

At an IAS Part, Room__, of the
Supreme Court of the State of New
York, held in and for the County of
Albany, at the Courthouse thereof, 16
Eagle Street, Albany, N.Y., on the day
of ____, 2026

Present: Hon. _____
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Index No.:

-----X
In the Matter of the Application of
GILLIO LOPES,

ORDER TO SHOW CAUSE

Petitioner,

RJI No. _____

FOR A JUDGMENT PURSUANT TO ARTICLE
78 AND SECTION 3001 OF THE CPLR

-against-

KATHLEEN ("KATHY") M. HOCHUL, in her official
capacity as Governor of the State of New York, and
LETITIA JAMES, in her official capacity as Attorney
General of the State of New York,

Respondent.
-----X

Upon the Verified Petition, sworn to by Andrew T. Miltenberg, Esq. on October 7, 2026,
together with the Affirmation of Andrew T. Miltenberg, Esq. dated October 7, 2026, and the
exhibits annexed thereto, and upon all papers and proceedings heretofore and herein,

IT IS HEREBY ORDERED THAT Respondents Governor Hochul and Attorney General
James show cause, at IAS Part, Room _ of this Court, to be held at the Courthouse, 16 Eagle Street,
Albany, NY, on the __ day of __, 2026, at ____ am/pm, or as soon thereafter as counsel may be heard,
why an Order should not be issued, directing that:

a) Respondent Governor Hochul's appointment of Attorney General Letitia James as Special Prosecutor in the investigation of the Cornell matter be voided; and

b) Respondent Governor Hochul shall appoint a Special Prosecutor who is free from actual or perceived conflicts of interest or bias against Petitioner and the other individually named Defendants in the civil action.

Sufficient cause being alleged therefore, it is hereby further

ORDERED, that pending the hearing of this motion before the Justice to be assigned, the Clerk of this Court, upon payment of the proper fees, be and is hereby directed to assign an index number to this proceeding, and to accept for filing a Request for Judicial Intervention ("RJ") bearing the following caption, namely:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

.....X

In the Matter of the Application of
GILLIO LOPES,

Petitioner,

For a Judgment Pursuant to Article 78
and Section 3001 of the CPLR

-against-

KATHLEEN ("KATHY") M. HOCHUL, in her official
capacity as Governor of the State of New York, and
LETITIA JAMES, in her official capacity as Attorney
General of the State of New York,

Respondent.

.....X

And sufficient cause being alleged therefore, it is hereby further

ORDERED that personal service of a copy of this Order to Show Cause, together with the

papers upon which it is based, and the Verified Petition, by delivery via Federal Express or other service providing for delivery confirmation, on or before the ____ day of ____, 2026, shall be deemed good and sufficient service hereof; and it is further

ORDERED, that answering papers, if any, shall be served upon Petitioner's attorneys, Nesenoff & Miltenberg, LLP, 363 Seventh Avenue, 5th Floor, New York, New York 10001, Attn. Andrew T. Miltenberg, so as to be received in hand no later than seven (7) days prior to the return date of this application and reply papers, if any, shall be served upon Respondent (or, if applicable, its counsel) so as to be received in hand no later than two (2) days prior to the return date of this petition.

Dated: New York, New York
October ____, 2026

Hon. _____, J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

-----X

**In the Matter of the Application of
GILLIO LOPES,**

Index No.:

Petitioner,

VERIFIED PETITION

**FOR A JUDGMENT PURSUANT TO
ARTICLE 78 AND SECTION 3001 OF THE
CPLR**

-against-

**KATHLEEN ("KATHY") M. HOCHUL, in
her official capacity as Governor of the State
of New York, and LETITIA JAMES, in her
official capacity as Attorney General of the
State of New York,**

Respondents.

