

CAUSE NO. C-2639-24-C

IN THE DISTRICT COURT OF HIDALGO COUNTY, TEXAS  
139TH JUDICIAL DISTRICT

In Re OFFICE OF THE ATTORNEY §  
GENERAL OF THE STATE OF §  
TEXAS, §  
*Petitioner,*

CATHOLIC CHARITIES OF THE §  
RIO GRANDE VALLEY, §  
*Interested Party.*

**CATHOLIC CHARITIES OF THE RIO GRANDE VALLEY'S RESPONSE  
AND OBJECTIONS TO RULE 202 PETITION**

Catholic Charities of the Rio Grande Valley (CCRGV) hereby answers, objects to, and opposes the Petition filed by the Office of the Attorney General of the State of Texas (Attorney General) under Texas Rule of Civil Procedure 202. The Attorney General's investigation of CCRGV is based solely on CCRGV's religiously motivated provision of charitable services to asylum seekers, which do not violate any law.

Nevertheless, the Attorney General's Rule 202 Petition asks this Court to order that the corporate representative of CCRGV submit to a deposition. Rule 202 allows a Court to require a deposition "only if it finds that . . . the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure." The burden is on the Attorney General to establish that this standard is met, *e.g.*, *In re East*, 476 S.W.3d 61, 66 (Tex. App. 13th 2014), and he has failed to do so. The Petition lacks any evidence—or even concrete factual allegations—that would carry the Attorney

General's burden of showing a likely benefit to a deposition or the existence of a potential (as opposed to speculative) claim to be investigated.

The Attorney General's failure to meet his burden is particularly telling in light of CCRGV's extensive cooperation with his overreaching inquiry during the past several months. The Attorney General initially demanded live testimony from a representative of CCRGV in March 2024. At that time, the Attorney General relied on his authority to review corporate records under the Business Organizations Code, rather than Rule 202. Although that demand was without factual or legal basis, CCRGV voluntarily responded by providing the requested information, ultimately producing more than 100 pages of relevant documents and a sworn statement explaining CCRGV's relevant activities. This evidence confirms that CCRGV does not violate the law. Evidently unsatisfied with CCRGV's responses, the Attorney General has changed tactics, now invoking Rule 202. But he points to nothing in the records and sworn statement that CCRGV has already provided that would justify a pre-suit deposition.

Tacitly acknowledging his inability to carry his Rule 202 burden, the Attorney General argues that, because he is the Attorney General, he is entitled to a Rule 202 deposition as a matter of law. He cites no case that supports this argument, which is contrary to repeated admonitions from the Texas Supreme Court that Rule 202 depositions are the exception, not the rule. *E.g., In re Jorden*, 249 S.W.3d 416, 423 (Tex. 2008) ("Rule 202 depositions are not now and never have been intended for routine use.").

The Petition represents a fishing expedition into a pond where no one has ever seen a fish. The only conclusion to be drawn from the substantial information CCRGV has provided to the Attorney General to date is that CCRGV committed no legal violations. There is no likely benefit to allowing the Attorney General to continue casting his line into barren waters. Another Texas district court recently referred to a similar investigation of a religious nonprofit by the Attorney General as “outrageous and intolerable.” See Order Granting Plaintiff’s Motion for Final Summary Judgment at 2, *Annunciation House v. Paxton*, Cause No. 2024DCV0616 (205th Judicial District July 2, 2024) (attached hereto as Exhibit L).

### **FACTUAL BACKGROUND**

Catholic Charities of the Rio Grande Valley (CCRGV) is a nonprofit corporation that provides services within the Diocese of Brownsville. CCRGV expresses its Catholic faith by providing food, shelter, and other basic necessities to homeless people, asylum seekers, and others in need in the Rio Grande Valley. CCRGV complies with the law; the immigrants it serves have been processed by the federal government and are often delivered to CCRGV’s Respite Center by agents of U.S. Customs and Border Protection.

