

MEMORANDUM

TO: Geoffrey S. Berman, U.S. Attorney
[REDACTED]

FROM: AUSAs [REDACTED]

DATE: December 5, 2019

RE: Analysis of Possible Corporate Prosecution

In connection with the investigation of Jeffrey Epstein for sex trafficking, we have been asked to analyze the feasibility of bringing criminal charges against one or more Epstein-controlled corporate entities that formally owned properties at which he abused certain minor victims. [REDACTED]

[REDACTED]

As described herein, the well-established requirements for prosecution of a corporation are that its agent or agents committed criminal acts¹ while (1) acting within the scope of corporate duties, and (2) intending at least in part to benefit the corporation itself. [REDACTED]

[REDACTED]

[REDACTED]

¹ This memorandum presumes familiarity with relevant prior case memoranda as well as the charges set forth in *United States v. Jeffrey Epstein*, 19 Cr. 490 (RMB), and similarly presumes that the corporate agent—Epstein himself—committed criminal acts, namely sex trafficking offenses in violation of Title 18, United States Code, Section 1591.

I. Background and Ownership of Property

On July 2, 2019, a federal grand jury in the Southern District of New York returned an indictment (the "Indictment") charging Jeffrey Epstein with one count of sex trafficking of minors, in violation of 18 U.S.C. § 1591, and one count of conspiracy to commit sex trafficking of minors, in violation of 18 U.S.C. § 371. Beginning in at least 2002, Epstein enticed and recruited dozens of minor girls to engage in sex acts with him, for which he paid the victims hundreds of dollars in cash. He undertook this activity in several locations, including his mansion in Manhattan, New York (the "New York Residence") and his estate in Palm Beach, Florida (the "Palm Beach Residence").

Between 1962 and 1989, prior to Epstein's ownership, the New York Residence was operated as a school, under the auspices of the Birch Wathen Lenox School (the "Birch School"). In 1989, the Birch School sold the property to the Nine East 71st Street Corporation, which at the time was wholly owned by Leslie Wexner, the billionaire founder of the Limited Company.² In or about 1998, Wexner agreed to sell the New York Residence to Epstein for \$20 million. We believe the change of ownership occurred through a transfer of control of the Nine East 71st Street Corporation, the LLC that had purchased the New York Residence in 1989. Documents we have reviewed reflect that in 2011, ownership of the New York Residence was transferred from one Epstein-controlled entity to another: from Nine East 71st Street Corporation, of which Epstein was President, to Maple, Inc.³ The New York Residence is valued at approximately \$55-86 million, and its parent company owner is herein referred to as the "Corporation."⁴

² From approximately the early 1990s through 2007, Epstein managed certain finances and financial projects for Wexner, including through having power of attorney for Wexner; it also appears that Epstein stole or otherwise misappropriated more than \$100 million from Wexner, in addition to receiving other fees in the tens or hundreds of millions of dollars during the duration of their decades-long financial relationship.

