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.: 911974-26

Petitioner,

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

-against-

KATHY 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 MOTION FOR LEAVE TO AMEND VERIFIED PETITION AND JOIN ADDITIONAL PARTIES

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:

I. Background

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, including communications with counsel concerning joinder, which is being submitted in support of Petitioner's Motion for Leave to Amend his Verified Petition.

3. As an initial matter, Petitioner brings to the Court's attention a recent development relevant to this proceeding; namely, an announcement by Attorney General James on November 4, 2026, indicating that she has appointed Jacqueline Kelly, former Civil Rights Unit Chief for the Criminal Division in the U.S. Attorney's Office for the Southern District of New York to "lead a fair and comprehensive criminal investigation into an alleged sexual assault on Cornell University's campus in October 2024." *See* https://ag.ny.gov/press-release/2026/attorney-general-james-appoints-veteran-prosecutor-outside-counsel-cornell

4. Importantly, this November 4 appointment does not eliminate Petitioner's underlying concerns about Attorney James conducting a fair investigation.

5. The Attorney General's press release contained a statement from Ms. Kelly which stated in part, "I thank Attorney General James for entrusting me to lead this investigation *with her office.*" (Emphasis added).

6. Further, the press release made reference to "Kelly and her team" but never identifies the individuals on Ms. Kelly's team. Is her team composed of members of Attorney General James' staff, whom the Attorney General has herself selected?

7. Additionally, the announcement does not state that Attorney General James has in fact recused herself, relinquished supervisory authority, surrendered charging authority, or agreed not to participate in decisions concerning Petitioner. Thus, while the appointment of Ms. Kelly changes the face of the investigation, it does not establish any change in ultimate authority.

8. Instead, while Ms. Kelly will "lead" the investigation, her team will report directly to the OAG.

9. What does "report to James" mean? Does James:

- receive Kelly's factual assessments?
- receive credibility determinations?
- receive charging recommendations?
- approve or reject charges?
- approve grand-jury presentation?
- direct further investigation?
- have authority to countermand Kelly?
- have authority to remove Kelly?
- participate in strategy meetings?
- decide whether the investigation ends?

10. Despite the appointment of experienced outside counsel, Petitioner maintains that the narrow relief previously requested is feasible and warranted: continuation of the investigation under a qualified designee without Attorney General James's personal participation, supervision, or control.

11. Should Your Honor deem necessary, Petitioner would appreciate the opportunity to submit a supplemental filing regarding this new development.

12. Petitioner seeks leave under CPLR 401 and 3025(b) to file and serve the proposed Amended Verified Petition.

13. My office filed the Petition on behalf of our client Gillio Lopes on October 7, 2026.

14. Through that Petition, brought pursuant to Article 78, Mr. Lopes requested that Governor Kathleen Hochul's 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 ("Jane Doe") be voided.

15. Specifically, three days prior to Attorney General James's appointment as Special Prosecutor in the matter, on September 28, 2026, at 6:13pm, she posted to 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."

16. In light of the foregoing statement, it is apparent that Attorney General James is not, and cannot, remain neutral in investigating this matter, and there is thus a substantial likelihood of prejudice to all of the individually named Defendants in the civil case, if Attorney General James is permitted to remain involved in the investigation in any capacity.

17. I, together with my partner Stuart Bernstein, Esq. appeared before this Court for oral argument on Petitioner's Article 78 proceeding on October 29, 2026.

18. At the October 29, 2026, oral argument, the Court raised whether the six other defendants individually named in the underlying civil action should be joined as parties to this proceeding. The Court questioned how a ruling concerning the Attorney General's appointment would affect those individuals and raised the possibility of inconsistent rulings. Consequently, the Court permitted a joinder application or submission by November 5, 2026. (***Exhibit 1***, Hearing Tr. 12:5–20, 13:3–25, 41:4–16, 42:13–43:3.)

II. Counsel's Outreach and the Individuals' Positions Regarding Joinder

19. Following oral argument, Petitioner's counsel contacted the other individuals subject to the investigation at issue, through their counsel for those who are currently represented, to ascertain their positions on joining this proceeding. This communication was made via email correspondence dated October 30, 2026 (***Exhibit 2***).

20. My colleagues Stuart Bernstein, Tara Davis, Kirsten Roy, and I met with counsel for Defendants via Zoom on November 4, 2026, to discuss this submission and each of the attorneys' respective positions.

21. The positions of each of the individually named Defendants as of November 5, 2026, are set forth below.

22. ***Diego Sarabia***. Through his counsel Craig Knox and Alishah Bhimani of Hacker Murphy, LLP, Mr. Sarabia has confirmed that he will join the proceeding, in support of joinder and removal of AG James.

23. ***Scott Kretzschmar.*** Through his counsel Alan Sash of Bushell, Sovak, Kane & Sash LLP, Mr. Kretzschmar has confirmed that he will join the proceeding, in support of joinder and removal of AG James.

24. ***Winston Lee*****.** Through his counsel Teny Geragos of Agnifilo Intrater, Mr. Lee has confirmed that he will join the proceeding, in support of joinder and removal of AG James.

25. ***Scott Norris.*** Through his counsel Mark Cuccaro, Alexandra Conlon, and Raphael Friedman of Sher Tremonte LLP, Mr. Norris has confirmed that he wishes to join the proceeding, and to reserve the right to participate, if appropriate.

26. ***Matthew Ingalls*****.** Mr. Ingalls is not currently represented in the pending civil matter, and my office was not able to locate contact information for him. Thus, as of the time of this filing, Mr. Ingalls has not responded or provided his position.

27. ***Johnathan Newell*****.** Mr. Newell is not currently represented in the pending civil matter. As such, my office reached out to Mr. Newell by email on October 30, 2026, to obtain his position regarding the request for relief made in Mr. Lopes's petition. As of the time of this filing, Mr. Newell has not responded or provided his position.

III. Proposed Amendment and Relief Requested

28. Petitioner respectfully requests that he be permitted to submit a Proposed Amended Verified Petition, which includes as co-petitioners, the following individuals: Diego Sarabia, Scott Kretzschmar, Winston Lee, and Scott Norris. The proposed amended pleading is attached as ***Exhibit 3***.

29. The co-Petitioners join in the requested relief, declaring that:

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.

30. Petitioner respectfully requests that the Court direct notice under CPLR 7802(d) to the remaining individuals and give them an opportunity to state their positions. If the Court determines that any other individual is a necessary party and subject to its jurisdiction, Petitioner respectfully requests an order directing joinder and service under CPLR 1001.

I affirm this 4th day of November 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
November 5, 2026

By: _____
Andrew T. Miltenberg, Esq.