

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ANGEL DANILO TRIGUEROS
QUIZAR,

Petitioner,

v.

TODD BLANCHE, Attorney
General,

Respondent.

No. 24-4847

Agency No.
A240-805-132

OPINION

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

Argued and Submitted August 11, 2026
Reno, Nevada

Filed September 4, 2026

Before: John B. Owens, Danielle J. Forrest, and Lawrence
VanDyke, Circuit Judges.

Opinion by Judge Owens;
Dissent by Judge VanDyke

SUMMARY*

Immigration

Granting Angel Trigueros Quizar’s petition for review of a decision of the Board of Immigration Appeals that dismissed his appeal from an Immigration Judge’s denial of a motion to reopen, and remanding, the panel held that the BIA erred by failing to apply this court’s precedent concerning a petitioner’s evidentiary burden in the context of a motion to reopen and rescind a removal order issued in absentia.

In his pro se motion, Trigueros Quizar argued that a flat tire, which he quickly had fixed, was an “exceptional circumstance” that made him five minutes late to his hearing and warranted rescinding his in absentia removal order. The IJ found that Trigueros Quizar’s factual claims were not “inherently unbelievable,” and that a flat tire could be an “exceptional circumstance,” but denied the motion because Trigueros Quizar failed to support his claims with adequate documentary evidence. The IJ wrote that the tire shop receipt that Trigueros Quizar submitted, dated a few weeks after the hearing and for a new set of tires, did not mention a previous flat tire. The IJ also noted that the court had no record of receiving phone calls that Trigueros Quizar claimed were placed at his request on the date of his hearing, and that Trigueros Quizar had failed to appear at a previous hearing and disregarded a prior order. The BIA dismissed Trigueros Quizar’s appeal.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

First, the panel held that the BIA erred by suggesting that Trigueros Quizar was required to file a separate affidavit submitted under penalty of perjury describing the events leading to his late arrival. Under this court's precedent, pro se petitioners are not required to submit a formal affidavit.

Second, the panel held that the agency erred by faulting Trigueros Quizar for not providing corroborating documentary evidence. Because motions to reopen are decided without a hearing, this court generally requires the agency to accept a petitioner's affidavit as true unless the facts stated "are inherently unbelievable" and has held that agency errs by requiring corroboration in this context.

Dissenting, Judge VanDyke wrote that the court's "deem-true rule" is wrong, and merits correction by this court en banc or the Supreme Court, because it has no textual support, the extra-textual justifications the court has offered for it make no sense, and it conflicts with Supreme Court precedent.

Judge VanDyke also wrote that the majority carried the deem-true rule one step further than precedent required by requiring the agency to ignore evidence the petitioner voluntarily provides that undermines the credibility of his self-serving statement. Nor has this court required the agency, when applying the relevant "totality of the circumstances" standard, to ignore all other evidence before it—like its own administrative records of phone calls and experience with the petitioner.

COUNSEL

Kyle E. Edgerton (argued), Edgerton Legal LLC, Reno, Nevada, for Petitioner.

Andrew N. O'Malley (argued), Senior Litigation Counsel; Cindy S. Ferrier, Assistant Director; Office of Immigration Litigation, Civil Division; Yaakov M. Roth, Acting Assistant Attorney General; United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

OWENS, Circuit Judge:

Angel Danilo Trigueros Quizar, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his appeal from an Immigration Judge's ("IJ") denial of his motion to reopen and rescind a removal order issued in absentia. In his motion to reopen, Trigueros Quizar stated that he was five minutes late to his merits hearing due to a flat tire that he quickly had fixed. The agency determined that Trigueros Quizar failed to provide sufficient evidence documenting the cause of his tardiness. Because the agency did not apply our precedent concerning a petitioner's evidentiary burden in the context of a motion to reopen, we grant the petition for review and remand for further proceedings consistent with this opinion.

I. BACKGROUND

A. IJ Order Removing in Absentia

In 2022, the Department of Homeland Security ("DHS") filed a Notice to Appear, charging Trigueros Quizar as

removable. Trigueros Quizar conceded removability but filed pro se an application for asylum, withholding of removal, and protection under the Convention Against Torture.

On September 1, 2023, Trigueros Quizar failed to appear for his individual merits hearing before an IJ. The IJ deemed his application abandoned and ordered him removed in absentia.

B. Motion to Reopen

Trigueros Quizar filed pro se a timely motion to reopen his proceedings and rescind the in absentia removal order. In the motion, Trigueros Quizar explained that he was five minutes late to the 1:00 p.m. hearing on September 1 due to a flat tire.

Specifically, Trigueros Quizar stated that he “departed his home in Sparks, Nevada, which is adjacent to Reno, sometime after 12:00pm.” “While traveling on Prater Way in Sparks, his vehicle suffered a flat tire.” “He drove the vehicle, on a deflating tire, to a nearby tire shop called Hooten Tire Company.” He “begged for an emergency flat repair so that he could arrive timely to an important appointment at 1:00pm, and the staff obliged.” “In about 15 minutes, they made a hasty repair of the flat and reinflated the tire.”

