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2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5
6 MARIA GARCIA, et al.,
7 Plaintiffs,

8 v.

9 GINA MCCARTHY, in her official capacity
10 as Administrator of the U.S. Environmental
11 Protection Agency, et al.,
12 Defendants.

Case No. [13-cv-03939-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 20

13
14 **INTRODUCTION**

15 Plaintiffs¹ Maria Garcia, David Garcia, and Angelica Guzman bring this action against
16 defendants Gina McCarthy, in her official capacity as Administrator of the United States
17 Environmental Protection Agency (“EPA”), Jared Blumenfeld, in his official capacity as Regional
18 Administrator of Region IX of EPA, and EPA. The plaintiffs allege violations of both the
19 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, and of their Due Process rights
20 under the Fifth Amendment of the United States Constitution based on EPA’s allegedly wrongful
21 investigation, negotiation, and settlement of an administrative complaint.² Based on the parties’
22 briefs and argument of counsel, and for the reasons below, the defendants’ motion to dismiss is
23 GRANTED.

24
25 ¹ The plaintiffs occasionally refer to themselves as simply “Garcia” or the “Garcias,” without any
26 apparent differentiation, in their pleading and motion papers. For convenience, the Court will
27 address all three defendants collectively and as “plaintiffs.”

28 ² EPA argues that the plaintiffs’ third cause of action should be dismissed because an injunction is
a remedy, not a cause of action. Br. 18 (citing *Sullivan v. JP Morgan Chase Bank, NA*, 725 F.
Supp. 2d 1087, 1099 (E.D. Cal. 2010)). The plaintiffs state that they do not intend to assert the
“Third Claim for Relief” as a separate cause of action. Opp’n 2 n.1. Accordingly, there is no need
to address it in this Order.

1 **FACTUAL BACKGROUND**

2 The First Amended Complaint (“FAC”) alleges the following:

3 On June 30, 1999, parents of Latino schoolchildren attending public schools, including
4 plaintiff Maria Garcia, filed an administrative complaint with EPA on behalf of themselves and
5 their children. FAC ¶ 41. The complaint in *Angelica C. v. California Department of Pesticide*
6 *Regulation*, EPA File No. 16R-99-R9 (“*Angelita C.*”), alleged that the California Department of
7 Pesticide Regulation (“CDPR”) violated Title VI of the Civil Rights Act of 1964 (“Title VI”) by
8 subjecting Latino schoolchildren in California to harmful and discriminatory exposures to toxic
9 pesticides and fumigants, in particular, methyl bromide. FAC ¶ 41. “To demonstrate this
10 disproportionate impact, this complaint focus[ed] on methyl bromide, due to its particularly deadly
11 characteristics, as an example of overall use of and exposure to highly toxic pesticides in the
12 state.” FAC ¶ 41 (quoting *Angelita C.* at 2). Exposure to high concentrations of methyl bromide
13 can result in complete central nervous and respiratory system failure and cause severe harm to
14 lungs, eyes, and skin. FAC ¶ 42. Chronic, low-level exposure is associated with peripheral
15 neuropathies, impaired gait, cognitive and behavioral changes, and liver and kidney dysfunction.
16 FAC ¶ 42. Acute effects from exposure include headaches, nausea, vomiting, seizures, psychosis,
17 and death. FAC ¶ 42. Children are especially vulnerable to methyl bromide’s effects. FAC ¶ 42.

18 On December 11, 2001, EPA accepted the complaint for investigation, but did not make a
19 preliminary finding within 180 days as required by 40 C.F.R. § 7.115(c). FAC ¶¶ 3-4. On
20 September 10, 2002, EPA staff met exclusively with CDPR senior management, during which
21 time CDPR “indicated its intent to continue authorizing the use of methyl bromide” and argued
22 that its processes for issuing permits were adequate to address risks posed by the chemical. FAC
23 ¶ 44. At some point, EPA conducted at least one additional phone call with CDPR senior
24 management, during which time “CDPR reiterated its position that it was appropriately mitigating
25 the risks posed by methyl bromide and in compliance with governing laws.” FAC ¶ 45.

