



Written by [Thomas R. Eddlem](#) on July 15, 2010

## Judge Andrew Napolitano Renews Call For Indictment of Bush/Cheney

Fox Business Channel host of Freedom Watch Andrew Napolitano has renewed a call for the indictment of former President Bush and Vice President Cheney for attacks on the U.S. Constitution in a July 12 C-SPAN interview with leftist consumer advocate Ralph Nader. "It was blatantly unconstitutional and in some cases criminal," the former New Jersey Superior Court judge told Nader. "They should have been indicted. They absolutely should have been indicted, for torturing, for spying, for arresting without warrant." Nader then followed up Napolitano's statement with a clarification question:



**Nader:** So you think George W. Bush and Dick Cheney should, even though they have left office, they haven't escaped the criminal laws, they should be indicted and prosecuted?

**Napolitano:** The evidence in this book and in others ... is overwhelming, when you compare it to the level of evidence required for a normal indictment. George W. Bush as President and Dick Cheney as Vice President participated in criminal conspiracies to violate the federal law and the guaranteed civil liberties of hundreds, maybe thousands, of human beings.

The interview had been scheduled to promote Napolitano's new book, [Lies the Government Told You](#), as well as his new Saturday television show on the Fox Business Channel.

Napolitano's statement comes just as President Obama has continued Bush's detention policies, though Obama faces an avalanche of unfavorable court cases on detainees. While Obama has begun the first civilian trial of a Guantanamo detainee, Tanzanian-born Ahmed Khaifan Ghailani, nearly eight years after he was first detained, in other cases the Obama administration has dragged its feet and - like the Bush administration - deliberately kept innocent people in prison as long as possible.

The Obama administration certainly did that with Mohammed Odaini, an eight-year detainee that officials concluded has been simply found in the wrong place at the wrong time. The 17-year-old Yemeni religious student studying in Pakistan was picked up by Pakistani authorities and turned over to the U.S. more than eight years ago. "This is a bad case to argue. There is nothing there. The bottom line is: We don't have anything on this kid," an anonymous Obama administration official [told](#) the *Washington Post* for June 19. "The judge wants a progress report by June 25th. We have to be able to report something other than we are thinking about it."

But the administration didn't have anything to report, so the judge [ordered Odaini released](#) on June 25 with the following summary of facts:

Respondents have kept a young man from Yemen in detention in Cuba from age eighteen to age twenty-six. They have prevented him from seeing his family and denied him the opportunity to



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complete his studies and embark on a career. The evidence before the Court shows that holding Odaini in custody at such great cost to him has done nothing to make the United States more secure. There is no evidence that Odaini has any connection to al-Qaeda. Consequently, his detention is not authorized by the AUMF [the Authorization of the Use of Military Force, passed by Congress the week after the 9/11 attacks, and used to justify the detentions at Guantnamo]. The Court therefore emphatically concludes that Odaini's motion must be granted.

Despite the judicial order to release Odaini immediately, he wasn't released until July 14.

Why the 48-day delay? British journalist Andy Worthington [reported](#):

In order to release Odaini, the administration had to break a moratorium on repatriating any Yemeni prisoners, which was introduced by President Obama in January, in response to a wave of hysteria following the revelation that the would-be Christmas Day plane bomber, Umar Farouk Abdulmutallab, a Nigerian, had been recruited in Yemen.

Implicit in the moratorium was the unacceptable notion that all Yemenis were potential terrorists, but the President chose to ignore this so as not to make his life uncomfortable, and, in doing so, also ignored the fact that some Yemenis were going to win their habeas petitions while the moratorium was in place. If he had any doubt about this, he need only have consulted the final report of his own *Guantanamo Review Task Force*, which had concluded that, of the 97 Yemenis still held, 59 should be released.

The Obama administration has simply followed the Bush administration policy of holding detainees to the utmost extent they can, even flouting the rulings of federal judges. The Bush administration [continued to hold 17 Chinese Uighurs for years](#) despite the conclusion of his own investigators that the Uighurs were innocent. Worthington [concluded](#) of the Obama administration's rationale in the Odaini case:

In other words, the Justice Department is arguing in court that the administration should be allowed to continue holding men that it has already conceded it has no reason to hold.

Bush and Cheney should be indicted, yes, but it's unlikely that the Obama administration — which is committing the same crimes against the U.S. Constitution — will be handing down the indictments.

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