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

Observation: Any counter plan to the affirmative in this debate must use the US government as an actor because if they are proposing an alternative to the action in the affirmative plan, then they must still use the same actor, or else the counter plan isn’t valid. Secondly, if the actor is different, then the CP can automatically be permd because if they are proposing an action that another actor can take, that doesn’t negate that the actor of the resolution shouldn’t do the proposed thing. An alternate actor doesn’t replace the plan because the resolution is focused specifically on an action that the prescribed actor must take.

Ought is should

We must prefer the definition as one of should rather than that of a moral obligation because governments do not serve as moral bodies. They actually serve as tools as a way for the people to facilitate the production of policy and laws, not a moral calculus. Governments serve as practical, collective bodies that don’t take morality into account as a major factor since they need to focus on the safety of their citizens and the legitimacy of their power.

Jurisdiction is the right or power to administer justice and to apply laws (American Heritage)

Observation 2: Since jurisdiction implies the ability to apply laws over people, the government places non-citizens under its umbrella of jurisdiction when it accuses them of a certain act or crime. Essentially, if the government can accuse an individual for a crime, they automatically extend their jurisdiction to them. If these people, citizen or not, fall under the jurisdiction of a government, they ought to be extended the rights that the government awards those that are in that position. This means that all laws and parts of justice that the government extends to those under their jurisdiction now also extend to people that aren’t citizens. This is significant because of two reasons:

1. Since due process protections are awarded to all under the jurisdiction of the United States government, non-citizens ought to get these rights since the government extends to all these protections to the people they have jurisdiction over.
2. The government’s legitimacy comes into question when we don’t follow the constitution on this issue. The legitimacy of the government is actually being upheld by utilizing the central document that guides the government on the day-to-day basis, as it is the work that encompasses all the governmental issues that have to do with the government, the people, and pretty much everything in between. Richardson expands on this idea:

[Richardson, Henry S. “Rawlsian Social-Contract Theory and the Severely Disabled.” The Journal of Ethics 10.4 (2006): 419-62. Print.]

“To accommodate this focus on the basic structure and the parties' ignorance about their own society, we need to reframe Nussbaum's principle slightly. Governments operate legislatively or via non-legislative policy decisions, and within a constitution. The basic structure, or constitutional essentials, of a society is not something under the ordinary control of a government. As Rawls sees things, at least, once a just basic structure has been assured by a permanent constitution, the government ought presumably to leave the constitution alone in going about its business.”

In so far as we are looking to upholding the correct access of the jurisdiction of the government, and in consequence, the constitution, the affirmative value premise in the round will center on **Governmental Legitimacy.** This is because if a government isn’t legitimate, it has no power, and thus the government cannot do its job and has no purpose. Without a government, there is no body to control and regulate the society in our country, and chaos can ensue and foreign relations would be next to nonexistent.

Since the constitution and various protections that it suggests check up on the things that the government can and cannot due, it stops the government from taking steps or not taking steps that make it an illegitimate body. As that is important to the value in the round, the standard of achieving legitimacy will be **promoting governmental checks**, which is basically enforcing that the government should be checked and balanced on what it is allowed to do.

The link between this and the resolution is that if the government isn’t held as legitimate, its ability to rule over and to be an actor on issues such as this will become nonexistent, so in order to look at this resolution from a realistic perspective, we must use the affirmative framework.

Contention 1: I contend that the constitution extends due process protections to noncitizens, and this rule has been upheld by the Supreme Court.

The constitution of the United States government explicitly outlines in the 5th and 14th Amendments that all persons ought to get due process regardless of status. This implies that the government ought to extend this protection to noncitizens because the constitution is the document that defines the guidelines of the government and deviating from these guidelines would compromise the legitimacy of the government because if we don’t follow the sole document that the government uses to prescribe its actions, the government is no longer valid in the eyes of the people that it rules over.

Cole explains:

“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.”

Contention 2: The CIPA manages an effective way to protect the right to fairness in trial by providing an opportunity to gather evidence, but at the same time establishes parameters for the use and obtaining of certain classified materials/evidences.

Without allotting for the ability for the accused to get evidence to back themselves up, we are risking a large number of innocents being wrongly imprisoned or punished. Additionally, the use of the CIPA in order to outline the abilities of both branches of governments in terms of evidence allows it to establish additional checks. Another consequence of not implementing this can be that the country that housed this “convicted terrorist” may get mad that their citizen didn’t get a fair enough shot at proving their innocence and sever ties with the US or even worse, call for war and further increase pressures and potential harms to the United States and its citizens. If pressures increase and the government is unable to handle it properly, its validity deteriorates.

Windsor Explains:

**LINDSAY WINDSOR, “IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? *THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT*.”** *GEORGETOWN JOURNAL OF INTERNATIONAL LAW, 2012*

**The courts are best suited to exercise a safeguard over Executive invocation of the privilege.** Though the courts do not have expertise in the field of foreign affairs, **they** do **have expertise in matters of evidentiary procedures and thus can make these determinations**.175 **The risks of disclosing the privileged material to the court are minimal, because the disclosure would be only to one judge**.176 In districts where national security cases routinely arise, **some judges have become accustomed to handling issues of national security and classified information through extensive CIPA and FISA litigation**.177 **Other courts frequently handle similar matters requiring government secrecy and protection of sources in criminal prosecutions, such as sting operations in drug cases. Limited judicial review through inspection of the privileged documents would verify the integrity of the privilege with minimal risk for public disclosure of the information.178**

CIPA differs from the state secrets privilege, though, because CIPA is used in criminal prosecutions.140 In the criminal context, the Executive is simultaneously responsible for law enforcement and national secu-rity.141 **If the Executive finds the national security information is more valuable than a criminal prosecution, it can choose not to proceed with the prosecution.**142 Thus, at all times in the criminal context, **the Executive retains final authority for declassification and can refuse to disclose the evidence.**143 In the civil context of the state secrets privilege, where “the Executive’s authority to protect [such secrets] is much broader,”144 Congress could not intrude upon the presidential authority to safeguard national security information.145

However, where the protection of classified information is concerned, the Court interprets the constitutional separation of powers to assign that authority to the executive, not the legislative branch.135 The case study of the Classified Information Procedures Act (CIPA) clarifies the scope of congressional ability to regulate the state secrets privilege. **CIPA establishes procedures for a judge to rule in pre-trial hearings on the use of classified information in criminal proceedings.136 When a judge deems it necessary to the defendant’s Sixth Amendment right to be confronted with witnesses, to present evidence, and to a public trial,137 the court can require the government to disclose certain classified evidence, either in summary form, with redactions, solely to a defense counsel with a security clearance, or with full disclosure**.138 **CIPA enables the government simultaneously to prosecute effectively, to protect national security information, and to respect a defendant’s constitutional rights. CIPA has never been held to be unconstitutional**.139