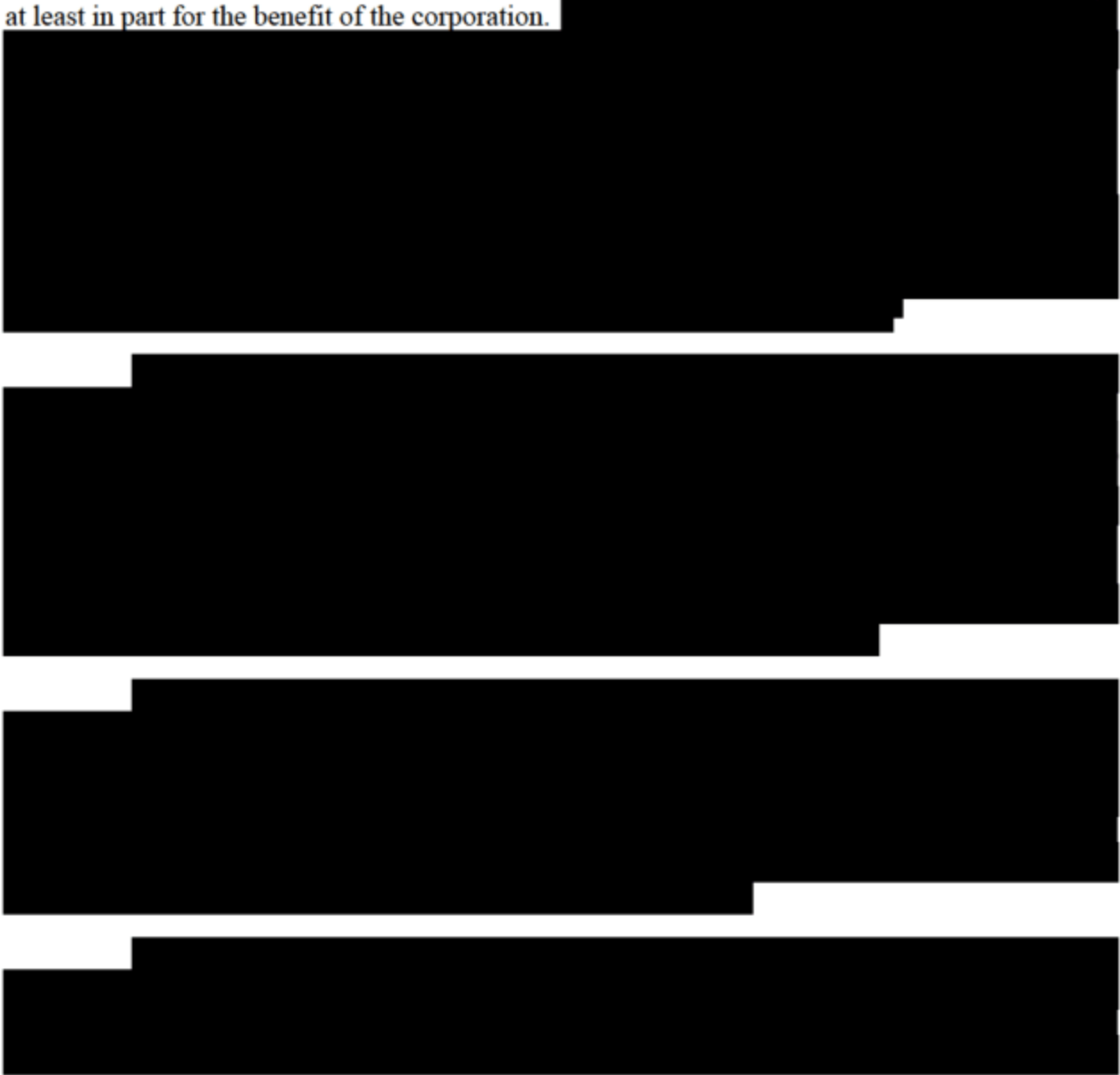
³ Relevant documents list Epstein as the President of the Nine East 71st Street Corporation, and no other officers or members are listed in those documents. Accordingly, [REDACTED] this memorandum assumes for its analysis that Epstein was the sole member of the Nine East 71st Street Corporation during the relevant time period of approximately 2002 through 2005.

⁴ We have obtained ownership paperwork for the New York Residence that suggests Epstein was the sole owner or member of these entities. Moreover, neither entity appears to have had a bank account or other indicia of operating costs, employees, etc. Additionally, Epstein also owned domestic properties during the relevant period including residences in Florida, New Mexico, and the U.S. Virgin Islands, at which he engaged in criminal conduct. Each of those properties is owned by a separate corporation, respectively, for which Epstein is the sole member, and none of which appears to have a bank account or other indicia of operations or employees. While Epstein did have employees working at each of those locations, these employees were generally paid out of a separate operating account controlled by Epstein, not directly by the LLC that owned the physical property. [REDACTED]

II. Principles and Requirements of Corporate Prosecution

A. Legal Framework and Application

Under federal law, corporate criminal liability is confined to offenses (a) committed by the corporation's officers, employees, or agents; (b) within the scope of their employment; and (c) at least in part for the benefit of the corporation.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Here, the Corporation—which appears to have existed only as an on-paper holding company for the New York Residence—had no formal business or corporate purpose, and Epstein, who appears to have been its sole officer or member, was not an “employee” and had no defined corporate responsibilities. We have not identified any documents that reflect a statement of corporate purpose or other mission statement for the entity itself, and it does not appear to have had any employees or operations, other than as a holding company. [REDACTED]

[REDACTED]

⁶ Under the principles of agency law more generally, “the scope of an agent’s authority is not unlimited and does not extend to actions that harm the interests of the principal.” *See United States v. Hilton*, 701 F.3d 959 (4th Cir. 2012) (citing *In re Am. Biomaterials Corp.*, 954 F.2d 919, 924-25 (3d Cir. 1992) (noting that an employee who embezzles from his corporation does not act within the scope of his employment in doing so)).

⁷ Case law does not appear to draw any distinction between the legal standard applicable to an entity based on its corporate structure—*i.e.*, an incorporated entity as opposed to a limited liability company, as was the case here. This Office has also recently reached corporate resolutions with, and has criminally charged, LLCs. *See, e.g., United States v. S.A.C. Capital Partners LP, S.A.C. Capital Partners LLC et al.*, 13 Cr. 541.

[REDACTED]

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III. Prudential Considerations

[REDACTED]

[REDACTED]

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IV. Assessment