While Trigueros Quizar was to appear in person at the immigration court in Reno, the IJ appeared remotely from California. When Trigueros Quizar “arrived at the Reno Immigration Court at approximately 1:05pm and passed through security,” “[t]he staff asked him why he was there, and he explained that he had an [individual hearing] at 1:00pm.” “The security staff stated that the hearing had

already been held and that he had been ordered removed *in absentia*.” Trigueros Quizar “asked the staff to call the court, and [he] believes that both a security guard and [a DHS Intensive Supervision Appearance Program] representative named ‘Carolina’ placed calls to [the] Court.” “They represented to [Trigueros Quizar] that the immigration judge had declined to hear his case due to the late arrival.”

Trigueros Quizar noted that he “later returned to Hooten Tire to purchase a set of new tires” “[i]n gratitude” for helping him with his emergency flat repair. He included as an exhibit a copy of his receipt from Hooten Tire for four new tires, dated September 21, 2023.

In the motion, Trigueros Quizar argued that his flat tire on the way to his hearing, which he quickly had fixed such that he was only five minutes late, constituted “exceptional circumstances” warranting rescinding his *in absentia* removal order.

C. IJ Decision Denying Motion to Reopen

The IJ denied the motion to reopen. The IJ acknowledged that a flat tire on the way to a hearing “may constitute an exceptional circumstance as it is ‘generally an unanticipated occurrence which is “beyond the control of the [non-citizen].”’ *Perez v. Mukasey*, 516 F.3d 770, 774 n.2 (9th Cir. 2008).” And, the IJ found that Trigueros Quizar’s “supporting documents do not render the claims in his motion to reopen ‘inherently unbelievable.’ *Silva v. Garland*, 993 F.3d 705, 718 (9th Cir. 2021).”

Nonetheless, the IJ denied the motion to reopen because Trigueros Quizar had “not met his burden of proof to demonstrate that his failure to appear was directly

attributable to exceptional circumstances.” The IJ reasoned that Trigueros Quizar was required to “‘provide adequate documentary evidence to support [his] claim of exceptional circumstances,’ and ‘[s]uch evidence should corroborate the cause of [his] late appearance.’ *Matter of S-L-H- & L-B-L-*, 28 I. & N. Dec. 318, 322 (BIA 2021).” The IJ stated that Trigueros Quizar’s “documentary evidence”—the receipt for purchasing four new tires a few weeks after the missed hearing—“makes no mention of a previous flat tire, much less that such incident occurred on the same day as his scheduled hearing.” The IJ also noted that, contrary to Trigueros Quizar’s motion, the court had no record of receiving phone calls placed at his request on the date of his hearing, and that Trigueros Quizar had failed to appear at a previous hearing and disregarded a prior order regarding filing his application.

Accordingly, the IJ denied the motion to reopen, and Trigueros Quizar appealed to the BIA.¹

D. BIA Decision Denying Motion to Reopen

The BIA affirmed the IJ’s denial of the motion to reopen because Trigueros Quizar “did not provide sufficient information or evidence to meet his burden of establishing that the motion should be granted.”

The BIA noted that Trigueros Quizar “did not include a separate affidavit submitted under penalty of perjury describing the events leading up to his late arrival, what he

¹ Trigueros Quizar filed pro se a timely Notice of Appeal with the BIA. He then retained counsel, who filed a brief that was rejected because it was filed one day late. Trigueros Quizar, through counsel, filed a motion to accept the late-filed brief, explaining that counsel had been confused about the applicable time zone for the electronic filing. The BIA denied the motion to accept the late brief.

did and to whom he talked specifically when he arrived at the court, what actions the staff took, specifically, or what time he arrived.” The BIA also noted that “[t]he receipt for tires dated September 21, 2023, does not document the reason [Trigueros Quizar] was late on September 1, 2023, and [he] did not submit a receipt for the tire repair on September 1, 2023, the day of the hearing.” The BIA further noted that the IJ found no records to support Trigueros Quizar’s assertion that calls were placed to the IJ after his late arrival.

The BIA stated that the IJ found “there was insufficient corroborative evidence documenting the cause of [Trigueros Quizar’s] tardiness to establish exceptional circumstances warranting reopening,” and cited *Matter of S-L-H- & L-B-L-*. The BIA concluded that, “[c]onsidering the totality of the circumstances, the [IJ] correctly denied the motion.”

This timely petition for review followed.

II. SCOPE AND STANDARD OF REVIEW

“Where the BIA conducts its own review of the evidence and law, rather than adopting the IJ’s decision, our review is limited to the BIA’s decision, except to the extent the IJ’s opinion is expressly adopted.” *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020) (citation omitted).

We review for abuse of discretion the denial of a motion to reopen. *Montejo-Gonzalez v. Bondi*, 166 F.4th 851, 854 (9th Cir. 2026) (en banc).