-----X

Petitioner Gillio Lopes, by and through his attorneys Nesenoff & Miltenberg, LLP, as and for his Verified Petition against Respondent Governor Kathleen ("Kathy") M. Hochul, and Attorney General Letitia James, respectfully alleges as follows:

INTRODUCTION

1. This is a special proceeding brought against New York Governor Kathleen ("Kathy") M. Hochul ("Governor Hochul") pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"), to void her appointment of New York Attorney General Letitia James to serve as Special Prosecutor in the case of Cornell male students alleged to have engaged in, or had knowledge of, the sexual assault of a female student.

2. On September 16, 2026, a former female student of Cornell University (“Jane Doe”) initiated a complaint in the Supreme Court, County of New York, Civil Action No. 161704/2026, titled Jane Doe v. Cornell University, Inc., *et al.*, against multiple parties including the Petitioner (the “Civil Case”).

3. In the complaint, Jane Doe alleges that on October 19-20, 2024, she was coerced to consume alcohol and drugs and repeatedly sexually assaulted throughout the evening and early morning hours by seven different students, at a fraternity house on Cornell’s campus.

4. The Civil Case gained immediate and widespread national attention, resulting in daily reporting in the media, commentary on social media, and outrage by the public over how Cornell, the University Police Department, and the Tompkins County District Attorney handled the allegations when first brought to their attention in the fall of 2024.

5. In response to this growing and immense pressure and scrutiny, on October 1, 2026, Governor Hochul appointed New York Attorney General Letitia James (“Attorney General James”) to serve as Special Prosecutor to investigate the allegations and prosecute any offenses arising from such investigation.

6. The appointment of Attorney General James is improper as Attorney General James has unequivocally demonstrated a bias and presumption of guilt against the defendants named in the Civil Case, including Petitioner.

7. Specifically, three days **prior** to her appointment as Special Prosecutor, on September 28, 2026 at 6:13pm, Attorney General James posted to the Attorney General’s official social media platform X’s account: “What this young woman has been forced to endure is horrific and unacceptable. I’m holding her in my heart and in my prayers. To her, and to all survivors: you’re not alone. We stand with you.”

8. Through this official public statement, Attorney General James has made clear that she has formed an opinion about the case, that she believes the allegations made by Jane Doe, and that she has already reached the conclusion that Petitioner and the other named Defendants are guilty.

9. Accordingly, because Attorney General James is not and cannot remain neutral in investigating this matter, there is a substantial likelihood of prejudice to Petitioner if Attorney General James is permitted to remain on as Special Prosecutor.

10. For the reasons that follow, Governor Hochul's appointment of Attorney General James as Special Prosecutor in the investigation of the Cornell matter must be voided.

THE PARTIES

11. Petitioner Gillio Lopes is a natural person and a resident of a State of other than New York.

12. Respondent Kathleen Hochul is the Governor of the State of New York, and a natural person and resident of the State of New York.

13. Respondent Letitia James is the Attorney General of the State of New York, and a natural person and resident of the State of New York.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to CPLR §§ 7801 *et seq.* to review whether a body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction.

15. Venue is proper pursuant to CPLR §§ 7804 and 506(b) because the actions of the Respondent challenged here occurred within this judicial district and the Respondent's principal place of business is within this judicial district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

16. On September 16, 2026, a former female student of Cornell University Jane Doe initiated a complaint in the Supreme Court, County of New York, against the Petitioner, six other male Cornell students or former students, Cornell University, the male student's fraternity, Doe's sorority, and a bar and nightclub in Ithaca, New York. **Exhibit 1.**

17. In the complaint, Jane Doe alleges that on October 19-20, 2024, she was coerced to consume alcohol and drugs and repeatedly sexually assaulted throughout the evening and early morning hours by seven different students, at a fraternity house on Cornell's campus, while she was incapacitated.

18. On or about November 8, 2024, Doe reported the incident to the Cornell University Police Department. No criminal charges were pursued at that time.

19. On or about January 14, 2025, Cornell initiated a Title IX investigation arising from Doe's complaint.

20. Cornell thereafter investigated the matter, from approximately January 2025 through May of 2025, concluding with a hearing that spanned twelve and a half days.

21. Following the hearing, the student respondents were found responsible for at least one violation of Cornell's conduct policies and were assigned sanctions ranging from probationary periods and campus bans up through permanent expulsions.

