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Statement of Mark Fallon for the United States Senate Judiciary Committee Hearing

Department of Defense On Closing Guantanamo: Ending 20 Years of Injustice

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Senator Richard Durbin  
Chairman, Senate Judiciary Committee

Dear Senator Durbin,

When our nation was attacked on September 11, 2001, I was the Naval Criminal Investigative Service (NCIS) Chief of Counterintelligence for the Europe, Africa and Middle East Division, and the commander of the USS Cole task force. I was overseeing the investigation of the October 2000 attack on the USS Cole (DDG-67) and coordinating global threat warnings for the Department of the Navy. I was a career NCIS special agent and had previously worked with the FBI-NYPD Joint Terrorism Task Force (JTTF) and United States Attorney's Office in the Southern District of New York on the prosecution of Omar Abdel-Rahman (known as the "Blind Sheikh") and the 1993 World Trade Center bombing suspects.

When President George W. Bush issued his Military Order of November 13, 2001 (Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism), I was appointed Special Agent-in-Charge and Deputy Commander of the DoD Criminal Investigation Task Force (CITF), reporting to the Office of General Counsel of the Secretary of Defense. I was the US government's chief investigator charged with bringing suspected terrorists to justice before Military Commissions. In October 2002, when a lawyer from the CIA Counterterrorism Center came to Guantanamo to help facilitate the migration of the torture program to the military, I stated, *"This looks like the kinds of stuff Congressional hearings are made of."* We have had many since then and I'm honored to offer this statement for the record for the Senate Committee on the Judiciary on "Closing Guantanamo: Ending 20 Years of Injustice."

We need a place to hold enemy combatants, prisoners of war, and violators of the law; however, Guantanamo Bay is not that place. The Naval Station GTMO prison facility is a symbol of torture, injustice, and oppression. It represents a denigration of the rule of law and a desecration of the inalienable human rights this nation was founded upon. Our acceptance of torture, degrading treatment and cruelty as policy has placed an indelible stain on our Constitution. Our actions are seen as international war crimes and serve as a catalyst for terrorist recruitment and financing. They have contributed to the proliferation of global violent extremism. We cannot redact, classify, and hide that Naval Station GTMO housed a CIA black site, as part of a gulag archipelago of dark prisons established to provide cover for those crimes.

The Military Commissions, that at one time may have offered hope, are now hopelessly part of an illusion that we can simultaneously hold trials for some prisoners, while holding others in indefinite detention without trials. GTMO is a costly facility to our budgets and our national

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honor. While prisoners are ageing without proper medical care, they are housed in crumbling facilities that represent the worst of America. We can no longer sustain a policy where we pledge commitment to the rule of law yet maintain a facility representing lawlessness. America is strongest when our actions match our values.

In 2017 I felt compelled to write *Unjustifiable Means: The Inside Story of How the CIA, Pentagon and US Government Conspired to Torture* (ReganArts 2017), an accounting of our country's tragic decision to use torture. The book was held up by the US government in prepublication review – a far-reaching system of government censorship – for 233 days. When the prepublication review office finally completed its review, it demanded that I make 113 separate redactions, including several that were more than two-pages long, or that reproduced material already in the public domain, including previous Congressional hearings. The US government continues to shroud any information that would lead to accountability for torture, or even identifying those involved, under a cloak of invisibility. Witnesses and victims of the US torture program are among the human remains clinging to whatever lives they have left at the Guantanamo Bay offshore prison. The family members of the 9/11 and USS Cole (DDG-67) attacks are victims of this system of injustice.

I am currently the Interim Executive Director of the Center for Ethics and the Rule of Law (CERL) at the University of Pennsylvania and member of a working group to address the legal and policy issues associated with bringing suspected terrorists to justice. A Summary of Working Group Recommendations will be submitted for the record on CERL letterhead, that I have signed on to. They are not included in this statement for the record, as I do not want to subject that work product to advanced governmental review and possible censorship. I offer copies of *Unjustifiable Means* to Committee members to learn more about the origins of the use of torture at GTMO as an instrument of warfare.

I urge the Senate Judiciary Committee to work with the Biden Administration to treat the shuttering of the Guantanamo Bay prison facility as a national security imperative, and to restore the rule of law within the law of war. The rule of law and Constitution cannot be selectively applied. The Guantanamo prison represents 20 years of injustice, where justice has not only been delayed and denied – justice has been deceived.

Sincerely,

Mark Fallon