Statement by Lezmond Mitchell's direct appeal counsel, Michael O'Connor, August 25, 2020, the day before the federal government executed Mr. Mitchell. DPIC is releasing this statement with the permission of Mr. O'Connor:

Tomorrow, absent some extraordinary intervention, the United States will kill Lezmond Mitchell, the only Native American on the federal death row. The government will carry out that killing in our names. Most Americans will be unaware of Lezmond's death. Of those who are aware, few will care. I am among those few.

Along with Celia Rumann, my wife and partner in all things, I represented Lezmond Mitchell in his direct appeal from his conviction and sentence of death. As a capital defense lawyer, I have no former clients – just clients that I used to represent. I have a continuing duty of loyalty to Lezmond imposed upon me by my profession. I have a continuing love for Lezmond imposed upon me by my humanity. I had not intended to write or say anything about Lezmond's execution for selfish reasons. Loyalty and love, however, compel me to raise my voice in protest.

In the twenty years I spent actively representing clients on death row, I saw up close how structural racism infects and affects our society. We are all infected by the virus of racism, regardless of who we are or how we look. No case made that more clear to me than the capital trial of Lezmond Mitchell. Without getting too specific about the law, tribal governments are given the choice of "opting in" to the federal death penalty – or not. If they choose not to opt in, the death penalty cannot be sought for major crimes occurring between Native Americans on reservation land. The Navajo Nation rejected the death penalty based upon the great value Navajos place on all life. Despite this tribal decision, and against the wishes of the victims' family and the Arizona U.S. Attorney, Attorney General John Ashcroft ordered that Lezmond be indicted and the death penalty sought in his case.

In a federal capital trial, a large number of jurors are summoned to appear. From those summoned, the court first, and then the lawyers with the court, winnow down and select the jury that will try the case. In Lezmond's case, more than 400 Native Americans (out of a total of approximately 2000 prospective jurors) were summoned for possible service on his trial. More than 99% of those Native Americans summoned were excused or disqualified as unfit for jury service. No other racial group was dismissed at even half that rate. In a Navajo on Navajo crime committed on the Navajo reservation, jurors were excluded if they spoke only Navajo. Before being dismissed for "cause," Navajo jurors were badgered by the judge with questions such as "You're Navajo and he's Navajo. Could you possibly be fair?" (Substitute any other group there and tell me how that sounds.) Navajo jurors were dismissed because they "were traditional" and "valued human life." Surely, being traditional and valuing human life should not be grounds for exclusion from jury service in a U.S. courtroom. It is if you are Navajo.

In our pleadings to the court, we described the death penalty in the U.S. and its application to Lezmond Mitchell as "racist to the core." Lezmond was prosecuted by white lawyers at the

behest of a white Attorney General and a white President intent on extending the death penalty to Indian lands despite tribal sovereignty over that issue. They may or may not have acted out of racial animus. But the effects of structural racism were evident even in a disparate group of actors in Lezmond's case. His three lawyers (one white, one black and one Hispanic) did not object to the overwhelming majority of Native jurors dismissed by the judge (herself, a Latina). Ultimately, only one Native juror sat on Lezmond's trial.

The system that permitted Lezmond Mitchell to be sentenced to death was built by those who explicitly believed that their white racial identity made them superior to the indigenous tribes. This is no secret. It has been written into our laws and treaties. That system has been maintained and reinforced for more than two hundred years. All people raised in a society built upon these structural lies are affected deeply by those lies – regardless of who we are and how we view ourselves. We internalize these structures as truths and their evil manifestations no longer shock us enough to care. We can overcome these structural lies, but only if we are willing to acknowledge their existence and their malignant nature. Then we have to do all we can to change them.

Any of those changes, though, will come too late for Lezmond. Like all of us, Lezmond deserved more than the racist mockery of justice he received.