22. More than a year later, on September 16, 2026, Plaintiff commenced the Civil Case, which includes claims against Petitioner, for sexual assault and sexual battery.

23. Immediately following the filing of Doe's complaint, the Civil Case began to gain widespread national attention and interest, resulting in daily reporting in the media, commentary across various social media platforms, and outrage by the public over how Cornell, the University

Police Department, and the Tompkins County District Attorney handled the allegations when first brought to their attention in the fall of 2024. **Exhibit 2.**

24. Questions emerged about the University Police Department and District Attorney's handling of Doe's claims back in the fall of 2024, eventually drawing the attention of the Governor of New York.

25. On or about September 28, 2026, Tompkins County District Attorney Matthew Van Houten indicated that his office would be reopening the case involving Doe's allegations and would bring the matter to a grand jury to determine if charges are warranted.

26. Van Houten noted that the allegations brought in the Civil Case however, were significantly different than what Doe had initially reported to police in 2024. **Exhibit 3.**

27. Following Van Houten's announcement, on October 1, 2026, Governor Hochul issued a statement in which she expressed that the initial decision by Tompkins County District Attorney Matthew Van Houten not to prosecute the case and questions surrounding the Cornell University Police Department's actions have "undercut [her] faith, and the public's faith, in the district attorney's ability to effectively investigate and prosecute the case at this time."

28. Thus, in response to this growing and immense pressure and scrutiny, Governor Hochul announced that she was issuing an Executive Order appointing New York Attorney General Letitia James ("Attorney General James") to serve as special prosecutor to "investigate this incident and, if warranted, prosecute any offenses arising from that investigation and present evidence to a grand jury." **Exhibit 4.**

29. Per the Executive Order, Governor Hochul assigned the Special Prosecutor "the powers and duties specified in subdivision 2 of section 63 of the Executive Law..." and noted the

“Special Prosecutor’s jurisdiction will displace and supersede the jurisdiction of the Tompkins County District Attorney...” **Exhibit 5.**

30. The Executive Order further indicated that the Special Prosecutor “shall conduct a full, reasoned, and independent investigation including, but not limited to, gathering and analyzing evidence, conducting witness interviews, and reviewing investigative reports, scientific reports, and audio and video recordings...” **Exhibit 5.**

31. However, the October 1st appointment of Attorney General James was highly improper as Attorney General James had previously, on September 28th, unequivocally demonstrated a bias and presumption of guilt against the defendants named in the Civil Case, including Petitioner.

32. Specifically, on September 28, 2026 at 6:13pm, Attorney General James posted to the Attorney General’s official social media platform X’s account: “What this young woman has been forced to endure is horrific and unacceptable. I’m holding her in my heart and in my prayers. To her, and to all survivors: you’re not alone. We stand with you.” **Exhibit 6.**

33. Through this public statement, Attorney General James has made clear that she has already: (i) formed an opinion about the case, (ii) that she believes the allegations made by Jane Doe against Petitioner and others, and considers Doe to be a victim; and (iii) she has formulated opinions about Petitioner’s and the other defendants’ guilt, before she has even begun the task of investigating the incident.

34. Her own words indisputably establish that Attorney General James is not and cannot remain neutral in investigating this matter and determining whether to prosecute. Allowing her to remain in the role as Special Prosecutor will result in substantial prejudice to Petitioner, as well as the other named defendants.

35. Thus, pursuant to CPLR § 7803(2), Governor Hochul's appointment of Attorney General James as Special Prosecutor in the investigation of the Cornell matter must be voided.