III. DISCUSSION

Under the Immigration and Nationality Act (“INA”), an in absentia removal order “may be rescinded . . . upon a motion to reopen filed within 180 days after the date of the

order of removal if the [non-citizen] demonstrates that the failure to appear was because of exceptional circumstances.” 8 U.S.C. § 1229a(b)(5)(C)(i). The INA defines “exceptional circumstances” as “exceptional circumstances (such as battery or extreme cruelty to the [non-citizen] or any child or parent of the [non-citizen], serious illness of the [non-citizen], or serious illness or death of the spouse, child, or parent of the [non-citizen], but not including less compelling circumstances) beyond the control of the [non-citizen].” *Id.* § 1229a(e)(1).

We recently clarified “what constitutes exceptional circumstances beyond a petitioner’s control.” *Montejo-Gonzalez*, 166 F.4th at 853. Courts look at the “totality of the circumstances” and “the particularized facts presented in each case” to decide whether a failure to appear was because of sufficiently compelling circumstances beyond the petitioner’s control. *Id.* at 854 (citation omitted). “Evidence relevant to the statutory factors may include whether the petitioners were diligent, whether they encountered external or unforeseen circumstances, and whether they lacked a motive to evade the hearing,” and “[o]ther factors . . . depending on the circumstances.” *Id.*

The INA provides that a motion to reopen “shall be supported by affidavits or other evidentiary material.” 8 U.S.C. § 1229a(c)(7)(B). The BIA made two errors regarding Trigueros Quizar’s evidentiary burden.

First, the BIA appears to have faulted Trigueros Quizar for not including “a separate affidavit submitted under penalty of perjury describing the events leading up to his late arrival, what he did and to whom he talked specifically when he arrived at the court, what actions the staff took, specifically, or what time he arrived.” But, pro se petitioners

are not required to submit a formal affidavit. *Perez-Portillo v. Garland*, 56 F.4th 788, 795 (9th Cir. 2022) (“Although [the petitioner’s] statements [in her motion to reopen] were not in the form of an affidavit, we have not required such from pro se petitioners.”). And to the extent the BIA sought an explanation, Trigueros Quizar provided that information in his motion to reopen. Therefore, the BIA erred by suggesting that a separate affidavit was necessary.

Second, the agency faulted Trigueros Quizar for not providing documentary evidence to corroborate his statements, even though his factual assertions were not “inherently unbelievable.” This evidentiary requirement is inconsistent with our longstanding case law.

“Because motions to reopen are decided without a hearing, we generally require the [agency] to accept the petitioner’s affidavits as true” unless the facts stated “are inherently unbelievable.” *Arredondo v. Lynch*, 824 F.3d 801, 805-06 (9th Cir. 2016) (citation omitted); *see also Singh v. Garland*, 117 F.4th 1145, 1148 n.1 (9th Cir. 2024) (stating that the agency “must credit” the facts stated in the petitioner’s affidavit). “Corroboration of a credible declaration by [a petitioner] moving to reopen is not required.” *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 892 (9th Cir. 2002); *see also Maroufi v. INS*, 772 F.2d 597, 600 (9th Cir. 1985) (rejecting “the BIA’s assertion that the law requires independent corroboration of the facts contained in a supporting affidavit” on a motion to reopen).

For example, in *Arredondo*, we held that independent corroboration of the petitioner’s declaration was not necessary. 824 F.3d at 806. There, the petitioner declared that she missed her hearing because her car broke down. *Id.* at 803-04. The BIA denied the motion to reopen in part

because the petitioner “had not presented persuasive evidence to corroborate her claim.” *Id.* at 805. As to corroboration, we held that the agency erred in disregarding the petitioner’s explanation because it was “not ‘inherently unbelievable’ or ‘incredible.’” *Id.* at 806.

We held similarly in *Hernandez-Galand v. Garland*, 996 F.3d 1030, 1035 (9th Cir. 2021), *overruled in part on other grounds by Montejo-Gonzalez*, 166 F.4th at 854. There, the petitioner declared that her failure to appear at her hearing was partially due to her longstanding memory problems from a childhood head injury. *Id.* at 1033, 1035. In denying the motion to reopen, the BIA noted that the petitioner “failed to provide any evidence to corroborate her claim in her declaration that she suffers from memory problems.” *Id.* at 1033-34. We held that, because the petitioner’s declaration was not conclusory or “inherently unbelievable,” “to the extent the BIA disregarded this aspect of [the petitioner’s] declaration simply because it lacked corroboration, it erred.” *Id.* at 1035.

Here, in concluding that Trigueros Quizar needed to provide corroborative documentary evidence, the agency relied solely on *Matter of S-L-H- & L-B-L-*. That agency decision held that a petitioner “must provide adequate documentary evidence to support a claim of exceptional circumstances” and “[s]uch evidence should corroborate the cause of the [petitioner’s] late appearance.” 28 I. & N. Dec. at 322. A BIA decision cannot displace our precedent. *See Mota v. Mukasey*, 543 F.3d 1165, 1167 (9th Cir. 2008) (noting that we “will not defer to BIA decisions that conflict with circuit precedent” (citation omitted)).

Therefore, the agency erred by requiring that Trigueros Quizar provide documentary evidence to corroborate his statements, which were not “inherently unbelievable.”