On March 25, 2024, claiming that he was entitled to investigate “whether [CCRGV] ha[s] taken any action related to services provided to aliens that would cause forfeiture of your corporate charter,” the Texas Office of the Attorney General served a “Notice of Demand for Sworn Statement” on CCRGV. Ex. A at 1. The Attorney General’s demand, which was served during the Holy Week of the Catholic

faith, directed CCRGV to designate someone to testify in a deposition on April 11, 2024. Ex. A at 1. Invoking Section 12.153 of the Business Organizations Code as a source of investigative authority, the Attorney General sought “an examination under oath” concerning a broad range of topics: CCRGV’s “governance, hiring, retention, and oversight of . . . employees, contractors, and volunteers”; its “rules, processes, and procedures for admitting immigrants, refugees, or aliens”; “documentation and processes for submitting Emergency Food and Shelter Program applications”; and CCRGV’s “relationship” with law enforcement. Ex. A at 1, 3.

CCRGV replied on April 3, 2024, offering to produce documents instead of testimony and asking for clarification on the scope of the investigation. Ex. B at 1-2. In a letter sent on April 5, 2024, the Attorney General expressed his “appreciat[ion]” for CCRGV’s “willingness to share documents with us, potentially in lieu of an oral examination,” and confirmed that he was “not accusing” CCRGV of “any substantive legal wrongdoing” at that time. Ex. C at 1.

On April 9, 2024, CCRGV sent 111 pages of documents in response to the Attorney General’s initial demand. Ex. D. These documents showed CCRGV’s compliance with the law. For instance, CCRGV’s policy on “Business Ethics and Conduct” explained that, “Because the nature of our work is to the people of the Diocese of Brownsville, it requires careful observance of the spirit and the letter of all applicable laws,” and failure to do so by an employee “could lead to disciplinary action, up to and including possible termination of employment.” Ex. D at 18. In the document production, CCRGV also explained its policy for admitting immigrants

and refugees: “All Immigrants/Asylum Seekers need to have been processed and released by CBP [U.S. Customs and Border Protection] to be admitted” to CCRGV’s Respite Center. Ex. D at 51. CCRGV “has established a working relationship with federal, state, and local law enforcement” and works with them closely in the intake process. Ex. D at 109.

The Attorney General was not satisfied with CCRGV’s production and requested more documents in a phone call on April 24, 2024. In a letter sent that same day, CCRGV disputed the Attorney General’s statutory authority to demand a sworn statement but, in the spirit of cooperation, welcomed the Attorney General to send a “letter with more detail of what areas or documents you want [CCRGV] to search for.” Ex. E at 1. On April 25, 2024, the Attorney General wrote to CCRGV requesting additional documents by May 2, 2024. Ex. F. Specifically, the Attorney General sought “[a]ll documents . . . regarding [CCRGV’s] procedure for admitting immigrants or refugees [sic],” “[a]ll training materials given to volunteers and employees regarding those procedures,” more details on CCRGV’s policy with respect to law enforcement, and intake forms for CCRGV volunteers. Ex. F at 1-2. If CCRGV complied with these requests, the Attorney General said he “believe[d]” CCRGV could “forego [sic] a sworn statement and/or Rule 202 deposition.” Ex. F at 1.

On May 2, 2024, CCRGV sent 18 additional pages of documents, including CCRGV job descriptions and volunteer intake forms. Ex. G. To further cooperate with the Attorney General’s inquiry, CCRGV also provided written explanations

responding to the Attorney General's requests. For instance, because CCRGV did not have documents setting forth written procedures for admitting immigrants or refugees, it explained that "both volunteers and employees" are given "verbal instructions" to "only take those that are brought to them by the federal government employees." Ex. G at 1. CCRGV further explained that, "No law enforcement officer has been denied admittance to any of the CCRGV facilities. During the course of the last 5 years Federal, State, and local law enforcement have visited the Humanitarian Respite Center for meetings and to drop off asylum seekers." Ex. G at 5.

