

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YOSELYN FIORELLA PASCO
APARCANA; A. F. M. P.,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-5899

Agency Nos.
A249-015-434
A249-015-435

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 14, 2026**
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

Petitioner Yoselyn Fiorelli Pasco Aparcana and her daughter A.M.F.P.
(collectively “Petitioners”), natives and citizens of Peru, petition for review of a
Board of Appeals (“BIA”) order denying their motion to reopen proceedings

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

related to their applications for asylum, withholding of removal, and protection under the Convention Against Torture. We have jurisdiction to review the BIA's order under 8 U.S.C. § 1252. We grant the petition.

We review the BIA's denial of a motion to reopen for abuse of discretion. *V. Singh v. Garland*, 117 F.4th 1145, 1150 (9th Cir. 2024). The Attorney General has "broad discretion" to grant or deny motions to reopen, and the BIA abuses its discretion when its decision is "arbitrary, irrational, or contrary to law." *Cui v. Garland*, 13 F.4th 991, 995–96 (9th Cir. 2021); *see also Montejo-Gonzalez v. Bondi*, 166 F.4th 851, 854 (9th Cir. 2026) (en banc). We review the BIA's decision and those portions of the Immigration Judge's decision expressly adopted by the Board. *Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021).

1. The BIA abused its discretion in denying Petitioners' motion to reopen because it failed to consider the totality of Petitioners' circumstances. Under the Immigration and Nationality Act ("INA"), an in-absentia removal order may be rescinded if a noncitizen petitioner files a motion to reopen within 180 days and demonstrates that their "failure to appear was because of exceptional circumstances." 8 U.S.C. § 1229a(b)(5)(C)(i); *Montejo-Gonzalez*, 166 F.4th at 854. Exceptional circumstances are defined as "circumstances (such as battery or extreme cruelty to the [noncitizen] or any child or parent of the [noncitizen], serious illness of the [noncitizen], or serious illness or death of the spouse, child, or

parent of the [noncitizen], but not including less compelling circumstances) beyond the control of the [noncitizen]).” 8 U.S.C. § 1229a(e)(1). We have held that these “statutory examples are explicitly not exhaustive,” *V. Singh*, 117 F.4th at 1150, and that the BIA must consider “all compelling [] circumstances relevant to a petitioner’s motion to reopen,” *see Chete Juarez v. Ashcroft*, 376 F.3d 944, 948 (9th Cir. 2004).

The BIA denied Petitioners’ motion on the basis that their history of “homelessness and reliance on shelter housing” could not constitute exceptional circumstances because the statutory “definition of exceptional circumstances expressly includes serious illness of an alien’s child, [but] does not contemplate a respondent’s ancillary circumstances.” It went on to state that “exceptional circumstances by definition do not extend beyond the serious illness of a child of the respondent.” This was legal error. We have consistently explained that the INA does not establish any per se rules regarding what constitutes an exceptional circumstance. *Montejo-Gonzalez*, 166 F.4th at 858 (“Whether a petitioner can establish “exceptional circumstances” under 8 U.S.C. § 1229a(b)(5)(C)(i) depends on the totality of the circumstances in each case, and *we reject any categorical rules dictating what does or does not meet that standard.*” (emphasis added)). Because the BIA erred as a matter of law by failing to consider the totality of Petitioners’ circumstances and erroneously applying a categorical rule as to what

circumstances could constitute exceptional circumstances, we grant the petition and remand to the BIA to consider whether Petitioners' history of homelessness constitutes exceptional circumstances warranting rescission of the in-absentia removal order. *See Montejo-Gonzalez*, 166 F.4th at 858; *V. Singh*, 117 F.4th at 1150 (holding that the BIA abused its discretion "by failing to adequately address all totality of the circumstances factors of [the petitioner's] exceptional circumstances claim").¹

PETITION GRANTED, VACATED, AND REMANDED.

¹ In granting the petition as to Petitioners' arguments that the BIA erred as a matter of law in failing to consider the totality of their circumstances, we do not reach Petitioners' other arguments. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (holding that courts do not need to decide issues unnecessary to the results they reach).