ARGUMENT

I. The Governor's Designation of Attorney General James as Special Prosecutor Warrants Prohibition Under CPLR 7803(2).

36. Petitioner seeks review of Respondent's October 1, 2026 designation of Attorney General Letitia James as Special Prosecutor to investigate and, if warranted, prosecute the allegations underlying the Civil Case. Executive Order No. 64 invokes Executive Law § 63(2) and supersedes the Tompkins County District Attorney with respect to that matter. Petitioner challenges the designation insofar as it places investigative and prosecutorial discretion in the hands of an official who has already publicly endorsed Plaintiff Jane Doe's account. **Exhibits 5, 6.**

37. Executive Law § 63(2) authorizes the Governor to require the Attorney General to exercise prosecutorial powers otherwise belonging to a district attorney. Petitioner acknowledges that *Matter of Johnson v. Pataki*, 91 N.Y.2d 214, 223–226 (1997), recognizes broad superseder authority and generally limits judicial review to whether constitutional or statutory authority exists, rather than how lawful discretion is exercised. Petitioner does not challenge the Governor's general power to supersede the Tompkins County District Attorney.

38. Petitioner instead challenges Attorney General James's qualification to exercise that authority personally in this matter, based upon her public statement concerning the very allegations she was subsequently assigned to investigate. Petitioner submits that the prosecutorial disqualification principles discussed below impose a limitation upon her participation notwithstanding the Governor's general superseder authority. Petitioner recognizes, however, that whether this asserted limitation supports relief under CPLR 7803(2) before prosecution presents a threshold question distinct from the merits of the disqualification claim.

39. New York imposes an increased standard for judicial disqualification of a public prosecutor. Ordinarily, removal requires actual prejudice arising from a demonstrated conflict of interest, or a substantial risk that an attorney will misuse confidences. *People v. Adams*, 20 N.Y.3d 608, 612 (2013); *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 55 (1983). The standard refers to the “opportunity for abuse of confidences entrusted to [an] attorney.” *People v. Shinkle*, 51 N.Y.2d 417, 420 (1980). In general, “[t]he objector should demonstrate actual prejudice or so substantial a risk thereof as could not be ignored.” *Schumer*, 60 N.Y.2d at 55.

40. There is a narrow exception in which an exceptionally serious appearance of impropriety warrants disqualification, including where the record objectively calls into question whether prosecutorial discretion is being exercised evenhandedly and on legitimate grounds. *See Adams*, 20 N.Y.3d at 612–613.

41. Indeed, in rare circumstances, an exceptionally serious appearance of impropriety may warrant disqualification. *Adams*, 20 N.Y.3d at 612–14. That inquiry includes whether the record supplies an objective basis to question whether prosecutorial discretion is being exercised evenhandedly, according to the merits and legitimate prosecutorial considerations. *Id.* at 613. Although *Adams* involved evidence of disparate treatment arising from the complainant’s position as a sitting judge, Petitioner submits that its narrow principle should inform the Court’s consideration of the circumstances presented here.

42. Prohibition is an extraordinary remedy and does not lie merely to correct an alleged error in the exercise of lawful discretion. The court in *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 53–56 (1983), invalidated a district attorney’s unauthorized delegation of independent prosecutorial authority before prosecution.

43. *Schumer* therefore distinguishes a defect in the grant of prosecutorial authority from an insufficiently developed challenge to the prosecutor's personal qualification. Petitioner submits that the public statement at issue here presents a concrete qualification question, while recognizing that *Schumer's* adverse holding requires the Court separately to determine whether that question is presently justiciable.

44. Petitioner submits that the wording of Attorney General James's post on social media communicated acceptance of Doe's account. By describing what Doe "has been forced to endure" and identifying her with "survivors," Attorney General James publicly characterized the alleged experience as an event that had occurred, before she was entrusted with the reopened criminal investigation. **Exhibit 6.**

45. While Attorney General James's statement does not expressly declare Petitioner guilty, its significance is the apparent credibility judgment it communicates concerning the complainant whose allegations Attorney General James was subsequently assigned to investigate.

46. Attorney General James's responsibilities under the Executive Order include evaluating those allegations, considering contradictory or exculpatory evidence, and determining whether criminal charges against individuals identified in the Civil Case, including Petitioner, are warranted.