On May 7, 2024, the Attorney General thanked CCRGV for its "continued cooperation" but requested that CCRGV identify a representative within two days to be deposed. Ex. H at 1. In response, on May 9, 2024, CCRGV reiterated its opposition to a deposition, explaining that "there is no legal authority for the taking of a deposition under the Texas Business Organizations Code or even for a sworn statement." Ex. I at 1. Nevertheless, in a continued spirit of cooperation, CCRGV offered to provide a written statement from a person knowledgeable about CCRGV's operations. Ex. I at 1. After the Attorney General asked that any such statement answer a list of specific questions by letter dated May 23, 2024, Ex. J, CCRGV provided a sworn statement from Executive Director Sister Norma Pimentel on May 31, 2024, Ex. K. The sworn statement responded to the Attorney General's specific questions. For example, in response to questions about CCRGV's properties, Sister Norma provided the address, ownership, and operating details for the two facilities

that CCRGV operates. Ex. K at 2. In response to the Attorney General's question asking for details about communications with federal agencies, the statement explained that these calls "take[] place verbally" and provided the names of federal officials with whom CCRGV works. Ex. K at 3.

The Attorney General never responded to this sworn statement or requested additional information. Instead, the Attorney General filed his Rule 202 Petition, without prior notice to CCRGV, on June 5, 2024. CCRGV opposes that petition.

### ARGUMENT

To obtain a pre-suit deposition under Rule 202, the Attorney General must satisfy a demanding standard. "Rule 202 depositions are not now and never have been intended for routine use." *In re Jorden*, 249 S.W.3d 416, 423 (Tex. 2008). "The intrusion into otherwise private matters authorized by Rule 202 outside a lawsuit is not to be taken lightly." *In re Does*, 337 S.W.3d 862, 865 (Tex. 2011). "[C]ourts must strictly limit and carefully supervise pre-suit discovery to prevent abuse of the rule." *In re East*, 476 S.W.3d 61, 66 (Tex. App. 13th 2014). To ensure that Rule 202 depositions are used only when necessary, "a petitioner seeking a presuit deposition must present evidence to meet its burden to establish the facts necessary to obtain the deposition." *Id.* at 68.

The Attorney General's Petition fails to meet this burden and should be rejected. He appears to rely solely on Rule 202.4(a)(2), which permits a Court to order a pre-suit deposition "only if [the Court] finds that . . . the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential

claim outweighs the burden or expense of the procedure.” That standard is not met here. The Attorney General has not demonstrated, with evidence or even credible allegations, that a deposition would have *any* “likely benefit” to *any* “potential claim” against CCRGV, much less a likely benefit that would outweigh the burden on CCRGV.

**A. The Petition Lacks Any Evidence or Credible Allegations Demonstrating That a Deposition Would Provide “Likely Benefit” to a “Potential Claim”**

As an initial matter, “[t]he law is clear that a petitioner seeking a presuit deposition must present *evidence* to meet its burden to establish the facts necessary to obtain the deposition.” *In re East*, 476 S.W.3d at 68 (emphasis added). “[V]erified pleadings are generally not considered competent evidence to prove the facts asserted in the pleading,” and “the argument of counsel is not evidence.” *Id.* In other words, “the Rule 202 petition itself does not constitute evidence for purposes of supporting the required findings.” *Id.*

The Attorney General has failed to provide any evidence supporting his Petition. Indeed, the Petition fails to contain a single credible factual allegation of wrongdoing that would support an inference that the Attorney General might have a “potential claim” against CCRGV. Although Rule 202 “does not require a potential litigant to expressly state a viable claim before being permitted to take a pre-suit deposition,” see *In re Emergency Consultants, Inc.*, 292 S.W.3d 78, 79 (Tex. App. 14th 2007), a petitioner must produce some “facts regarding the anticipated suit or potential claim,” see, e.g., *In re Reassure Am. Life Ins. Co.*, 421 S.W.3d 165, 173



(Tex. App. 13th 2013); *see also, e.g., In re Does*, 337 S.W.3d at 865 (rejecting petition that only contained “sketchy” factual allegations). The Attorney General has provided no facts regarding any claim, let alone sufficient facts to demonstrate the need for a pre-suit deposition.

