SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of GILLIO LOPES,

Petitioner,

Index No.: 911974-26

Farrell, J.

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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REPLY IN RESPONSE TO RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO AMEND

Petitioner Gillio Lopes submits this reply in response to Respondents Kathleen Hochul ("Governor Hochul") and Letitia James ("Attorney General James") opposition to Petitioner's Motion for Leave to Amend. For the reasons that follow, Petitioner's motion should be granted.

PRELIMINARY STATEMENT

Respondents' twenty-page opposition attempts to obscure the simple fact that is at the core of this proceeding: Attorney General James's own public words before she was appointed Special Prosecutor prevent her from conducting an impartial investigation. Three days before receiving prosecutorial authority over this matter, Attorney General James publicly stated on the Attorney General's official social media account on X:

> "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."

Those words were not spoken after an investigation had been completed, after evidence had been gathered, after credibility had been assessed, or after a determination had been made as to whether criminal charges were warranted. They were spoken *before* Attorney General James was assigned to investigate the matter. Three days later, on October 1, 2026, Governor Hochul selected Attorney General James to serve as Special Prosecutor and entrusted her with investigating the very allegations about which James had already spoken and expressed her opinions. From an objective standpoint, Attorney General James's words communicated that she accepted the allegations made by Jane Doe. Respondents may dispute that conclusion, but no amount of additional briefing, citation to authority, or conflation of separate legal issues can alter the language Attorney General James chose to use or the sequence in which these events occurred. This is not a matter of speculation on the part of Petitioner as the Respondents suggest; James's own words demonstrate an inability to ensure impartial prosecutorial judgment.

The present motion, however, does not require the Court to decide the ultimate merits raised in the Petition. Petitioner's motion for leave is solely intended to address the practical issue the Court itself identified at the October 29 oral argument. That is, whether the other individuals potentially affected by the relief concerning Attorney General James's appointment should be joined in the action, to avoid fragmented proceedings and potentially inconsistent results. Petitioner's motion responds directly to that concern. The proposed amendment seeks to add Diego Sarabia, Scott Kretzschmar, Scott Norris, and Winston Lee as co-petitioners and expressly asks the Court to direct joinder and service upon any additional individual whom the Court determines to be a necessary party and subject to its jurisdiction. The proposed amendment would not alter the

governmental act being challenged, but would bring before the Court the additional individuals whose interests may be implicated by the controversy that is already pending. Four of the individuals named as defendants in the underlying civil action now affirmatively seek to participate. Respondents nevertheless urge the Court to deny them that opportunity, by reiterating their arguments previously briefed as to why they believe the Petition should ultimately fail. Respondents' arguments in opposition do not provide a basis for excluding the other affected individuals. Petitioner's motion for leave should be granted.

ARGUMENT

I. The Proposed Amendment Directly Addresses the Court's Joinder Concern.

On October 7, 2026, Petitioner filed a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules (the "Petition") to void the appointment of Attorney General 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. This Court heard argument on the Petition on October 29, 2026, during which the Court raised whether the other six individually named defendants in the underlying civil action should be joined as parties to this proceeding. Specifically, the Court questioned the practical consequences of how a ruling concerning the Attorney General's appointment would affect the other individuals and raised a concern about the possibility of inconsistent results. The Court thus permitted Petitioner an opportunity to submit an application for joinder of the other parties. Your Honor was very clear and direct as to what the November 5th submission was to contain:

> THE COURT: I'll give you one week to get a joinder application in. That's it.
>
> MR. BERNSTEIN: A joinder application.

THE COURT: Yes or submission on the issue of joinder. I think you have real issues with the joinder. It wasn't raised by the Attorney General. I'll give you time to submit it to me, One week.

MR. BERNSTEIN: Thank you, Your Honor. (Hearing Tr. 42:13-20).

On November 5th Petitioner filed exactly what Your Honor requested, a joinder application providing the position of the other six individuals. By Order to Show Cause signed by Your Honor on November 9, 2026, this Court ordered that Respondents show cause why an Order should not be entered directing in part that:

1. Pursuant to CPLR 401, 1002(a), 1003, and 3025(b), granting Petitioner leave to file and serve the proposed Amended Verified Petition adding Diego Sarabia, Scott Kretzschmar, Scott Norris, and Winston Lee as co-petitioners and amending the caption accordingly; and

2. Pursuant to CPLR 1001, directing joinder and service of any other individual whom the Court determines is a necessary party and subject to its jurisdiction.

The Court further ordered that answering papers, if any, were to be served by November 16, 2026, and Petitioner's reply papers were due by November 17, 2026. The Court's Order specifically limited the Respondents' response to the joinder issue at hand.

