Affirmative

Resolved: The United States ought to extend to noncitizens accused of terrorism the same constitutional due process protections it grants to citizens.

**Obs.1)** Giving noncitizens constitutional due process means that we must grant these people the same opportunities that due process encompasses. We all have the right to due process, but that doesn’t mean we all have the same attorneys and the same court rooms.

Because the resolution is a question of whether or not to treat non U.S. citizens and U.S. citizens alike I value **Equality**. My value criterion is **John Rawls Social Contract**. Rawls Contract states that no matter a person’s position in life, they need the essential aspects in life. When we grant Due Process to noncitizens accused of terrorism, we value their worth as humans by allowing them the same privileges us Americans so proudly promote. To not give them this constitutional right is to treat them as lesser human beings.

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| **1John Rawls explains, “In justice as fairness the** original **position of equality corresponds to the** state of nature in the traditional **theory of the social contract.** **This** original **position, is not,** of course, **thought of as an actual historical state of affairs[.]**, much less as a primitive condition of culture. **It is understood as a** purely **hypothetical situation[.]** characterized so as to lead to a certain conception of justice.”  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  1English, William. *The Value Debate Handbook*  Baylor Briefs. Waco, Texas 76706  [Baylor University] |

Rawls believes the only way we can achieve fairness is through the veil of ignorance.

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| **2Celeste Friend Professor at Hamilton College furthers, He invokes this point of view** (the general view that Thomas Nagel describes as “the view from nowhere”) **by imagining persons in a hypothetical situation,** the Original Position, which is **characterized by the** epistemological **limitation of the Veil of Ignorance.** Rawls’ original position is his highly abstracted version of the State of Nature. It is the position from which we can discover the nature of justice and what it requires of us as individual persons and of the social institutions through which we will live together cooperatively. In the original position, **[B]ehind the veil of ignorance, one is denied any** particular **knowledge of one’s circumstances, such as one’s gender, race,** particular talents ordisabilities, one’s age, **social status,** one’s particular conception of what makes for a good life, **or the particular state of the society in which one lives.** Persons are also assumed to be rational and disinterested in one another’s well-being. **These are the conditions** under which**, Rawls argues, one can choose principles for a just society which are** themselves chosen from initial conditions that are **inherently fair. Because no one has any** of the particular **knowledge he or she could use to develop** principles that favor his or her own particular circumstances, in other words the knowledge that makes for and sustains **prejudices[.]**, the principles chosen from such a perspective are necessarily fair.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  2Friend, Celeste. “Social Contract Theory.” *Internet Encyclopedia of Philosophy*  2004 [Professor at Hamilton College] |

Look to Rawls Social contract because it eliminates any worldly biases leaving us to debate over what is best for all. When we are all made ignorant of our position is society and are asked the question of whether we should all be given equal opportunities we would answer yes. Therefore you affirm on face.

**C1- the United States Constitution is a set of fundamental values that we as Americans ought to promote**

The fundamental Values of the Constitution such as everyone being treated equally by receiving due process is something that if we were made ignorant of our position in society we would all agree to.

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| **1Daniel Cohen Professor of Philosophy at Colby College states, “The U.S. Constitution is more than the foundational body of laws that established American government and outlined the boundaries of its power. Its provisions not only set out the most basic guiding principles for the government but also ratify a set of fundamental values**, some overtly stated n10 and some implicitly embedded, n11 **that help make up the moral fabric of American society.** Indeed, **Ronald Dworkin claims that "the American ideal of government not only under law but under principle as well is the most important contribution our history has given to political theory."** n12 **Among these principles are** popular participation in government, n13 various individual liberties, n14 and **equality[.]** - given a voice in the Equal Protection Clause of the Fourteenth Amendment. n15 **The mere fact of their inscription in the Constitution, in itself, indicates the reverence that American society has for those values - or, at least, has had for them in the past.** Not all constitutional norms are created equal, however. Some values are so fundamental to the American conception of government and the boundaries of its power that the Court will tie itself up in knots in order to maintain them. Others, by contrast, garner far less judicial fidelity.”  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  1Daniel H. Cohen, 2010 [professor of philosophy at Colby College], “Post-9/11 Anti-terrorism Policy Regarding Noncitizens and the Constitutional Idea of Equal Protection under the Laws,” Texas Law Review, 88 Tex. L. Rev. 1323. |

If we truly value the fundamental laws of our American Society then we would promote them to everyone because they are what’s fair, not deny people in need of Due Process.

**C2- As human beings, There is no distinction between Citizens and Non-Citizens making them both capable of committing terrorist actions.**

It is not moral to let person A and person B commit the same crime, yet person A gets constitutional due process because they are American citizens.

