinct sections and be sure to address the questions related to Marta and Salvador each in a separate section:

Section I: Marta [suggested time: 1 hour 45 min.]:

Is Marta removable? If so, under what grounds and why? Who has the burden of proof?

Assuming Marta is removable, what relief may she apply for? What must she show to qualify for each such form of relief? What are her chances of prevailing and why?

Marta wants to know if she should marry Joe in order to get her green card. What more do you need to know to answer Marta's question? What things should Marta consider before deciding whether to marry Joe? Would their marriage be valid for immigration purposes? Will the fact that Marta is now in Removal Proceedings affect your answer to that question?

If Marta marries Joe, can she remain in the U.S. or will she have to leave the U.S. to immigrate? Why? If she has to leave the U.S. how long will it take her to come back?

Are there any impediments to the relief you are considering for Marta? If so, what are they and how might they be overcome?

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Section II: Salvador [suggested time: 1 hour]:

Is there any way for Salvador to obtain legal permanent status in the U.S.? If so, how may he do so and how long will it take? Are there any deadlines or time constraints of which Salvador should be aware?

Marta and Salvador want to know if Marta marries Joe, will that help Salvador? If so, how? If not, why not? What if Joe is willing to adopt Salvador?

If Salvador is able to immigrate, may he do so here in the U.S. or must he travel abroad? If he must travel abroad, how long will he have to be outside the U.S. before he can come back? Is there anything he can do now to avoid a long stay outside the U.S.?