On November 16, 2026, Respondents filed a memorandum of law in opposition to Petitioner's joinder motion, spanning 20 pages and citing approximately 83 cases, much of it devoted to the ultimate merits of disqualification—issues already extensively briefed in connection with the original Petition. The opposition goes well beyond the scope of the Court's directive, as well as Petitioner's moving papers, which focus on the limited and very specific issue of joinder. In fact, Respondents have misused the opportunity to respond to Petitioner's motion for leave by treating it as another vehicle to reiterate the arguments already made in their initial Answer and Opposition to the Petition. While Respondents are entitled to contest the proposed amendment,

Respondents should not be allowed a second bite at the apple. The excessive nature of their Opposition brief is outrageous, improper, and presumably not what the Court anticipated when it built into the briefing schedule one day for Petitioner to respond. The proposed amendment responds directly to the concern identified by this Court, reduces rather than increases the prospect of fragmented litigation and inconsistent rulings, causes Respondents no cognizable prejudice or surprise concerning the governmental conduct being challenged, and permits the common issues to be resolved in an orderly manner with the affected parties before the Court. The appropriate response to the absence of potentially affected parties is to bring them before the Court, as Petitioner has sought to do here, not to prevent them from participating because Respondents disagree with their position.

II. The Proposed Amendment Satisfies New York's Liberal Standards for Amendment of Pleadings and Joinder.

CPLR 3025(b) directs that leave to amend "should be freely granted." The central inquiry is not whether Petitioner and the proposed co-petitioners can establish their ultimate entitlement to relief at this stage but whether the amendment would cause cognizable prejudice, or whether the proposed pleading is patently lacking in merit. *Thome v. Benchmark Main Transit Assocs., LLC,* 125 A.D.3d 1283 (2015). The proposed amendment readily satisfies the standard for allowing leave to amend. First, the proposed amendment would not cause any prejudice to the Respondents. To the contrary, as the Court observed during argument, permitting the Petitioner to join all potentially affected parties would prevent inconsistent rulings. Respondents would be better served by allowing common questions concerning the same prosecutorial appointment to be addressed in a single proceeding.

Second, the proposed amendment does not lack merit. This controversy arises from a public statement made by Attorney General James three days before she was appointed by the Governor

to serve as Special Prosecutor in the investigation of the same allegations on which she had already commented. Petitioner and Respondents disagree about the legal consequences of that statement, not whether the statement was made. Nor does Petitioner seek to add new allegations to his original Petition. The proposed amendments relate solely to the addition of interested parties. Consequently, allowing joinder now does not require the Court to issue a decision on the ultimate relief sought by the Petition. It would instead allow the Court to make such decision with the appropriate parties before it.

Additionally, CPLR 1002(a) permits joinder where persons assert rights arising from the same transaction, occurrence, or series of transactions or occurrences and a common question of law or fact exists. Here, each proposed co-petitioner is likely to be affected by the designation of Attorney General James as Special Prosecutor to investigate the Cornell matter. There is therefore a common question of law or fact among the parties Petitioner seeks to join. The proposed amendment would change only the parties before the Court, not the underlying facts or controversy. Petitioner's motion for leave to join additional parties should be granted.

III. Respondents' Opposition Attempts to Distract from James's Own Conduct, Which Created the Controversy Now Before the Court.

This matter is before the Court because of Attorney General James's own conduct. Before her appointment, James publicly stated that what Jane Doe "has been forced to endure" was "horrific and unacceptable," addressed her together with "all survivors," and declared, "We stand with you." Three days later, Attorney General James was appointed to investigate whether the allegations underlying those statements could be established and whether criminal charges were warranted. Respondents characterize the September 28 statement as an innocuous expression of empathy. But counsel's characterization cannot alter the language itself. Whether these circumstances ultimately require Attorney General James's disqualification presents a legal

question for the Court. That issue cannot reasonably provide a basis for concluding, at the amendment stage, that the claims of the proposed co-petitioners are patently devoid of merit.

Respondents' brief is an illustration of the Governor and Attorney General taking advantage of the unlimited resources of their offices to protect James's reputation. However, Attorney General James has already compromised herself by making facially biased statements on an official government social media page. Unfortunately for Respondents, no matter how far afield their briefing takes this Court, no amount of case law or peripheral argument can cover up or distract from the statements made by James, which indisputably demonstrate a likelihood of prejudice to all of the individually named defendants, while also compromising her integrity and her ethics. The breadth of Respondents' opposition to a routine joinder application is difficult to explain by any legitimate need to oppose it. Its length and its focus on irrelevant matters suggest an effort to further Respondents' own agenda, not to assist the Court in resolving the application.

CONCLUSION

Petitioner respectfully requests that the Court: (i) grant him leave to file and serve the proposed Amended Verified Petition, adding Diego Sarabia, Scott Kretzschmar, Scott Norris, and Winston Lee as co-petitioners and amend the caption accordingly; (ii) pursuant to CPLR 1001 directing joinder and service of any other individual whom the Court determines is a necessary party and subject to its jurisdiction; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 17, 2026

Respectfully submitted,

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STATEMENT PURSUANT TO 22 NYCRR 202.8-b

I, Andrew Miltenberg, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing Reply Memorandum of Law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 2,047 words. The foregoing memorandum of law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing Reply Memorandum of Law, I relied upon the word count of the word-processing system used to prepare the document.

/s/ *Andrew T. Miltenberg*
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