Moreover, the evidence that does exist—that which was provided by CCRGV in response to the Attorney General’s inquiry under the Business Organizations Code—makes clear CCRGV complies with the law. CCRGV provided over 100 pages of documents in response to the Attorney General’s request, as well as a sworn statement to answer further questions. The Attorney General’s inability to point to a basis for demanding more is particularly telling in light of everything he has received so far.

Lacking evidence or credible allegations, the Attorney General instead offers several “illustrative potential legal violations” that he would want to investigate further, but he points to nothing from which it could be reasonably inferred that CCRGV has committed any of those violations. Pet. ¶ 19. Rule 202 authorizes pre-suit deposition only for “an *existing*—rather than future or speculative—right that may be presently asserted.” *In re DePinho*, 505 S.W.3d 621, 624 (Tex. 2016). The violations hypothesized by the Petition are wholly speculative, and if hypotheticals were enough to force Rule 202 depositions, then such depositions would be available as a matter of course. Any would-be plaintiff could raise “illustrative potential legal

violations” of his rights by a would-be defendant and secure a pre-suit deposition on that basis. That is not how Rule 202 works.<sup>1</sup>

The Attorney General claims a deposition is needed based on what he perceives as a single “non-responsive and evasive” answer in CCRGV’s response to his inquiry under the Business Organizations Code. Pet. ¶¶ 14-15. The Attorney General asked for “CCRGV’s processes for documenting, transporting, and sheltering aliens who enter the United States *through CCRGV’s area* in Anzalduas Park.” Ex. J at 1 (emphasis added); *see also id.* (requesting information about CCRGV’s “possession” of the park). In the sworn statement, Sister Norma explained that “CCRGV does not possess, own, lease, or operate Anzalduas Park”; rather, the Park is “operated by the City of McAllen.” Ex. K at 2. The Attorney General may want a different answer, but the one provided is responsive to the way he phrased the question. *See* Pet. ¶ 15. In any event, it is CCRGV’s understanding that the temporary migrant shelter that the City of McAllen had been operating in Anzalduas Park was recently closed.

The closest thing to a factual allegation of wrongdoing is the Petition’s assertion that “members of Congress have identified Catholic Charities USA—CCRGV’s parent organization—as an entity that may be ‘encouraging, transporting, and harboring aliens to come to, enter, or reside in the United States.’” Pet. ¶ 5 (quoting Letter from Rep. Lance Gooden to Catholic Charities USA (Feb. 9, 2022)).

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<sup>1</sup> CCRGV would vigorously fight any attempt to “strip CCRGV’s right to operate in the State of Texas,” Pet. ¶ 20, or any similar effort as not only without legal or factual basis under state law but a serious assault on CCRGV’s constitutional rights, including its right to freedom of religion under the First Amendment.

But the Petition is incorrect to identify Catholic Charities USA as CCRGV's "parent organization." *Id.* CCRGV is a separate entity within the Diocese of Brownsville, not a subsidiary of Catholic Charities USA.<sup>2</sup> Catholic Charities USA is a membership organization for local Catholic Charities agencies, but each of those agencies "falls under the auspices of its local bishop/archbishop and serves the needs of the community in which it is located."<sup>3</sup> The cited letter, which is from a single member of Congress, points to no evidence to support any allegation that Catholic Charities USA has violated the law and says nothing about CCRGV, which is an entirely separate entity.<sup>4</sup> That letter certainly is not enough to show that the Attorney General has a "potential claim" against CCRGV or that there is a likely benefit to be gained from deposing CCRGV as an organization.