The dissent’s main concern is with our preexisting “deem-true” case law. But, as a three-judge panel, we are generally bound by the precedent of our circuit, *see Miller v. Gammie*, 335 F.3d 889, 899-900 (9th Cir. 2003) (en banc), so we will not relitigate those cases here.

And contrary to the dissent’s implication, we are merely following and not expanding that circuit precedent. The IJ specifically found that Trigueros Quizar’s “supporting documents do not render the claims in his motion to reopen ‘inherently unbelievable,’” and the BIA did not disagree. Unlike the dissent, the agency did not find that the receipt for new tires somehow cast doubt on his credibility or undermined his version of events. *Cf. Shen v. Garland*, 109 F.4th 1144, 1155 (9th Cir. 2024) (noting that this circuit does not conduct “factfinding in the first instance” (emphasis and citation omitted)). Instead, the agency focused on Trigueros Quizar’s failure to furnish sufficient documentary evidence to corroborate his own statements, such as a receipt for the flat tire repair on the day of the missed hearing. For the reasons stated above, that evidentiary burden conflicts with our longstanding case law, which mandates another go around.

Accordingly, we grant the petition for review and remand for the agency to reconsider Trigueros Quizar’s motion to reopen under the proper evidentiary requirements.²

² We also conclude that the BIA did not abuse its discretion by denying Trigueros Quizar’s motion to accept his late brief. Despite the BIA’s

PETITION FOR REVIEW GRANTED AND REMANDED.

VANDYKE, Circuit Judge, dissenting

If you were born before my law clerks, you might remember the following iconic movie scenes.

Scene 1: *Indiana Jones and the Raiders of the Lost Ark* (1981). Indiana Jones creeps through a booby-trapped Peruvian temple in search of a golden idol lost to history. Indy’s map tells him that the idol is hidden on a pedestal in the temple’s inner sanctum. But every step there is rigged: pressure plates trigger poison darts, deadly spikes shoot from the walls, the floor opens to a bottomless chasm, and terrifying spiders line the passageways. Only by avoiding all these pitfalls can our hero reach the sought-after idol. But lifting the idol from the pedestal sets off the temple’s final trap—a giant boulder that comes crashing toward our hero, forcing him to escape with (and then without) the prize.

Scene 2: *Mission Impossible* (1996). Secret agent Ethan Hunt must steal a file from an impenetrable CIA server room. But the room is wired with sound-, pressure-, and temperature-sensors that will be triggered by the slightest misstep. To remain undetected, Hunt must enter the room

cursory language, we can reasonably discern the BIA’s rationale for not exercising its discretion. See *Hernandez v. Garland*, 52 F.4th 757, 768 (9th Cir. 2022). Moreover, “[t]he BIA was under no obligation to” accept the late brief and “did not act arbitrarily, irrationally, or contrary to the law, by exercising its discretion to deny an untimely brief under a regulation indicating that it could—or could not—accept the brief.” *Zetino v. Holder*, 622 F.3d 1007, 1013 (9th Cir. 2010) (internal citation omitted).

suspended from a harness inches above the floor. While dangling there, Hunt and his team must hack into the CIA's servers and extract the file. One bead of sweat or one wrong keystroke will trigger the alarm and end the mission.

Picture these scenes in your head, and you've got a good working image of how immigration judges must feel about the Ninth Circuit. As I've described elsewhere, our case law has created an impenetrable system of traps and "gotchas" that make it nearly impossible for the agency—which hears 30,000-60,000 appeals per year¹—to function. *See, e.g., Flores Molina v. Garland*, 37 F.4th 626, 646–49 (9th Cir. 2022) (VanDyke, J., dissenting); *Cordero-Garcia v. Garland*, 44 F.4th 1181, 1195–1205 (9th Cir. 2022) (VanDyke, J., dissenting), *rev'd and remanded sub nom. Pugin v. Garland*, 599 U.S. 600 (2023); *Reyes v. Garland*, 11 F.4th 985, 998–1007 (9th Cir. 2021) (VanDyke, J., dissenting). In each of these thousands of cases, if the agency makes one "wrong" step in navigating the labyrinth we've laid out for it, we remand and reward the immigration petitioner—who usually has no legal right to be in the United States—with the best consolation prize ever: more time. There's something badly wrong with this situation. An Immigration Judge shouldn't have to be Indiana Jones to do the job Congress has assigned. And carrying out the INA's stated goals shouldn't be Mission Impossible.

This case centers on one of the many snares we've laid for the BIA: the deem-true rule. Here is the story that

¹ *See* Catholic Legal Immigration Network, Inc., *Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals*, <https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals> [https://perma.cc/L2QH-5A5V](last visited Aug. 20, 2026).

triggers the rule. Petitioner Angel Danilo Trigueros Quizar missed his removal hearing and was ordered removed in absentia. He later claimed that he (1) left his home sometime after 12:00 pm, (2) “suffered a flat tire” on his way to immigration court, (3) drove on that flat tire to a nearby repair shop called Hooten Tire Company where he received an “emergency flat repair” in “about 15 minutes,” and (4) arrived at the Immigration Court just five minutes late for his 1:00 pm hearing. Once there, Trigueros claimed, a security guard and DHS representative called the court and “represented to [him] that the immigration judge had declined to hear his case due to the late arrival.” Three weeks later, Trigueros says, he returned to the tire shop to buy four new tires “in gratitude” for the repair on the day of his missed hearing.

