I affirm the resolution, Resolved: The United States ought to extend to non-citizens accused of terrorism the same due process protections it grants to citizens.

Observation: The resolution is a statement of general principle. This means that the aff need only prove that an obligation to extend rights exists, not that it outweighs any other particular concern a government might have. Conversely, the negative must disprove that the obligation exists. There are three justifications:

First, the resolution does not state that the government is ONLY obligated to extend rights to non-citizens or that the obligation outweighs other obligations. To state that I have an over-riding concern to ignore my obligations does not negate that the obligation exists. If I’m forced to choose between doing my homework and saving someone’s life, that doesn’t negate my obligation to do my work it just proves that I have multiple obligations.

Second, Constitutional rights are not absolute. Rights can be abridged if there are greater societal concerns, but the rights still exist. Cole writes,

“To assert that noncitizens are entitled to substantially the same constitutional rights protections as citizens is not to assert that these rights are absolutes, or that the Constitution is a suicide pact. With the exception of the bans on slavery and torture, most constitutional rights are not absolutes, but presumptive protections that may be overridden by compelling showings of governmental need and narrow tailoring. Thus, for example, the First Amendment creates a strong presumption of protection for speech, but that presumption is overridden where the speech is intended and likely to incite imminent lawless action. My claim is not that such categorical balancing is inappropriate, but that we should not cheat on the balance by drawing the line differently for non-nationals and citizens. While the definition of most constitutional rights contains an implicit consequentialist balance, the balance should be struck equally for all - even if it might appear convenient or politically tempting to strike it differently for some.”

Third, debating the resolution as anything other than a statement of general principle forces the aff to make assumptions about the circumstances of the non-citizens. This is bad for two reasons.

A. Affs can never categorically affirm the resolution because they can only affirm for certain non-citizens.

B. This destroys clash because both sides would just choose specific groups, and there would be no way to weigh between them.

The affirmative will value morality, because the word ought implies a moral obligation. And, in order to act morally, a government must bind itself to a universal rule of law. Habermas explains,

[Habermas, Jurgen. “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?” *Political Theory* 29.6 (2001): 766-81. Print.]

“Because autonomy must not be confused with arbitrary freedom of choice, the rule of law neither precedes the will of the sovereign nor issues from that will. Rather, the rule of law is inscribed in political self-legislation, just as the categorical imperative—the idea that only universalizable maxims, maxims capable of universal consent, are legitimate and reasonable in the sense of showing equal respect for each person—is inscribed in moral self-legislation. However, whereas the morally acting individual binds her will to the idea of justice, the reasonable self-binding of the political sovereign means that the latter binds itself to legitimate law. The practical reason that is articulated in the rule of law is—as legally exercised rulership—bound up with the constitutive features of modern law. This explains why the coimplication of popular sovereignty and constitutionalism is reflected in the relation between the autonomy of the citizen and the autonomy of the private individual: one cannot be realized without the other.”

Thus, a government ought to abide by the laws of its nation. Since the resolution is US-specific, the standard is **Constitutionality**.

Wilkinson 1 states:

What does it meant to look at the American Constitution structurally? Our founding document assumes different appearances, much as a mountaintop may seem to change under shadows and sun. In the of some, **the Constitution is** primarily **a declaration of rights, a priceless charter of our most basic freedoms.** In the view of others, **the Constitution is the blue print of our government, a document that literally allows us to function.** In point of fact, the Constitution is both things**,** and the supposed dichotomy between rights and structure is never so stark as some would have it. There is nonetheless a difference: view the Constitution structurally provides insights that simply are not possible if the Constitution is seen as a list of liberties and little more.

Wilkinson 2 explains:

But one should not pursue this dichotomy too far, for **our** Madisonian **tradition teaches that structural provisions not only confer collective rights upon popular majorities, but safeguard individual liberty by diffusion power. The Founders early on faced the dilemma of protecting minority rights in a country of majority rule.** “For Jefferson,” **writes the historian Bernard Bailyn, : the solution was clear: a bill of rights, which he advocated from the moment he first saw the Constitution… But Madison-** who in the end would write the national Bill of Rights **pointed out** to Jefferson **that a limited enumeration of human rights would never prevent anyone from misusing powere. Only structural balances within a government**, Madison thought, **pitting once force against another, could keep the misuse of power in check and so protect minority rights.** Thus, the dichotomy between rights and structure has been with the Republic almost from the start. **But the distinction has also been subsumed into the larger purpose of holding government in check for benefit of all citizens.**

**Our Structural Constitution**

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Since the Constitution is the main check of governmental power and protects rights, we must look to Constitutionality.

Contention 1: The Constitution makes no distinction between citizens and non-citizens in regards to due process. First, the 5th and 14th amendment protections are intentionally worded to include anyone being tried for a crime. Cole1 explains,

[Cole, David. “Are Foreign Nationals Entitled to the Same Constitutional Rights as Citizens?” *T. Jefferson Law R.* 25 (2003): 367-88. Print.]

