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Affirmative, SEPOCT 2012

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

Before we start this debate, I would like to provide the following definitions:

Ought: Used to indicate duty or correctness

(Google Dictionary)

Non-citizens: In law, an alien is a person in a country who is not a citizen of that country..

(www.thefreedictionary.com/**noncitizen)**

Terrorism: The use of violence and intimidation in the pursuit of political aims.

(American Heritage Dictionary**)**

Due process: Fair treatment through the normal judicial system

(Google Dictionary)

Protections: A legal or other formal measure intended to preserve civil liberties and rights

(American Heritage Dictionary**)**

Value: Morality

The affirmative advocacy centers on a value of morality, defined under the moral principles theory observed by Nosek which is that **that morality is first and foremost prescriptive judgments of justice, rights, and welfare pertaining to how people ought to relate to each other.**

Criterion: Protecting rights

What we essentially will be weighing on in the round is protecting rights, which is essentially upholding and defending the rights of all people. Additionally, creating this rights grant to all, we have created an avenue for individual welfare and thus we have already tapped into achieving the value by weighing on this standard.

The Value and criterion link into the resolution because the resolution is concerning the US government, which is a body that is responsible for dealing with people, and that can’t be done without accounting morality otherwise a government is at risk for becoming a Nazi Germany or a Soviet Russia. The government also is in charge of looking after the welfare of its people.

Contention 1: The terrorist detention centers are extremely dehumanizing to all inmates.

Analysis: The detention center at Guantanamo Bay is inherently dehumanizing, and under the guise of a rights free zone, the mental, emotional, and physical health of detainees is constantly being attacked. Under President Bush, these prisons like Guantanamo have been out of jurisdiction and deemed as rights-free zones, which means that no rights need apply there, which is where the first moral issue takes place. Second, inmates are under constant torture and aren’t even allowed to lead their everyday lives in the camp properly as they are constantly messed with by the guards and caretakers at the prisons. If we can avoid this dehumanizing status quo and move away from it into the court system, morality is upheld by being just through avoiding this unfair torture and treatment, protect their rights through keeping their physical and mental body intact. Welfare in turn is protected because everybody is being taken care of so no one is tortured so inhumanely.

Ahmad continues:

**Muneer I. Ahmad, “RESISTING GUANTÁNAMO: RIGHTS AT THE BRINK OF DEHUMANIZATION”** Northwestern University Law Review, 2009

**Thus is Guantánamo** built deliberately upon contradiction, these two worlds existing side-by-side, the one self-consciously normal, the other a **carefully constructed project of dehumanization.** The town‘s aspiration of normalcy is made all the more urgent by the aberrance of the camps. The service members who work in the camps but spend their off hours in the town cross between these two worlds daily, traversing the dividing line known as ―the Wire.‖ The prisoners, of course, are forever delimited; their containment underscores the service members‘ freedom, and the barbarity of the camps helps to constitute the normalcy of the town.70

While these three dimensions of dehumanization are distinct, they are also interrelated. **All are pervaded by law, and more specifically, by rights. This is to say that law has been deployed to create the preconditions for the exercise of a state power so brutal as to deprive the Guantánamo prisoners of the ability to be human**. ~~In this way, Guantánamo recalls Hannah Arendt‘s formulation of citizenship as the right to have rights.16 By this she meant that without membership in the polity, the individual stood exposed to the violence of the state, unmediated and unprotected by rights.~~ **The re-sult of such exposure,** she argued**, was to reduce the person to a state of bare life, or life without humanity. What we see at Guantánamo is the inverse of citizenship: no right to have rights, a rights vacuum that enables extreme violence, so as to place Guantánamo at the center of a struggle not merely for rights, but for humanity—that state of being that distinguishes human life from mere biological existence.17**

**Power is exercised at Guantánamo not only through spatial demarca-tion, but through administration of ―indigenous‖ ritual. In Muslim coun-tries, the call to prayer is heard five times day**. In the old days, a muezzin ascended a steep minaret to make the call. **Today, it is broadcast from loud speakers attached to the minarets. At Guantánamo, too, the call to prayer is heard** (**though prisoners have complained that it is not broadcast all five times and that the government sometimes deliberately disrupts it). But on our first visits there, the recorded call was broadcast from loud speakers not atop minarets, but attached to the guard towers encircling the camps, each tower staffed by armed guards, and each emblazoned by an American flag. The prisoners‘ call to prayer issued nearly from the barrel of their captors‘ guns.**

Impact: If we don’t bring this matter into the realm of the federal court, the guards at these detention centers will continue to violate the human rights of a lot of people and as such, a program endorsed our government will be viewed as inherently immoral. An immoral government can’t be trusted, so there may be additional internal conflicts after this detention thing plays out such as revolutions or protests. These people are being put into detention centers randomly and being forgotten, in an isolated place where they are being beaten severely, not allowed a speedy trial, not even being given representation to make a legitimate advance at proving themselves innocent, and these need to be avoided in order to maintain the welfare of and protect the rights of people. In turn, justice can only be administered in this way or else it isn’t fair to any of these suspects.

Contention 2: The federal court system can be amended to avoid potential obstacles

Analysis: 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. This way, the welfare of our government and its secrets stay intact, yet the right for the accused to collect evidence for themselves is still present. This doctrine keeps parameters around the evidence system for the simple purpose of regulating what comes and leaves under the presumption of evidence. Additionally, the courts are the best suited to handle situations like these, and not allowing them to take care of business would lead to a lack in legitimacy because the solution would be settled for.

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

Impact: 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. 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. This way, everyone’s rights and welfare is looked after so there isn’t a real risk for danger.

Conclusion: Implementing the affirmative plan can prevent many potential harms and also protects human rights of all persons involved in the convictions and trials of these suspected terrorists, so it should be the best option.

I am now open for cross-examination.