Asserting only these facts, Trigueros moved to reopen and rescind his in absentia removal order, arguing that the flat-tire story was an exceptional circumstance that caused his failure to appear. He attached one piece of evidence to his motion: the following receipt showing that on September 21, 2023—three weeks after his missed hearing—he’d purchased four brand-new tires from Hooten.

The Immigration Judge (IJ) found no record of the phone calls Trigueros claimed had been made to the Immigration Court on his behalf. It noted that Trigueros had previously missed a hearing and otherwise failed to follow court orders. And it reasonably observed what any ordinary person would think: that the September 21 tire receipt said nothing about why Trigueros had missed a hearing three weeks earlier. Given all this, the IJ found Trigueros failed to demonstrate exceptional circumstances and denied his motion to reopen. The BIA concluded that the IJ reasonably found that, under the totality of the circumstances, Trigueros failed to show that exceptional circumstances caused him to miss his hearing. Trigueros now says that was an abuse of discretion.

Easy case, you might think? Wrong. Enter our court's special deem-true rule. You see, whatever the evidence showed, and however implausible and vague and unsupported his tale, Trigueros *said* he was late because he got a flat tire. And that's all that matters. In the Ninth Circuit, the agency must accept what Trigueros said as true. *Maroufi v. INS*, 772 F.2d 597, 600 (9th Cir. 1985). And today, the majority takes that rule one step farther. After today, the deem-true rule requires the agency not only to accept Trigueros's statement as true, but also to allow that statement to override all evidence to the contrary. While the issue might seem esoteric, it's a big deal. Congress intentionally made it challenging to show exceptional circumstances "in response to a serious problem of aliens deliberately failing to appear for hearings and thus effectively extending their stay in this country." *Kaweesa v. Gonzales*, 450 F.3d 62, 68 (1st Cir. 2006). If the agency treats as gospel a petitioner's word for why he missed his hearing—despite other more persuasive evidence to the contrary—then all an alien needs to do is claim that

something we've previously called an exceptional circumstance is exactly what happened to him. He's guaranteed to win his motion to reopen.

I write in part to explain why our existing deem-true rule is obviously wrong and merits correction—either by our court en banc (but who am I kidding?) or by the Supreme Court. The majority and I agree that this three-judge panel is powerless to correct decades of precedent applying that rule. *See Miller v. Gammie*, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc). But I also believe that the majority carries the deem-true rule one step further than our flawed precedents required. Our deem-true case law holds that the agency may not require corroborating evidence. But it never says the agency must *ignore* evidence the petitioner voluntarily provides that undermines the credibility of his self-serving statement. Nor have we ever required the agency to ignore all the other evidence before it—like its own administrative records and experience with the petitioner. Indeed, our most recent precedents do not just *permit* the agency to consider these other facts; they *require* the agency to do so. By holding to the contrary, the majority unnecessarily extends our flawed deem-true rule, contradicts our “totality of the circumstances” standard, and disregards the Supreme Court’s instructions in *Garland v. Ming Dai*, 593 U.S. 365 (2021).

I.

The Immigration and Nationality Act (INA) provides that an in absentia removal order “may be rescinded ... upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances.” 8 U.S.C. § 1229a(b)(5)(C)(i). A motion to reopen asserting

exceptional circumstances must “be supported by affidavits or other evidentiary material.” *Id.* § 1229a(c)(7)(B). On top of these statutory provisions, our court has imposed what I’ll call the “deem-true rule”: that the agency must “accept as true the facts stated in an alien’s affidavit in ruling upon his motion to reopen unless it finds those facts to be ‘inherently unbelievable.’” *Maroufi*, 772 F.2d at 600 (quoting *Hamid v. INS*, 648 F.2d 635, 637 (9th Cir. 1981)); *see also Arredondo v. Lynch*, 824 F.3d 801, 805–806 (9th Cir. 2016); *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 892 (9th Cir. 2002); *Limisco v. INS*, 951 F.2d 210, 213 (9th Cir. 1991).

The “deem-true” rule is wrong. It’s atextual, illogical, and it conflicts with Supreme Court precedent.

A.