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| **Cohen 2 writes:**“For the laws and policies addressed in Part IV to be reasonable [I]n any true sense, **[T]here would have to be something about the distinction between aliens and citizens that makes codifying that distinction defensible in this context.** n117 **As a general matter, there is not. American citizens are** at least **as capable of carrying out a terrorist attack as noncitizens are.** In fact, they are probably more so in some ways because aliens - at least those who arrive legally - have to go throu/gh customs when they come to the United States, and thus the government maintains some minimal ability to keep track of those aliens who might be dangerous or to keep them out of the country altogether. Even the Bush Administration admitted as much**. When he was the Attorney General, Alberto Gonzales noted, "The threat of homegrown terrorist cells ... may be as dangerous as groups like al Qaeda, if not more so."** n118 It might be argued that because noncitizens do not have a vested interest in American society the way that citizens do, they are more apt to commit acts of terrorism[.], even if they are no more practically capable of doing so. And, [T]herefore, the distinction between citizens and aliens in counterterrorism law is appropriate. But this is plainly a false premise. Unfortunately, **[A]merican citizens repeatedly have shown that the desire and willingness to** [\*1340] **resort to terrorism on American soil is not unique to foreigners.** After all, **[T]he Oklahoma City bombing, the worst act of terrorism in America prior to September 11th, was the work of a citizen.** n119 More **[R]ecently, there have been citizen enemy combatants.** n120 **More recently still, a citizen-member of the U.S. military shot and killed thirteen Americans at the Fort Hood army base.** n121 Moreover, by their very terms, many of these specific laws and policies render any differentiation between citizens and aliens nonsensical and even counterintuitive. Consider, [F]or example, provisions of two of the laws noted above: the USA PATRIOT Act and the first military order asserting authority to preventatively detain aliens. The former defined terrorism so broadly for noncitizens that it allowed the government to detain some aliens who were, at best, tangential to terrorism[.], n122 whereas the first incarnation of the Bush military order, on its face, did not even allow the Administration to detain citizen-members of al Qaeda. n123 Thus, the government asserted broad authority to detain arguably harmless noncitizens but did not - at first - claim the same authority over citizens who, all else being equal, were much more dangerous. **It seems absurd for the** **government to claim that there is something intrinsic to noncitizen status that makes an alien with** tenuous, **indirect ties to al Qaeda more dangerous, and thereby more detainable, than a [U.S.] citizen who is a full-blown member of the terrorist organization.** But that is the position the government took[.] before it apprehended Padilla.”  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Daniel H. Cohen, 2010 [professor of philosophy at Colby College], “Post-9/11 Anti-terrorism Policy Regarding Noncitizens and the Constitutional Idea of Equal Protection under the Laws,” Texas Law Review, 88 Tex. L. Rev. 1323. |

The government does exactly what Rawls Social Contract attempts to avoid by placing a bias on other human beings that aren’t on American soil.

**C3- By not treating noncitizens accused of terrorism as equals we are making them lesser than us therefore dehumanizing them**

The United States currently detains noncitizens accused of terrorism at Guantanamo Bay, Cuba. They are dehumanized in this area for the following reasons:

1. They unlike American terrorist are not given due process, although they committed the same crimes.
2. They are being indefinitely held with no evidence of their crime.

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| **Amy Kaplan Professor at the University of Pennsylvania states,** Since Rasul June 2004, however, the administration continues its effort to block the access of the prisoners to the lower courts. Despite its many legal defeats, it continues to ignore the courts and to treat the prisoners according to its own rules: [**B]y staging** farcical **administrative hearings to determine the enemy combatant status of prisoners who have already been labeled enemy combatants**, by planning military tribunals to judge war crimes run by officers with little training who have the power to condemn the accused to death, by releasing some prisoners at its whim, and by building two maximum security prisons for the indefinite detention of others. By understanding the long imperial history that fills the black hole of Guantanamo, we can see how the Court decision in Rasul v. Bush does not simply rein in executive power or bring Guantanamo inside the rule of law. In perpetuating the differential logic of the Insular Cases, **the Court remaps an arena only partially** and indiscriminately **subject to constitutional restraints, wherein the executive can still exert power[.]** with impunity. In creating this ambiguous territory, **[T]he Court contributes to reclassifying persons as "enemy combatants," a category that erodes the distinctions among citizens and aliens[.],** immigrants and criminals, prisoners and detainees, terrorists and refugees. Yet **[T]his erosion** is not moving toward granting more rights to noncitizens. On the contrary, it **moves both citizens and noncitizens further toward the lowest possible rung of diminished liberties. Ultimately, these persons are codified as less than human and less deserving of human, international, or constitutional rights. This dehumanization is shaped by racial, national, and religious typologies and shored up by revamped historical imperial taxonomies, which rebound across national borders. The blurring of legal boundaries between** domestic and foreign, and **aliens and citizens, does not weaken executive and military authority[.],** as Scalia fears. **Instead it creates ever-widening spheres** to the "four corners of the earth," **where the U.S. administration**, abetted by the courts, **might manipulate habeas corpus to conceal rather than to "show the bodies" that have been indefinitely detained, sexually humiliated, and medically and psychologically abused and tortured.**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Amy Kaplan *American Quarterly* , Vol. 57, No. 3, Legal Borderlands: Law and the Construction of American Borders (Sep., 2005), pp. 831-858 [Works in the interdisciplinary field of American studies at The University of Pennsylvania} |

When we are the ones accusing noncitizens of terrorism and do not plan on giving them any just deserts we view them as ‘others’, as sub-human beings that do not want, do not need, or do not deserve the rights that we give our those in our nation. By not allowing them constitutional due process we are being, dehumanizers, and we create inequalities, therefore making us the most immoral.

Because of these reasons you must Affirm.

C2- Giving gov to much power.