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,

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

“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. In a society morality doesn’t just prescribe how to act it also provides our way of justifying our actions to others. Freeman explains,

[Freeman, Samuel. “Reason and Agreement in Social Contract Views.” Philosophy and Public Affairs 19 (1990): 125-57. Print.]

If we focus on reasons solely from the perspective of single agents under conditions of choice, and interpret this notion purely by reference to their desires and interests as individuals, then the skeptical question "Why should I be moral?" is a natural one to ask. And from that perspective it would appear that the only kind of considerations that can supply an answer to particular persons are instrumental ones about what promotes their antecedent ends. But these considerations are too narrow. They leave no place for the intuitive sense that practical reasons are not just normative considerations that must motivate an individual but also have a justificatory aspect extending beyond the individual's particular concerns. To account for this intuition, suppose we approach reasons differently, from the standpoint of our membership in a social group. When we ask for people's reasons in social contexts, we are not concerned simply with their intentions and motives, and we may not be interested at all in their having adopted effective means to realize their ends. Instead, our primary concern is whether their ends are legitimate and their means justified, as measured by the system of norms generally accepted within the group or by society as a whole. Every social group has norms of cooperation, certain practices and procedures that regulate interaction and are necessary to sustain the life of the group. The norms do not simply characterize accepted constraints on conduct. They also serve a social role in providing a public basis for justification. Members of the group assess one another's activities and pursuits in terms of its system of norms. When someone's conduct departs from standard practices, he is subject to criticism according to these standards, and is expected to justify his actions by reference to them. The system of norms has a central place in the public life of the group: certain rules and institutions are seen as providing reasons for and against people's actions and ends, whatever their desires and interests may be.”

And contractualism is the only moral theory that can account for this justificatory property of norms. Freeman 2 explains,

“Central to this definition is the idea that individuals are answerable to one another for their conduct, the claims they make, and the expectations they have regarding others' conduct and claims. This is part of what it means to be reasonable. Answerability implies more than being held accountable (responsible) for one's acts. It means that we (or someone in our stead) be able publicly to justify our conduct, aims, and expectations on terms others could freely accept. This gives rise to the contractualist idea that the norms we rely on to justify as well as to regulate our actions and expectations are the product of an ideal agreement.”

And the constitution of a society is the embodiment of the principles its citizens have agreed upon. Acting within the constitution is the only way for a government to meet the requirements of contractualism. Richardson explains,

[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.”

Since the resolution is US-specific, the standard will be **adherence to the Constitution.**

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. Cole2 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.”

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.”

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.”