



Navajo Nation calls for end to Federal execution of tribal member, Lezmond Mitchell

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WINDOW ROCK, Ariz. — Members of the 24th Navajo Nation Council issued a call for the U.S. Federal Government to reverse a planned execution of a member of the Navajo Nation. Lezmond Mitchell, Navajo, was convicted over 17 years ago for the federal crime of carjacking resulting in murder that took place on the Navajo Nation in 2001. The Navajo Nation has long held the position, which was reinforced with extensive public hearings conducted by the Navajo Nation Council throughout 2003, that members of the Navajo Nation should never be subjected by the Federal government to the death penalty.

“This is about reaffirming our longstanding position and standing up for the Navajo Nation’s sovereignty. The United States made a commitment to the Navajo Nation in the Federal Death Penalty Act of 1994,” said Council Delegate Carl Roessel Slater (Round Rock, Lukachukai, Rock Point, Tsaile/Wheatfields, Tsé Ch’izhi). “If this execution goes forward, the precedent will be set that, no matter the sovereign position of any Indian tribe, the federal government can kill American Indians and Diné, specifically. While this is a justice issue, this precedent will only add another chink in the nation’s sovereign armor.”

On Jul. 29, U.S. Attorney General William P. Barr directed the Federal Bureau of Prisons to reschedule the execution of Mitchell after successive appeals and hearings. The scheduled execution is set for Aug. 26 at the U.S. Penitentiary in Terre Haute, Indiana.

Delegate Slater is sponsoring Navajo Nation Council Legislation No. 0166-20, calling on the federal government to recognize the Navajo Nation’s opposition to capital punishment in any and all forms, including the sentence given to Mitchell.

The legislation states: “The Diné have long believed in rehabilitative and restorative justice, practiced in many forms. Punitive justice, as expressed by western and United States’ influences, by definition, does not create harmony and serves to primarily reinforce discord within society.”

The capital punishment for Mitchell was allowed under the Federal Death Penalty Act, which went into effect on Sept. 13, 1994. The Act established procedures for imposing the death penalty for 60 offenses and included provisions for capital crimes committed by members of a Native American tribal nation.

Those special provisions for Indian country, found at 18 U.S.C. §3598, state:

“... no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country ... and which has occurred within the boundaries of Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.”

As early as 2002, the Navajo Nation stated, in a letter to the U.S. Department of Justice, that: “As part of Navajo cultural and religious values we do not support the concept of capital punishment. Navajo holds life sacred. Our culture and religion teach us to value life and instruct against the taking of human life for vengeance. ... The capital punishment sentence removes any possibility of restoring the harmony in a society.”

The Navajo Nation's position, as reinforced through the Title 1 of the Navajo Nation Code, is embodied through Diné Bi Beehaz'áanii, or the foundation of Navajo law known as Navajo Fundamental Law.

"The United States Government intended to defer to Native American tribal nations when it came to the death penalty for its own members," said Council Delegate Mark Freeland (Becenti, Lake Valley, Nahodishgish, Standing Rock, Whiterock, Huerfano, Nageezi, Crownpoint). "This is for very strong reasons that are being ignored today. The US Government should never again be able to put Indigenous persons to death without the will of the tribal nation supporting it."

Navajo leaders expressed concern that the federal justice system unfairly targeted Mitchell, as a member of a Native American tribal nation.

Marlene Slim, the mother and daughter of the two victims of perpetrator Johnny Orsinger and accomplice Lezmond Mitchell's crimes, called for the U.S. Federal Government to impose a life-long prison sentence in the case. Her testimony, which acknowledges the severity of the crimes committed, maintained this call for life imprisonment as the only appropriate punishment for the murder of her mother and daughter.

Additionally, the Navajo Nation has provided at least three position statements opposing the death sentence that was being sought by federal prosecutors for Mitchell. The statements drew attention to aspects of the detainment, questioning, jury selection and trial processes that were overlooked by the federal justice system in its pursuit of prosecuting Mitchell.

The 20th Navajo Nation Council conducted, and accepted, a report on the question of whether the Navajo Nation should opt-in to the federal death penalty. The Public Safety Committee of the Council conducted seven public hearings from September to November of 2003 and collected more than 300 comments from members of the Navajo Nation.

That report urged the Navajo Nation Council to reject opting-in to the federal death penalty because doing so would diminish the Navajo Nation's sovereign ability and would subject Navajo people acting within the Navajo Nation to outside courts, juries and penalties.

The report also stated that the application of capital punishment was racist: "Under [then-]current Attorney General John Ashcroft, 74 [percent] of the defendants against whom the federal death penalty was sought were minorities." The report also noted that Navajos would be subject to the death penalty in cases where a non-Indian would not.

The report also questioned the ability for the jury of a federal capital crime trial to remain indifferent to the fact that an individual is a Native American when the first test of a federal case against Native Americans is to prove, beyond a reasonable doubt, that the person is, in fact, Native American.

Further, the Navajo Nation Council heard expert testimony that capital punishment was no more effective than imprisonment in deterring murder. The same report stated that the death penalty has been applied erroneously, and to people that were eventually found to be innocent. That called into question the ability of the federal government to avoid errors in collecting testimony and evidence when difficulties in language, cultural barriers, communication problems and more are prevalent to a greater degree on in tribal nations.

In 2014, Chief Justice of the Navajo Nation Herb Yazzie submitted a letter to then-U.S. Attorney General John Leonardo stating the Navajo Nation's continued opposition to the application of the death penalty to the case of Lezmond Mitchell.

Chief Justice Yazzie stated: "After we made clear that we would not support a capital prosecution for Mr. Mitchell, the [United States] Department of Justice relied on a technicality to bypass us. Instead of respecting the opt-in provisions, the Department of Justice sought death against Mr. Mitchell not for murder, but for carjacking resulting in death. The difference was in name only."

The 2014 letter reinforced the Navajo Nation's position against the use of the death penalty by the federal government in cases where the defendant is a member of the Navajo Nation.

Chief Justice Yazzie continued to avail the Navajo Nation's concerns by pointing out that the Federal Bureau of Investigations repeatedly interrogated Mr. Mitchell while in tribal custody to develop evidence later used to support the federal death sentence. He pointed out that Mitchell was not tried on Navajo land nor by a Navajo jury, but instead was tried before an Arizona jury in a federal district court. Of 30-36 Native Americans interviewed for the jury panel, all but one were excluded for reservations regarding capital punishment consistent with Navajo religion and culture, use of Navajo as a first language and hardship created by the long distance between the Navajo Nation and Phoenix.

"[T]he Navajo Nation asks the Department of Justice to right the wrongs of previous administrations and honor our Nation's sovereignty," stated Chief Justice Yazzie.

The legislation sponsored by Delegate Slater would reaffirm the Navajo Nation's position opposing the death penalty imposed in Lezmond Mitchell's case and asks the federal government to respect the Navajo Nation's decision against all forms of capital punishment for tribal members.

Legislation No. 0166-20, including the exhibits containing the references in this press release, is available through the Navajo Nation Council's legislative tracking system, Diné Bibeehaz'áanii Binaaltsoos (DiBB) at: <http://dibb.nnols.org/>. The legislation will become eligible for committee action on Aug. 12.

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