47. Petitioner contends that publicly endorsing the complainant's account before undertaking those responsibilities creates an objective concern that subsequent decisions may be influenced by the position Attorney General James has already expressed. The Court should consider whether that concern, in the context of the appointment and the record as a whole, amounts to a sufficiently substantial risk of prejudice to warrant limiting her participation.

48. Attorney General James's October 1 statement that her office would conduct the investigation fully and fairly, guided by the facts and the law, must be considered alongside her earlier statement in evaluating whether the record supports the asserted risk of prejudgment... Petitioner submits that the later assurance should be considered together with the earlier endorsement and the nature of the authority conferred upon her. **Exhibit 7.**

49. Therefore, the Court should assess whether the record supports a sufficiently serious risk of prejudice to justify limiting her participation. **Exhibit 8.**

50. While in *Matter of Abelove v. Cuomo*, 57 Misc. 3d 668, 676–677 (Sup. Ct. Albany County 2017), the court denied prohibition where the Attorney General was performing a purely investigative executive function, no prosecution was pending, and prosecutorial qualification could be challenged if charges were brought. Petitioner seeks review of Attorney General James's personal qualification under the designation, rather than review of an individual investigative decision.

51. Nevertheless, Petitioner recognizes that this distinction alone does not establish entitlement to prohibition: the Court must determine whether the challenged conduct involves present or threatened quasi-judicial action, whether the asserted disqualification constitutes a legal restriction on authority, and whether an adequate alternative remedy exists.

II. Alternatively, Petitioner Seeks Review Under CPLR 7803(3), To the Extent Such Review Is Available.

52. Alternatively, and subject to the limitations on review recognized in *Johnson*, Petitioner seeks review under CPLR 7803(3) on the grounds that the challenged designation was affected by an error of law or constituted an abuse of discretion.

53. Petitioner does not contend that the ordinary arbitrary-and-capricious standard independently establishes reviewability of the Governor's superseder decision. If the Court

determines that review under CPLR 7803(3) is available, Petitioner relies upon *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 (1974), in support of the alternative claim that the challenged determination lacks a rational basis in the circumstances alleged.

54. Petitioner submits that entrusting the reopened investigation to an official whose prior public statement demonstrate an objective basis to question Attorney General James's ability to serve in a neutral manner, is in direct conflict with Respondent's stated purpose of restoring confidence in the investigation.

55. Accordingly, to the extent review under CPLR 7803(3) is available, Petitioner submits that the designation should be annulled or modified insofar as it permits Attorney General James personally to direct the investigation and any resulting prosecution concerning Petitioner.

III. Petitioner Has a Direct Interest in the Challenged Designation and Seeks Protection From a Specific Risk of Prejudice.

56. Petitioner is an individual defendant named in the Civil Case whose alleged conduct falls within the subject matter of the investigation authorized by Executive Order No. 64. The designation therefore directly concerns the exercise of investigative and prosecutorial authority over allegations involving Petitioner.

57. The authority conferred by the Executive Order encompasses consequential decisions concerning the direction of the investigation, the evidence pursued, the assessment of witnesses, the presentation of evidence to a grand jury, and whether criminal charges should be brought. Petitioner's claimed harm concerns the risk that those decisions will be influenced by Attorney General James's prior public endorsement of Doe's account.

58. That concern extends beyond the ultimate determination of guilt or innocence. Investigative choices shape the record upon which subsequent decisions are made. Decisions about which witnesses to interview, which inconsistencies to examine, and which evidence to pursue

may affect the factual basis for a grand jury presentation or charging determination. Petitioner seeks relief before those discretionary decisions are made under the challenged designation.

59. Prompt resolution would serve the interest in determining whether the official directing the matter may lawfully continue in that role. *Matter of Working Families Party v. Fisher*, 23 N.Y.3d 539, 544–547 (2014), recognizes the value of resolving prosecutorial appointment questions promptly. That case, however, concerned a judicial appointment under County Law § 701 following a district attorney's request for his own disqualification. Petitioner invokes its reasoning concerning prompt resolution, while recognizing that it does not independently establish the availability of pre-prosecution review in this proceeding. Petitioner accordingly requests that the Court determine whether the circumstances established by the record satisfy the demanding standard for relief before Attorney General James exercises further investigative or prosecutorial discretion concerning Petitioner.

IV. CPLR 7806 Authorizes the Court to Annul or Modify a Challenged Determination.

60. If Petitioner establishes entitlement to relief under CPLR 7803, CPLR 7806 authorizes an appropriate judgment, including annulment or modification of a reviewable determination and an order directing or prohibiting specified action by Respondent.

61. Upon a finding that the challenged designation is unlawful or constitutes an arbitrary and capricious exercise of discretion, Petitioner requests a judgment annulling Executive Order No. 64 insofar as it authorizes Attorney General James personally to direct the investigation and any resulting prosecution of Petitioner.

62. Alternatively, Petitioner requests modification of the determination to limit Attorney General James's personal participation, supervision, and control to the extent warranted

by the Court's findings, together with remittal to Governor Hochul for reconsideration consistent with the judgment and applicable law.

63. The requested relief should address the prejudice established by the record while permitting a lawful investigation and any warranted prosecution to proceed.

V. Harm to Petitioner

64. Petitioner is an individual named in the Civil Case whose alleged conduct falls within the investigation authorized by Executive Order No. 64.

65. Attorney General James's authority encompasses the assessment of witness credibility, the pursuit of evidence, grand jury presentations, and charging decisions concerning Petitioner.

66. Petitioner contends that Attorney General James's prior public endorsement of Doe's account creates a substantial risk that these decisions will be influenced by prejudgment.

67. Moreover, later review may not fully remedy the consequences of investigative choices and charging decisions already made under the challenged designation.

68. Petitioner therefore seeks prompt review before Attorney General James exercises further investigative or prosecutorial discretion concerning him.

**AS AND FOR A FIRST CAUSE OF ACTION
JUDGMENT PURSUANT TO CPLR § 7803(2)**

69. Petitioner repeats and re-alleges each and every allegation above as if fully set forth herein.

70. In appointing Attorney General James to serve as Special Prosecutor in the criminal investigation of the Cornell matter, Respondent has proceeded and is proceeding in excess of her jurisdiction, in violation of CPLR 7803(2).

71. In appointing Attorney General James to serve as Special Prosecutor in the criminal investigation of the Cornell matter, Respondent has acted in an arbitrary and capricious manner, or committed an abuse of discretion, in violation of CPLR 7803(3).

72. On October 1, 2026, Respondent issued Executive Order No. 64, directing Attorney General James to investigate the allegations underlying the Civil Case and, if warranted, present evidence to a grand jury and prosecute offenses arising from that investigation.

73. Petitioner is an individual defendant named in the Civil Case whose alleged conduct falls within the subject matter of the investigation authorized by Executive Order No. 64.

74. Before Respondent issued the Executive Order, Attorney General James publicly addressed Doe's allegations in the September 28, 2026 statement quoted above. Petitioner alleges that the statement endorsed Doe's account before Attorney General James was entrusted with the reopened criminal investigation.

75. Respondent thereafter designated Attorney General James to exercise investigative and prosecutorial discretion over the same allegations, including the assessment of Doe's credibility and the determination whether charges against Petitioner are warranted.

76. Petitioner alleges that Attorney General James's public endorsement of Doe's account creates a substantial risk that her assessment of the evidence and exercise of discretion will be influenced by the position she publicly expressed before receiving the designation.

77. Petitioner alleges that vesting control of the reopened matter in an official who had publicly endorsed the complainant's account is inconsistent with the stated purpose of conducting a fair and full investigation.

78. For these reasons, Petitioner alleges that Respondent's October 1, 2026 determination, insofar as it authorizes Attorney General James to direct the investigation and any

resulting prosecution of Petitioner, is in excess of her jurisdiction within the meaning of CPLR 7803(2).

79. For these reasons, Petitioner also alleges that Respondent's October 1, 2026 determination, insofar as it authorizes Attorney General James to direct the investigation and any resulting prosecution of Petitioner, is arbitrary and capricious and constitutes an abuse of discretion within the meaning of CPLR 7803(3).

80. Pursuant to CPLR 7806, Petitioner requests a judgment annulling the challenged determination to that extent or, alternatively, modifying it to address Attorney General James's personal participation and control, and remitting the matter to Respondent for reconsideration consistent with the Court's judgment.

81. Petitioner has not made a prior application for the relief requested herein.

WHEREFORE, Petitioner respectfully requests that the Court enter a judgment and order declaring:

- a) Respondent Governor Hochul's appointment of Attorney General James as Special Prosecutor in the investigation of the Cornell matter is voided; and
- b) Respondent Governor Hochul shall appoint a Special Prosecutor who is free from actual or perceived conflicts of interest or bias against Petitioner and the other individually named Defendants in the civil action.

**Dated: New York, New York
October 7, 2026**

Respectfully Submitted,

NESENOFF & MILTENBERG, LLP

By: 
Andrew T. Miltenberg, Esq.
Stuart Bernstein, Esq.
Tara J. Davis, Esq.

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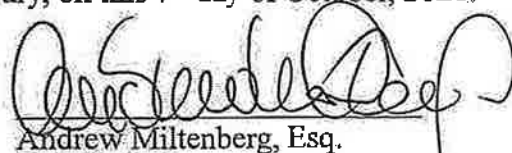
VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ANDREW MILTENBERG, being duly sworn, deposes and says:

I am counsel to the Petitioner in this matter. I have read the annexed Verified Petition, know the contents thereof, and the same is true to my knowledge, except as to matters alleged upon information and belief and as to those matters, I believe them to be true.

Signed under the pains and penalties of perjury, on this 7th day of October, 2026.


Andrew Miltenberg, Esq.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

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**In the Matter of the Application of
GILLIO LOPES,**

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her official capacity as Governor of the State
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Respondents.

-----X

**AFFIRMATION IN SUPPORT OF VERIFIED PETITION FOR
A JUDGMENT PURSUANT TO ARTICLE 78**

Andrew T. Miltenberg, an attorney duly admitted to practice before the Courts of the State of New York, affirms, pursuant to CPLR § 2106(a) and under penalty of perjury, that the following is true and correct:

1. I am a partner at the law firm of Nesenoff & Miltenberg, LLP, attorneys for Petitioner Gillio Lopes ("Petitioner"), in the instant matter.

2. In that capacity, I am fully familiar with the facts and issues set forth in this Affirmation, which is being submitted in further support of Petitioner's Verified Petition, pursuant to CPLR Article 78.

3. I submit this affirmation in support of the accompanying Verified Petition challenging Governor Kathy Hochul's October 1, 2026 designation of Attorney General Letitia James as Special Prosecutor pursuant to Executive Order No. 64. Unless otherwise indicated, the factual statements herein are based upon my review of the documents identified below and the materials maintained by my office in connection with its representation of Petitioner.

4. Petitioner seeks a judgment pursuant to CPLR Article 78 annulling or modifying the challenged determination insofar as it authorizes Attorney General James personally to direct the investigation and any resulting prosecution of Petitioner.

5. Submitted with the Verified Petition are copies of the following documents:

- a. **Exhibit 1:** The complaint filed on September 16, 2026 in Jane Doe v. Cornell University, Inc., et al., Supreme Court, New York County (the "Civil Case").
- b. **Exhibit 2:** The news articles referenced in the Verified Petition concerning the allegations and the prior handling of the matter.
- c. **Exhibit 3:** CNN Article regarding New York prosecutors reopening investigation.
- d. **Exhibit 4:** Governor Hochul's October 1, 2026 public statement announcing the designation of Attorney General James as Special Prosecutor.
- e. **Exhibit 5:** Executive Order No. 64, dated October 1, 2026.
- f. **Exhibit 6:** Attorney General James's September 28, 2026 post on the social media platform X concerning Doe's allegations.
- g. **Exhibit 7:** Attorney General James's October 1, 2026 public statement concerning her appointment as Special Prosecutor.
- h. **Exhibit 8:** Various news articles regarding Attorney General Letitia James's appointment as Special Prosecutor.

