

ALEX ABDO
Senior Staff Attorney

BRETT MAX KAUFMAN
STAFF ATTORNEY

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Senator Diane Feinstein
331 Hart Senate Office Building
Washington, DC 20510

Senator Martin Heinrich
303 Hart Senate Office Building
Washington, DC 20510

Senator John McCain
218 Russell Senate Office Building
Washington, DC 20510

Senator Jack Reed
728 Hart Senate Office Building
Washington, DC 20510

Senator Mark Warner
703 Hart Senate Office Building
Washington, DC 20510

Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, DC 20510

**RE: Prepublication Review of Mark Fallon's
*Unjustifiable Means***

Dear Senators Feinstein, Heinrich, McCain, Reed, Warner, and Wyden,

We represent Mark Fallon, a twenty-seven-year veteran of the Naval Criminal Investigative Service and a former Senior Executive Service member. Mr. Fallon served at the NCIS at a time when the nation's most senior officials had authorized the torture of prisoners, and he has written a book detailing his experience and that of other public servants who protested these policies. We write to you now because Mr. Fallon's manuscript, *Unjustifiable Means*, has been held up for more than seven months in "prepublication review," and we are increasingly concerned that

some in the government are committed to suppressing Mr. Fallon's account. We write on Mr. Fallon's behalf to ask you to intervene.

Unjustifiable Means concerns the Bush administration's policies authorizing the cruel treatment and torture of detainees. It is an insider's account of the moral and strategic costs of those policies and the many ways that honorable Americans working in government protested and resisted them. It is also a deeply personal exploration of how national-security professionals should respond when forced to choose between loyalty to their superiors and loyalty to their oaths of office. Since his retirement from federal service in 2010, Mr. Fallon has been involved in unclassified global studies of violent extremism and in unclassified research studies of interrogation. His book reflects that work, which transcends his government service and addresses policies that have impacted the proliferation of global terrorism.

Mr. Fallon's manuscript surely contains many hard truths, but they are ones that the public should hear. As Senator McCain said when explaining the release of the Senate Intelligence Committee's torture report:

The truth is sometimes a hard pill to swallow. . . . But the American people are entitled to it nonetheless. They must know when the values that define our Nation are intentionally disregarded by our security policies, even those policies that are conducted in secret. They must be able to make informed judgments about whether those policies and the personnel who supported them were justified in compromising our values, whether they served a greater good, or whether, as I believe, they stained our national honor, did much harm, and little practical good.¹

Mr. Fallon submitted his manuscript for review on January 4, 2017. More than seven months have passed since then, far exceeding the thirty-day advisory timeline that DOD Instruction 5230.29 § 3(a)(4) establishes for the review of manuscripts. Despite Mr. Fallon's repeated inquiries and the government's many missed estimates for completing its review, the DOD office overseeing the review has failed to clear the manuscript for publication or to deliver a draft identifying any passages it deems to be classified. The government has also refused to provide basic information about the status of the government's review, including the list of all other agencies reviewing the book, or even the number of agencies reviewing it. These failures are especially difficult to understand because Mr. Fallon's

¹ Sen. John McCain, Floor Statement on Senate Select Committee on Intelligence Report on CIA Interrogation Methods (Dec. 9, 2014), <https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=1a15e343-66b0-473f-b0c1-a58f984db996>

manuscript relies heavily on information the government has officially disclosed, including in the Executive Summary of the *Senate Intelligence Committee Study on CIA Detention and Interrogation Program*.

The government's delay in reviewing Mr. Fallon's manuscript is unacceptable. Mr. Fallon has a First Amendment right to timely review, and the public has a First Amendment right to hear Mr. Fallon's account. The government's delay in reviewing Mr. Fallon's manuscript impedes Mr. Fallon from participating in public debate about interrogation policy provoked by calls during the presidential election for a return to the Bush administration's torture policies. At a time when other officials are endeavoring to suppress the Senate Intelligence Committee's report about those policies, firsthand accounts like Mr. Fallon's are more important than ever.

It is hard to escape the inference that the extended delay in reviewing Mr. Fallon's book is related to his criticisms of the torture policies. We note that the Defense Department and CIA have cleared (or not stood in the way of) the publication of many books defending those policies.² When they have approved the books of critics, however, the books have apparently been subjected to lengthy delays in review or heavy redactions. Discussing his experience with the prepublication review process, former FBI agent Ali Soufan explained that he was forced to redact information that vocal proponents of the torture policies were permitted to publish. As he put it: "Absolutely there are things that [former head of the CIA clandestine service Jose Rodriguez] was able to talk about [in his book *Hard Measures*] that were redacted from my book. . . . I think it has more to do with trying to protect a narrative rather than protecting classified information."³

Again, we ask that you consider intervening to expedite the government's review and ensure that the public can have the benefit of Mr. Fallon's important insights.

² See, e.g., John Rizzo, *Company Man: Thirty Years of Controversy and Crisis in the CIA* (2014); Jose Rodriguez, *Hard Measures: How Aggressive CIA Actions After 9/11 Saved American Lives* (2012); John Yoo, *War by other means: An insider's account of the War on Terrorism* (2006); James Mitchell, *Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America* (2016).

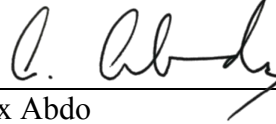
³ Greg Miller & Julie Tate, *CIA Probes Publication Review Board Over Allegations of Selective Censorship*, Wash. Post, May 31, 2012, <http://wapo.st/2u1pDrS>.

Thank you for considering this request, and thank you for your broader efforts to ensure that the public record relating to the torture policies is accurate and complete.

Sincerely,



Brett Max Kaufman
American Civil Liberties Union
Foundation
125 Broad Street—18th Floor
New York, NY 10004
(212) 549-2603
bkaufman@aclu.org



Alex Abdo
Jameel Jaffer
Knight First Amendment Institute
at Columbia University
535 West 116th Street
314 Low Library
New York, NY 10027
(212) 854-1128
alex.abdo@knightcolumbia.org

Charles S. Sims
Proskauer Rose LLP
Eleven Times Square
New York, NY 10009
(212) 969-3950
csims@proskauer.com