### 1NC – Indefinite Detainment – Place and Space

#### The negative is a total and complete rejection of bondage and captivity, the affirmative is a necessary but not sufficient rejection of this reality.

Nagel and Nocella 13 (The End of Prisons: Reflections from the DecarcerationMovementedited by Mechthild E. Nagel, Anthony J. Nocella II)

The original working title for this volume was Prison Abolition. After discussion among the contributors however, we changed the title to The End of Prisons. First, we wish to raise discussions about the telos of prisons – what purpose do they have?Second, Prison abolition is strongly related to a particular movement to end the prison industrial complex. Following Michel Foucault(1977), we argue that prisons are also institutions such as schools, nursing homes, jails, daycare centers, parks, zoos, reservations and marriage, just to name a few. Prisons are all around us and constructed by those in dominant oppressive authoritarian positions. There are many types of prisons – religious prisons, social prisons, political prisons, economic prisons, educational prisons, and, of course, criminal prisons. Individuals leave one prison only to enter another. From daycare to school to a nursing home, we are a nation of instutionalized prisons. Criminal prisons in the United States are not officially referred to as such, but rather as correctional facilities. A prison, as we define it in this volume, is an institution or system that oppresses and does not allow freedom for a particular group. Within this definition, we include the imprisonment of non-human animals and plants, which are too often overlooked. Michel Foucault (1977) famously said, “Is it suprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?” (p. 288). We believe that this volume is one of the first to extend Foucault’s logica, by making a connection between coercive institutions and all systems of domination as forms of prisons. We argue that the conception of prison is far reaching, always changing and adapting to the times and the socio-political environment. We expand the concept of prison from concrete walls, barbed wire, gates and fences to many of the institutions and systems throughout society such as schools, mental hospitals, reservations for indigenous Americans, zoos for non-human animals, and national parks and urban cultivated green spaces for the ecological community. United States imperialism, which promotes global domination and capitalism, not only imprisons convicted criminals byt its people, land, non-human animals, those that surround it (non-United States citizens) and those trapped within it (American Indians and immigrants).

### 1NC – Indefinite Detainment – The Law

#### The legal system has been the basis and justification for the very same cultural violence they seek it out for protection.

#### Margulies and Metcalf argue

(“Terrorizing Academia” <http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf>, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago. Margulies expresses his thanks in particular to Sid Tarrow, AzizHuq, BaherAzmy, Hadi Nicholas Deeb, Beth Mertz, Bonnie Honig, and Vicki Jackson.Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush. Metcalf expresses her thanks to Muneer Ahmad, Stella Burch Elias, Margot Mendelson, Jean Koh Peters, and Judith Resnik for their feedback, as well as to co-teachers Jonathan Freiman, RamziKassem, Harold HongjuKoh and Michael Wishnie, whose dedication to clients, students and justice continues to inspire., Journal of Legal Education, Volume 60, Number 3 (February 2011))

This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasuland Boumediene, therefore, should be seen as part(and probably only a small part) of a varied and complex collection of events, includingthe fiasco in Iraq, the scandal at the Abu Ghraibprison, and the use of warrantless wiretaps, as well asseemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political supportfor the underlyingright. Since the premise of the proceduralist scholarship is that such support does not exist,it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights area necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency