

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

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**In the Matter of the Application of
GILLIO LOPES,****Index No.:****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,****Respondents.**

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**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.

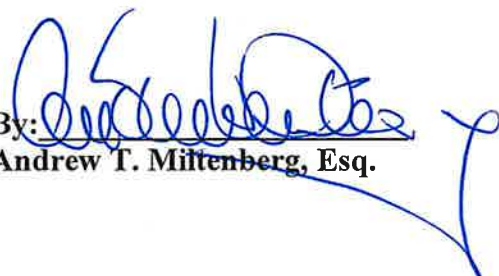
15. Petitioner contends that Attorney General James's prior public endorsement of Doe's account creates a substantial risk that those decisions will be influenced by prejudgment. Later review may not fully remedy the consequences of investigative choices and charging decisions already made under the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