In sum, the Attorney General has supplied no evidence or credible allegations that would satisfy his burden of proving the "likely benefit" of taking a deposition to support a "potential claim" that he has against CCRGV. Texas. R. Civ. P. 202.4(a)(2). That alone is fatal to the Petition.

**B. The Burden on CCRGV from a Deposition Decisively Outweighs Any Likely Benefit**

Not only has the Attorney General failed to show any benefit of the deposition, but the burden of forcing a deposition here is substantial. CCRGV's staff

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<sup>2</sup> See Catholic Charities of the Rio Grande Valley, About Us, <https://catholiccharitiesrgv.org/about-us>.

<sup>3</sup> See Catholic Charities USA, Mission, <https://www.catholiccharitiesusa.org/about-us/mission>.

<sup>4</sup> See generally Letter from Rep. Lance Gooden to Catholic Charities USA (Feb. 9., 2022), [https://mcusercontent.com/bad9f5fdbb6d48e3db97b6099/files/f6ce2f64-4b6b-4a29-90fe-667e677a2664/Catholic\\_Charitys\\_USA\\_Letter\\_02.09.2022.pdf](https://mcusercontent.com/bad9f5fdbb6d48e3db97b6099/files/f6ce2f64-4b6b-4a29-90fe-667e677a2664/Catholic_Charitys_USA_Letter_02.09.2022.pdf).

is very busy providing an array of services to less fortunate residents of the Rio Grande Valley, and forcing a leader of the organization to step away from her obligations to sit for a deposition probing into the organization's affairs would impose a significant expenditure of resources. *Cf. Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995) (disfavoring depositions of persons in upper management of corporations). CCRGV has already attempted to cooperate with the Attorney General, devoting considerable time to collecting and providing over 100 pages of documents, explanations of its policies and procedures, and a sworn written statement. Every hour spent responding to the Attorney General is an hour not spent performing services in pursuit of CCRGV's religious and charitable mission. And requiring CCRGV to further divert its resources to satisfy the Attorney General's overreaching requests would harm not only CCRGV but also the individuals CCRGV serves.

Immigration services are a small sliver of CCRGV's work. CCRGV works in all four counties of the Rio Grande Valley.<sup>5</sup> The organization offers services to the homeless and to veterans. It coordinates charitable responses to natural disasters, including recent hurricanes and associated flooding. And during the summer months, the organization feeds needy children who might otherwise go hungry without access to school lunch. Forcing a representative of CCRGV to take time to prepare and sit for a deposition would impose a substantial burden.

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<sup>5</sup> See generally Catholic Charities of the Rio Grande Valley, Services, <https://catholiccharitiesrgv.org/services>.

And of course, a burden imposed on CCRGV's work necessarily also burdens its exercise of religion, as a faith-based charitable organization. The Texas Religious Freedom Restoration Act expressly commands that the State avoid substantially burdening religious practice,<sup>6</sup> unless such burden is the least restrictive means of furthering a compelling governmental interest. Tex. Civ. Prac. & Rem. Code Ann. § 110.003; *see also* Tex. Civ. Prac. & Rem. Code. § 110.004 (providing that religious burden may be asserted as a defense). Texas law also prohibits a government entity from taking "any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization." Tex. Gov't Code § 2400.002; *see also Dohlen v. City of San Antonio*, 643 S.W.3d 387, 390 (Tex. 2022). The Attorney General therefore may not target CCRGV for adverse action based even in part on its affiliation with the Catholic Church and support for Catholic teachings. The burden on CCRGV's religious and charitable activities further weighs against granting the Petition.