6. Petitioner is an individual defendant named in the Civil Case. The complaint alleges that Doe was sexually assaulted at a fraternity house on Cornell University's campus during the evening of October 19, 2024 and the early morning of October 20, 2024. These allegations concern the conduct that Governor Hochul subsequently directed the Attorney General to investigate.

7. On September 28, 2026, before receiving that designation, Attorney General James publicly posted the following statement in response to Doe's allegations: *"What this young woman has been forced to endure is horrific and unacceptable. I'm holding her in my heart and in my prayers. To her, and to all survivors: you're not alone. We stand with you."*

8. Three days later, on October 1, 2026, Governor Hochul issued Executive Order No. 64 pursuant to Executive Law § 63(2). The Executive Order directs the Attorney General to investigate the alleged conduct and, if warranted, present evidence to a grand jury and prosecute offenses arising from that investigation. It supersedes the Tompkins County District Attorney with respect to the matter specified in the Order.

9. In announcing the designation, Governor Hochul expressed concern about the prior handling of the allegations and stated that those circumstances had undermined her confidence, and the public's confidence, in the district attorney's ability to investigate and prosecute the matter effectively.

10. Attorney General James subsequently issued an October 1, 2026 statement representing that her office would conduct the investigation fully and fairly and would be guided by the facts and the law.

11. Petitioner's challenge concerns Attorney General James's public statement before the designation and its implications for her subsequent exercise of investigative and prosecutorial discretion. Petitioner contends that her characterization of Doe's experience and identification of

Doe with survivors communicated acceptance of the complainant's account before Attorney General James was entrusted with the reopened investigation.

12. Although the September 28 statement does not expressly declare Petitioner guilty, Petitioner submits that it provides an objective basis to question whether Attorney General James will assess Doe's credibility and potentially contradictory evidence with an open mind. Petitioner further contends that the subsequent assurance of fairness does not resolve that concern because it neither retracts nor explains the earlier statement.

13. Petitioner recognizes that prosecutorial disqualification requires a demanding showing. New York generally requires actual prejudice arising from a demonstrated conflict of interest or a substantial risk of misuse of attorney client confidences, while recognizing a narrow exception for an exceptionally serious appearance of impropriety. *People v. Adams*, 20 N.Y.3d 608, 612-14 (2013); *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 55 (1983). The accompanying Verified Petition sets forth Petitioner's argument that the circumstances here warrant relief under those principles.

14. Petitioner has a direct interest in the challenged designation because the investigation encompasses allegations concerning Petitioner's own conduct. The authority conferred by Executive Order No. 64 includes decisions concerning the pursuit of evidence, assessment of witnesses, grand jury presentations, and whether criminal charges should be brought against Petitioner.

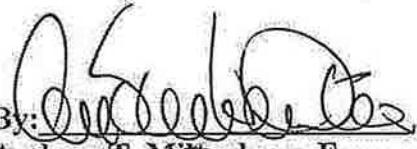
15. Petitioner contends that Attorney General James's prior public endorsement of Doe's account creates a substantial risk that those decisions will be influenced by prejudgment. Later review may not fully remedy the consequences of investigative choices and charging decisions already made under the challenged designation. Petitioner therefore requests prompt

consideration of the Petition before Attorney General James exercises further investigative or prosecutorial discretion concerning Petitioner.

16. Accordingly, Petitioner respectfully requests a judgment pursuant to CPLR 7806 annulling the challenged designation insofar as it authorizes Attorney General James personally to direct the investigation and any resulting prosecution of Petitioner or, alternatively, modifying the determination to limit her personal participation, supervision, and control to the extent warranted by the Court's findings; remitting the matter to Governor Hochul for reconsideration consistent with the judgment and applicable law; and granting such other and further relief as the Court deems just and proper.

I affirm this 7th day of October, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters, I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York
October 7, 2026

By: 
Andrew T. Miltenberg, Esq.