

No. 19A\_\_\_\_\_

IN THE  
**Supreme Court of the United States**

---

KEYPOINT GOVERNMENT SOLUTIONS, INC., ET AL.,

*Applicant,*

v.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, ET AL.,

*Respondents.*

---

**APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

ALEXANDER H. SOUTHWELL  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, New York 10166  
(212) 351-4000

F. JOSEPH WARIN  
JASON J. MENDRO  
*Counsel of Record*  
MATTHEW S. ROZEN  
JEREMY M. CHRISTIANSEN  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500  
jmendro@gibsondunn.com

*Counsel for Applicant KeyPoint Government Solutions, Inc.*

## **TABLE OF APPENDICES**

Opinion of the United States Court of Appeals for the District of Columbia Circuit (June 21, 2019).....	1a
Order of the United States Court of Appeals for the District of Columbia Circuit Denying Petition for Panel Rehearing (Oct. 21, 2019) .....	70a
Order of the United States Court of Appeals for the District of Columbia Circuit Denying Petitions for Rehearing En Banc (Oct. 21, 2019).....	71a

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES, AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Pursuant to this Court's Rule 13.5, Applicant KeyPoint Government Solutions, Inc. ("KeyPoint") respectfully requests an extension of time, to and including February 18, 2020, in which to file a petition for a writ of certiorari to the U.S. Court of Appeals for the District of Columbia Circuit, commensurate with the extension requested by co-defendant the U.S. Office of Personnel Management ("OPM") by its separate application filed January 7, 2020 ("OPM App."). The court of appeals entered its judgment on June 21, 2019, captioned *In re U.S. Office of Personnel Management Data Security Breach Litigation*, 928 F.3d 42 (D.C. Cir. 2019) (Nos. 17-5217 & 17-5232). KeyPoint's and OPM's petitions for rehearing en banc were denied October 21, 2019. Unless extended, the 90-day period within which to file a petition for a writ of certiorari runs until January 19, 2020 (a Sunday). The time to file a petition for a writ of certiorari therefore expires on January 21, 2020, the Tuesday after a Monday holiday. *See* S. Ct. Rule 30.1; 5 U.S.C. § 6103(a). The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). KeyPoint's application is timely filed. *See* S. Ct. Rule 30.2.<sup>1</sup> Copies of the court of appeals' opinion and its order denying rehearing en banc are attached to this application ("App.").

---

<sup>1</sup> OPM's extension application states that the current deadline for filing a petition is January 17, 2020. *See* OPM App. 1. KeyPoint respectfully disagrees for the reasons stated above. But even under the deadline calculated by the government, KeyPoint's application for an extension of time to file a petition for a writ of certiorari is timely. The Court closed on January 7, 2020 due to inclement weather and provided that all filings due on January 7, 2020—10 days before January 17, 2020—would be due the next business day.

1. As OPM explains in its application, this case arises from a series of cyberattacks on OPM's data systems. OPM App. 2. KeyPoint is a government contractor that conducts background investigations for OPM on prospective federal employees and contractors. App. 4a. According to the allegations in the complaint, unknown persons obtained a login credential to OPM's network from a KeyPoint employee. *Ibid.* Plaintiffs claim that this login credential was used to facilitate a breach of OPM's network that resulted in exposure of the private information of more than 21 million individuals. *Ibid.* KeyPoint was named as a co-defendant in this litigation. The district court dismissed all claims against KeyPoint and OPM because the plaintiffs lacked Article III standing. *Id.* at 10a. The district court further dismissed all claims against KeyPoint because KeyPoint is entitled to contractor immunity under this Court's decision in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), and its progeny. App. 11a.

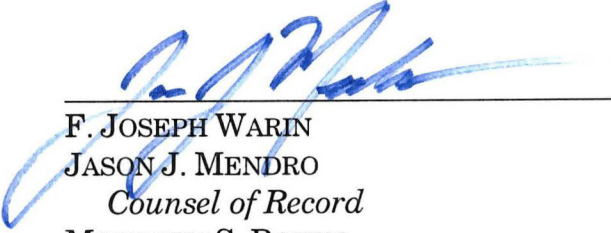
2. The D.C. Circuit, in a divided opinion, reversed the district court and held that plaintiffs alleged sufficient facts at this stage to plead Article III standing as to both OPM and KeyPoint. OPM App. 3. The court of appeals also rejected KeyPoint's defense of contractor immunity, holding that plaintiffs' allegations that KeyPoint violated requirements of the Privacy Act incorporated into KeyPoint's contract were sufficient to overcome KeyPoint's immunity at the pleading stage. App. 40a–44a. On October 21, 2019, the court of appeals denied KeyPoint's petition for rehearing en banc. *Id.* at 71a.

3. KeyPoint has not yet determined whether to file a petition for a writ of certiorari and continues to confer with OPM on these issues. KeyPoint's defense in this

action overlaps substantially with OPM's defense, and OPM's litigation position could affect KeyPoint in a number of ways. Judicial efficiency and fairness counsel in favor of KeyPoint's and OPM's petitions, if any, being submitted to this Court and considered concurrently. Additional time is necessary to permit counsel of record the opportunity to prepare and file a petition. KeyPoint is not aware of any party that would be prejudiced by the requested extension. KeyPoint thus respectfully requests that its time to file a petition for a writ of certiorari be extended to and including February 18, 2020.

Respectfully submitted.

ALEXANDER H. SOUTHWELL  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, New York 10166  
(212) 351-4000



---

F. JOSEPH WARIN  
JASON J. MENDRO  
*Counsel of Record*  
MATTHEW S. ROZEN  
JEREMY M. CHRISTIANSEN  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500  
jmendro@gibsondunn.com

*Counsel for Applicant KeyPoint Government Solutions, Inc.*

January 8, 2020