**C. The Attorney General's Argument That He Is Entitled to a Rule 202 Deposition as a Matter of Law Is Meritless**

Although the Texas Supreme Court has emphasized that "Rule 202 depositions are not now and never have been intended for routine use," *In re Jorden*, 249 S.W.3d at 423, the Attorney General argues that "[a]s a matter of law,"

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<sup>6</sup> There can be no doubt that CCRGV and its staff are "substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code Ann. § 110.001(a)(1). Although "it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief," *id.*, the work performed by Catholic Charities is driven by Catholic faith.

the Rule 202 standard “will *always* be satisfied” when he seeks a deposition of a corporate entity. Pet. ¶ 17 (second emphasis added). The Attorney General cites no case that gives him a free pass under Rule 202, and there is none. Instead, the Court should assess the Attorney General’s petition using the same Rule 202 standard that applies to any other litigant. The Attorney General’s invocation of statutory authorities under the Business Organizations Code, which have nothing to do with Rule 202, underscores how far he is from meeting his Rule 202 burden.

In any event, the Attorney General overstates the extent of his authorities under the Business Organizations Code, none of which entitles him to a deposition. Pursuant to the Business Organizations Code, the Attorney General may “inspect, examine, and make copies” of corporate records, upon “written request.” Bus. Org. Code §§ 12.151, 12.152.<sup>7</sup> That authority is specific to obtaining records and does not encompass demands for testimony. The Attorney General selectively quotes from Section 12.153, which uses the word “investigate.” Bus. Org. Code § 12.153; *see* Pet. ¶ 7. But when read in full, Section 12.153 is a limitation on, rather than an expansion of, the Attorney General’s authority to review an organization’s records. The role of Section 12.153 within the overall statutory scheme is to specify the purposes for which the Attorney General can request those records. He may do so to “determine if the entity has been or is engaged in acts or conduct in violation of:

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<sup>7</sup> Another Texas district court recently declared Sections 12.151 and 12.152 of the Texas Business Organizations Code “facially unconstitutional” under the First and Fourth Amendments. *See* Order Granting Plaintiff’s Motion for Final Summary Judgment at 2-3, *Annunciation House v. Paxton*, Cause No. 2024DCV0616 (205th Judicial District July 2, 2024) (Ex. L).

(1) its governing documents; or (2) any law of this state.” *Id.* Indeed, Texas courts have read analogous language in a predecessor statute as imposing limits on the purposes for which the Attorney General can inspect records, not as providing investigative power beyond inspecting records. *See Humble Oil & Ref. Co. v. Daniel*, 259 S.W.2d 580, 590 (Tex. Civ. App. 1953); *Chesterfield Fin. Co. v. Wilson*, 328 S.W.2d 479, 481 (Tex. Civ. App. 1959).

The Attorney General’s reliance on *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 354 (1909), is likewise misplaced. That case, decided more than a century ago, upheld the constitutionality of an Arkansas statute, the text of which differed in material respects from that of the Texas Business Organizations Code. Unlike Texas’s law, which speaks of inspecting records, the Arkansas law explicitly permitted the attorney general of that state “to take the testimony” of corporate officers, *id.* at 336 n.1 (internal quotation marks omitted), and to compel such officers “to attend before any court or before any person authorized to take the testimony in said proceedings,” with penalties applicable should they “fail to appear and testify,” *id.* at 339 n.3 (internal quotation marks omitted). Texas law conspicuously fails to confer that same power to require testimony. The Attorney General’s deposition request thus finds no support in the Business Organizations Code and must instead meet the usual standard for a pre-suit deposition under Rule 202, which, as noted above, the Attorney General has failed to do.

## CONCLUSION

For these reasons, the Court should deny the Attorney General’s Petition.

By: /s/ David C. Garza

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Catholic Charities of the Rio Grande Valley's original answer has been served by the electronic e-filing system on counsel of record on this 3<sup>rd</sup> day of July 2024 as follows:

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Response and objections to Rule 202 petition

Status as of 7/3/2024 1:23 PM CST

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