The first problem with the deem-true rule is that it appears nowhere in the INA’s text. *See* 8 U.S.C. § 1229a(c)(7)(B) (providing that a motion to reopen “shall be supported by affidavits or other evidentiary material”); *id.* § 1229a(b)(5)(D) (confining our review of an in absentia removal order, as relevant here, to “the reasons for the alien’s not attending the proceeding”). In rejecting another atextual “deem-true” rule from our court, the Supreme Court explained that “a reviewing court is generally not free to impose additional judge-made procedural requirements on agencies that Congress has not prescribed and the Constitution does not compel.” *Ming Dai*, 593 U.S. at 365 (citation omitted). But we’ve never even tried to identify textual support for our deem-true rule. We first adopted the rule in *Reyes v. INS*, 673 F.2d 1087, 1090 (9th Cir. 1982). There, without citing to any provision in the version of the INA then in effect, we stated that “common notions of fair play and substantial justice generally require that the [BIA]

accept as true the facts stated in an alien’s affidavits” in support of her motion to reopen. *Id.* We stated the rule more definitively in *Maroufi*—again without a single reference to the INA’s text—holding that the “BIA is required to accept as true the facts stated in an alien’s affidavit in ruling upon his motion to reopen unless it finds those facts to be inherently unbelievable.” *Maroufi*, 772 F.2d at 600 (citation modified). Since then, when we’ve applied the deem-true rule, we’ve simply cited *Reyes*, *Maroufi*, and their progeny without stopping to ask whether the INA’s text requires—or even permits—the rule. *See, e.g., Hernandez-Ortiz v. INS*, 777 F.2d 509, 514 (9th Cir. 1985), *superseded by statute on other grounds as stated in Parussimova v. Mukasey*, 555 F.3d 734, 739–40 (9th Cir. 2009); *Sakhavat v. INS*, 796 F.2d 1201, 1203 (9th Cir. 1986); *M.A. A26851062 v. INS*, 858 F.2d 210, 216 (9th Cir. 1988); *Limisco*, 951 F.2d at 213; *Ghahremani v. Gonzales*, 498 F.3d 993, 999 (9th Cir. 2007); *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010); *Avagyan v. Holder*, 646 F.3d 672, 678–79 (9th Cir. 2011); *Silva v. Garland*, 993 F.3d 705, 718 (9th Cir. 2021), *abrogated on other grounds by, Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). The deem-true rule thus appears to be a creature of pure judicial ingenuity all the way down. This is inconsistent with *Ming Dai*’s instruction to hew to the INA’s text.

As the Supreme Court in *Ming Dai* explained, the INA “carefully circumscribe[s] judicial review of” the agency’s decisions. 593 U.S. at 365 (citation omitted). The INA requires reviewing courts to accept the agency’s factual findings “as ‘conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.’” *Id.* (quoting 8 U.S.C. § 1252(b)(4)(B)). Findings about why an alien missed his hearing are factual findings. The agency

must determine what happened, when, and why before it can apply the exceptional circumstances standard. *Ming Dai* explains that while the agency may not “arbitrarily reject an alien’s evidence,” “so long as the record contains contrary evidence of a kind and quality that a reasonable factfinder could find sufficient, a reviewing court may not overturn the agency’s factual determination.” *Garland v. Ming Dai*, 593 U.S. 357, 365–66 (2021) (citation and quotation marks omitted). By allowing federal courts to invalidate the agency’s factual findings about why a petitioner missed a hearing if those findings contradict what the petitioner merely claims, the deem-true rule violates these statutory principles.

B.

Since the deem-true rule lacks any textual support, you might think that it would at least have a compelling *practical* justification. Wrong again. The deem-true rule rests on a single premise: because a motion to reopen is decided without a hearing, the agency has no way to assess the credibility or persuasiveness of a petitioner’s affidavit claiming that exceptional circumstances caused his failure to appear. *See Arredondo*, 824 F.3d at 805–806. But that obviously isn’t true. A petitioner moving to reopen can—and often does—file corroborating evidence. *See, e.g., Montejo-Gonzalez v. Bondi*, 166 F.4th 851, 853 (9th Cir. 2026) (en banc); *Celis-Castellano*, 298 F.3d at 890, 892. And the agency almost always has before it record evidence about, or direct experience with, the petitioner’s previous compliance with court orders or deadlines. These pieces of evidence often shed light on whether a petitioner’s proffered excuse for missing his hearing is persuasive. Requiring the agency to ignore them makes no sense.

The deem-true rule has the most merit when a petitioner submits a naked affidavit without any supporting documents, and no other evidence could inform why the petitioner failed to appear. But even in that rare scenario, the rule makes little sense. Affidavits have *some* evidentiary force because the affiant swears under penalty of perjury to the truth of what he's saying. Yet we don't always treat affidavits as unchallengeable. Consider the habeas context, where petitioners often submit affidavits that seek to undermine their convictions or guilty pleas. We don't blindly invalidate those convictions on a habeas petitioner's mere *ipse dixit*. See *United States v. Allen*, 153 F.3d 1037, 1041 (9th Cir. 1998) (“[S]elf serving statements by a defendant that his conviction was constitutionally inform are insufficient to overcome the presumption of regularity accorded state convictions.” (quoting *Cuppert v. Duckworth*, 8 F.3d 1132, 1139 (7th Cir. 1993) (en banc))). Instead, we look to other evidence to assess the veracity of the petitioner's claims. That's because we know the habeas petitioner has a strong incentive to lie. As do immigration petitioners seeking to avoid removal.

Everyone understands that people are far more likely to lie when they will benefit from doing so. It makes all the sense in the world to account for the natural human incentive to lie or embellish when there is a lot at stake by requiring a petitioner to back up his asserted excuse with evidence. See *Matter of S-L-H- & L-B-L*, 28 I & N. Dec. 318, 322 (BIA 2021). By imposing a conclusive presumption of credibility when the incentives point entirely in the opposite direction, the deem-true rule contradicts this basic human experience.