“The Constitution does distinguish in some respects between the rights of citizens and noncitizens: the right not to be discriminatorily denied the vote and the right to run for federal elective office are expressly restricted to citizens. All other rights, however, are written without such a limitation. The Fifth and Fourteenth Amendment due process and equal protection guarantees extend to all "persons." The rights attaching to criminal trials, including the right to a public trial, a trial by jury, the assistance of a lawyer, and the right to confront adverse witnesses, all apply to "the accused." And both the First Amendment's protections of political and religious freedoms and the Fourth Amendment's protection of privacy and liberty apply to "the people."

“The fact that the Framers chose to limit to citizens only the rights to vote and to run for federal office is one indication that they did not intend other constitutional rights to be so limited. Accordingly, the Supreme Court has squarely stated that neither the First Amendment nor the Fifth Amendment "acknowledges any distinction between citizens and resident aliens." For more than a century, the Court has recognized that the Equal Protection Clause is "universal in [its] application, to all persons within the territorial jurisdiction, without regard to differences of ... nationality." The Court has repeatedly stated that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." When noncitizens, no matter what their status, are tried for crimes, they are entitled to all of the rights that attach to the criminal process, without any distinction based on their nationality.”

And the Supreme Court ruled unanimously in favor of this notion in the case of Yick Wo v. Hopkins. Henkin writes,

[Henkin, Louis. “The Constitution as Compact and as Conscience: Individual Rights Abroad and at our Gates.” Wm. & Mary L. Rev. 27.11 (1985). Print.]

“Yick Wo remains the foundation of our jurisprudence concerning the rights of aliens in the United States. According to Yick Wo, the phrase "any person" in the fourteenth amendment's equal protection and due process clauses includes aliens. Later, the Supreme Court also held that an alien was a "person" for the purposes of the due process clause of the fifth amendment, which safeguards life, liberty, or property against deprivation by the federal government. According to subsequent Court decisions, aliens also are among the "people" entitled to the fourth amendment guarantee "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," the freedoms of the first amendment, and the procedural safeguards and immunities provided in other amendments.”

The Supreme Court has reinforced the Equal Protections clause, and the UDHR also reaffirms the statute that all persons are entitled to due process protections. Cole 2 furthers:

Cole 03 (David, Professor of Law Georgetown University Law Center cole@law.georgetown.edu: Are Foreign Nationals Entitled to the Same Constitutional Rights As Citizens?; GEORGETOWN LAW The Scholarly Commons, March 2010; <http://scholarship.law.georgetown.edu/facpub/297>; September 2, 2012)

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There are strong normative reasons for the uniform extension of these fundamental rights. As James Madison himself argued,

those subject to the obligations of our legal system ought to be entitled to its protections: [I]t does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that whilst they actually conform to it, they have no right to its protection. Aliens are

not more parties to the laws, than they are parties to the Constitution; yet it will not be disputed, that as they owe, on one

hand, a temporary obedience, they are entitled, in return, to their protection and advantage While Madison's view was not without its CrItIcs, his view prevailed in the long run.I8 On this view, the Constitution pre-sumptively extends not just to citizens, but to all who are subject to American legal obligations, and certainly to all persons within the United States. Madison's view is buttressed by the fact that when adopted, the rights enumerated in the Bill of Rights were viewed not as a set of optional contractual provisions enforceable because they were agreed upon by a group of states and extending only to the contracting parties, but as inalienable natural rights that found their provenance in GOd.19

While natural law theories hold less influence today, the human rights movement of the last fifty years reflects a remarkably parallel secular understanding, namely that there are certain basic human rights to which all persons are entitled, simply by virtue of their humanity. Human rights treaties, including those that the United States has signed and ratified, uniformly provide that the rights of due process, political freedoms, and equal protection are owed to all persons, regardless of nationality**. The** **Universal Declaration of Human Rights, for example, aptly described** by Professor Richard Lillich as the "Magna Carta of contemporary international human rights law**," is expressly premised** **on "the inherent dignity and ... the equal and inalienable rights** **of all members of the human family.** Every international law scholar to consider the question has concluded that the Universal

Declaration extends its rights to non-nationals and nationals alike.21 **The Universal Declaration explicitly guarantees the** **rights of due process, political expression and association, and** **equal protection.**

Sedition Act, so with the Alien Act, those espousing the more inclusive, rights-protective views ultimately prevailed, and the Alien Act sunsetted two years after its enactment.

Contention 2: Denying rights to non-citizens creates a dangerous precedent for citizens. The logic behind restricting non-citizen’s rights can easily be extended to citizens, and it has been done in the past. Cole 3 explains

“Finally, what we are willing to allow our government to do to immigrants creates precedents for how it treats its citizens. In 1798, for example, Congress enacted the Enemy Alien Act, which remains on the books to this day and authorizes the President during wartime to detain, deport, or otherwise restrict the liberties of any over 14 years of age of a country with which we are at war, without any individualized showing of disloyalty, criminal conduct, or even suspicion. In World War II, the government extended that logic to intern 110,000 persons of Japanese ancestry, about two-thirds of whom were U.S. citizens. Similarly, while we think of the McCarthy era as beginning in the 1940’s, it was in fact preceded by several decades of targeting immigrants for their purportedly subversive political associations using immigration law. Joe McCarthy simply applied to citizens techniques developed in the 1910’s under the leadership of a young J. Edgar Hoover, head of the Justice Department’s “Alien Radical” division. Measures initially targeted at noncitizens may well come back to haunt us all.”