So even in the paradigmatic scenario, our deem-true rule is out of touch with reality. But like so many “special” and “judge-made” Ninth-Circuit immigration rules, *Ming Dai*,

593 U.S. at 359–60, the deem-true rule has metastasized to cover situations without any plausible connection to its original, stated rationale. This case is a perfect example of the rule’s corrosive effect. The deem-true rule originally required the agency to accept a petitioner’s *affidavit* as true. *See, e.g., Maroufi*, 772 F.2d at 600. But over time, we eroded that requirement to allow a pro se petitioner to file a mere declaration. *See, e.g., Perez-Portillo v. Garland*, 56 F.4th 788, 795 (9th Cir. 2022). And here, Trigueros didn’t supply an affidavit, or even a declaration. He filed a conclusory motion in which he laid out his flat-tire story described above. In support of this motion, he filed only one document: a receipt from a tire store, dated three weeks after the missed hearing and showing the purchase of four new tires instead of the repair of one flat. That non-sequitur receipt is worse than *no* corroborating evidence. Imagine you were out late one night and your spouse asked you, “Where have you been?” Stammering, you reply, “I was at work!” Still skeptical, your spouse asks for proof. You show your spouse a work email you sent three months ago. We all know how the rest of that conversation is going to go.

Assuming Trigueros’s flat-tire story is true, consider how easy it would have been to provide *some* corroborating evidence. According to Trigueros, he spent nearly \$400 on new tires in a gesture of pure gratitude. During that visit, he easily could have asked the good employees of Hooten Tire Shop to write a simple note confirming that they had fixed his flat on the day of the hearing. That Trigueros presented no such evidence—and instead presented only evidence that undermines his story—speaks volumes. *See Oral Argument at 3:10–4:20*, <https://perma.cc/474H-8QR4>, *Trigueros Quizar v. Blanche*, No. 24-4847, (Trigueros’s counsel

admitting that the belated tire-receipt evidence is “not great”).²

II.

To recap, our deem-true rule has no textual support. And the extra-textual justification we’ve offered for it makes no sense. The Supreme Court will someday overturn it. But even under our existing precedents applying that deeply flawed rule, this case still should have come out differently.

A.

It’s true that we’ve held—wrongly—that the agency cannot *require* an alien moving to reopen to corroborate his deemed-true declaration with documentary evidence. *See Celis-Castellano*, 298 F.3d at 892. But we’ve never held that when, as here, a petitioner *voluntarily* “corroborates,” the agency must put on the blinders and confine its exceptional-circumstances review to the four corners of the petitioner’s self-serving declaration—even if the other evidence casts serious doubt on the credibility of that declaration. *See id.* at 890–92 (holding that while petitioner was not required to corroborate his claim that he missed hearing due to asthma attack, the agency did not err by holding that by failing to

² I respectfully disagree with the majority that “the agency did not find” that the belated tire receipt “undermined [Trigueros’s] version of events.” The agency expressly looked to the “totality of the circumstances,” and also expressly emphasized that the tire receipt said nothing about what happened the day of the missed hearing and thus did not support Trigueros’s story. We must uphold “even a decision of less than ideal clarity if the agency’s path may reasonably be discerned.” *Ming Dai*, 593 U.S. at 369 (citation modified). And it’s clear to me from the agency’s decision that it had the same reaction an ordinary person would have to Trigueros’s belated tire receipt evidence (or to the spouse mentioned above): if that’s the “supposed” evidence you claim supports your story, then there are serious problems with your story.

provide evidence showing the severity of that attack, petitioner failed to meet his burden to show exceptional circumstances).

In fact, our most recent discussion of the evidentiary standard for a motion to reopen shows the opposite is true. In *Montejo-Gonzales v. Bondi*, an en banc panel of our court adopted a “totality of the circumstances” test, and made clear that the agency must look to “the particularized facts presented in each case” to decide whether a failure to appear was because of sufficiently compelling circumstances beyond the petitioner’s control. 166 F.4th at 854–55 (citation omitted). If the agency must accept the petitioner’s declaration as true and ignore all other contrary evidence in the record, then how can it consider “the totality of the circumstances” as *Montejo-Gonzales* requires? There would be only *one* set of “circumstances” that matters: whatever the petitioner says in his self-serving affidavit (or declaration ... or motion).

Here, the agency considered the facts Trigueros asserted in his motion. It also considered the tire-store receipt. And it looked to its own records to determine whether Trigueros had tried to call the IJ after his late arrival. The agency further noted that Trigueros had missed a hearing before and also “disregarded orders ... requiring him to file a timely application as well as submitting supporting documents.” Given “the *totality* of the[se] circumstances,” the agency found that Trigueros had not shown “exceptional circumstances warranting reopening.” This analysis complies with our “totality of the circumstances” standard and should have led us to deny the petition. See *Celis-Castellano*, 298 F.3d at 891–92.

The majority sees things differently. Focusing on the agency's citation to *Matter of S-L-H-*, 28 I & N. Dec. at 322, and reference to Trigueros's "insufficient corroborative evidence," the majority reads the agency as having denied Trigueros's motion to reopen solely because he failed to corroborate his declaration with documentary evidence. Thus, the majority reasons, the agency disregarded Ninth Circuit precedent and must re-do its work. See *Celis-Castellano*, 298 F.3d at 892 ("Corroboration of a credible declaration by [a petitioner] moving to reopen is not required."). But respectfully, this misreads the agency's decision. The BIA adopted the IJ's finding that there was "insufficient corroborative evidence documenting the cause of [Trigueros's] tardiness to establish *exceptional circumstances warranting reopening*." In other words, the agency looked to all the evidence before it, including Trigueros's own "corroborating" evidence, to assess whether the flat-tire excuse was an *exceptional circumstance*—not to assess whether Trigueros's claim about getting a flat tire was *credible*. See *Ming Dai*, 593 U.S. at 371 (explaining the difference between credibility, persuasiveness, and sufficiency of proof). Second, Trigueros attempted to provide corroboration (the tire-store receipt), and he still lost. The agency could not have relied exclusively on a "corroborate-or-lose" rule to deny Trigueros's motion—as the majority presupposes—because Trigueros *did* provide evidence to corroborate his story.

The majority isn't explicit about what should happen on remand. But the unfortunate implication of its holding is clear: a petitioner's declaration is now the only evidence that really matters for a motion to reopen—even when there is more informative, contradictory evidence before the agency and even when the petitioner submitted some of that

evidence himself. Even if a petitioner has missed five straight hearings and willingly submitted evidence that undermines his story about why he missed this one, the agency must ignore the history and rely only on his self-serving description of the facts that caused him to miss his hearing. I fail to see how that kind of “don’t believe your lying eyes” test can accord with our case law requiring the agency to look at the totality of the circumstances.

B.

The majority’s expansion of the deem-true rule also conflicts with the Supreme Court’s instruction that, under the INA, there is a difference “between credibility, persuasiveness, and the burden of proof.” *Ming Dai*, 593 U.S. at 371. As the Supreme Court has explained, “[i]t’s not always the case that credibility equals factual accuracy, nor does it guarantee a legal victory.” *Id.* Instead, “an alien’s testimony” will “carry the day on its own” only when his testimony is “credible,” “persuasive,” *and shows* that exceptional circumstances caused his failure to appear. *Id.* That the agency must, under our ill-conceived deem-true rule, accept Trigueros’s declaration as *credible* does not mean that it must “find his evidence persuasive or sufficient to meet the burden of proof.” *Id.*

Before today, our deem-true rule still left room for the agency to recognize the daylight between these concepts. *See, e.g., Hernandez-Ortiz*, 777 F.2d at 518 (explaining that the rule is a substitute “*credibility* determination[]” (emphasis added)); *see also Perez-Portillo*, 56 F.4th at 795 (recognizing that the IJ could have found the facts asserted in a petitioner’s pro se motion to reopen “not credible” and not persuasive “*based on additional filings*” (emphasis added)). But in holding that the agency must ignore other

record evidence that casts doubt on the petitioner's deemed-true statement, the majority has extended our deem-true rule so that an alien's affidavit is not only per se credible but also "operate[s] as a trump card, foreclosing the possibility that even [deemed-]credible testimony may be outweighed by other more persuasive evidence or be insufficient to satisfy the burden of proof." *Ming Dai*, 593 U.S. at 373.

This will create serious problems. It isn't hard to learn about the myriad fact patterns that will likely be deemed "exceptional circumstances" by our court. *See, e.g., Hernandez-Galand v. Garland*, 996 F.3d 1030, 1035 (9th Cir. 2021), *overruled in part on other grounds by Montejo-Gonzales*, 166 F.4th at 854 (memory problems); *Montejo-Gonzales*, 166 F.4th. at 856 (severe traffic). Now, to win on a motion to reopen, all a petitioner needs to do is pick one of those "exceptional circumstances," and then submit a barebones declaration claiming that very circumstance is what caused his failure to appear. The only thing left to do is tweak the date, time, and location to fit the petitioner's own situation. Even if there are piles of other evidence before the agency showing that the declaration is almost certainly inaccurate, the agency must take the petitioner's word for it and grant the motion to reopen.

Respectfully, that cannot be right.

* * *

I don't blame the majority for our ill-conceived deem-true rule. And my disagreement with my colleagues in the majority on how they've attempted to apply that precedent is narrower than my disagreement with the deem-true rule itself. Even so, we could have cabined our circuit's illogical deem-true rule here and made clear that it doesn't require the agency to ignore documentary evidence the petitioner

voluntarily submits with his declaration. Instead, we've expanded it. By extending the deem-true rule to situations in which other evidence—some of it provided by the petitioner himself—undermines his version of events, the majority has followed an unfortunately well-trodden path in the Ninth Circuit: take an illogical, atextual immigration rule and push it one more step further. I wish we wouldn't do that, and therefore respectfully dissent.