26 Nearly 12 years after the filing of the complaint, on April 22, 2011, EPA issued a
27 preliminary finding against CDPR of racial discrimination, concluding that Latino schoolchildren
28 in California suffered excessive exposure to and disparate effects from methyl bromide between

1 1995 through 2001. EPA concluded that there was “sufficient evidence to make a preliminary
2 finding of a *prima facie* violation of Title VI as a result of the disparate adverse impact upon
3 Latino schoolchildren in California from the application of methyl bromide between 1995 and
4 2001”; it did not analyze any other chemicals or any other time period after 2001. FAC ¶ 47
5 (quoting Preliminary Finding 3). Comparing data from over 8,000 “majority non-Latino”
6 California public schools against the schools listed in the complaint, EPA found that Latino
7 schoolchildren were disparately exposed to both short-term acute (two-to-30-day periods) and
8 long-term chronic (180-day period to lifetime) levels of methyl bromide above “EPA’s health
9 thresholds of concern.” FAC ¶ 49. Excessive levels were found at Rio Mesa High School, Rio del
10 Valle Middle School, and Rio Lindo Elementary School. FAC ¶¶ 24, 27.

11 This was the first preliminary finding ever issued by EPA finding discrimination based on
12 race, color, or national origin. FAC ¶ 6. However, “EPA kept the preliminary finding secret” and
13 did not inform the complainants or the general public, nor were the complainants allowed to
14 discuss the investigation or view the investigative documents. FAC ¶¶ 5, 52. EPA requested that
15 CDPR maintain complete secrecy, stating, “OCR [(EPA’s Office of Civil Rights)] would like to
16 conduct these discussions confidentially and hopes that CDPR will also view them in the same
17 way.” FAC ¶ 52.

18 Between August 22, 2011, and August 24, 2011, EPA and CDPR engaged in private
19 settlement discussions and did not invite the complainants to participate or to examine the
20 underlying documents for EPA’s decision. FAC ¶¶ 52-53. On August 24, 2011, EPA entered into
21 an informal compliance agreement with CDPR pursuant to 40 C.F.R. § 7.115, but, again, the
22 complainants were not part of the process leading to the agreement. FAC ¶ 7. “As required by its
23 Title VI implementing regulations, EPA provided recommendations for CDPR to achieve
24 voluntary compliance with Title VI.” FAC ¶ 50. Among other requirements, EPA recommended
25 more ongoing air monitoring through 2013; a data-call-in process with pesticide registrants to
26 collect data from high-use areas; promulgating methods to ensure that monitoring efforts are
27 effective against excessive long-term exposure; use of high-barrier virtually impermeable films
28 and township caps on methyl bromide levels; and holding three outreach events per year with the

1 Latino community. FAC ¶¶ 50-51, 56.

2 The plaintiffs identify numerous deficiencies with the settlement agreement, asserting that
3 it provides no relief to those exposed to the pesticides and leaves them without a remedy. FAC
4 ¶¶ 55, 57. “The settlement does not limit or alter the current registration or the use of methyl
5 bromide, its replacements, or other hazardous pesticides throughout California or within 1.5 miles
6 of public schools. CDPR last re-registered and certified as lawful the spraying of methyl bromide
7 on January 26, 2012, for use in 2012. CDPR has not indicated that registration or use faces any
8 changes in 2013.” FAC ¶ 55. The agreement contains no duty for CDPR to achieve the exposure
9 reduction goals EPA recommended in its preliminary finding. FAC ¶ 58. “Rather, the settlement
10 agreement allows CDPR to continue to discriminate against Latino children in California by
11 allowing the hazardous application of methyl bromide and other dangerous pesticides and
12 fumigants near their schools.” FAC ¶ 58.

13 EPA informed Brent Newell, the complainants’ counsel, of the preliminary finding and
14 agreement, and dismissed the complaint on the same day that the agreement was executed. FAC
15 ¶ 9. Newell did not know of the preliminary finding, agreement, or dismissal before then. FAC
16 ¶ 59. Ironically, Newell was attending an EPA-sponsored conference on Title VI and
17 environmental justice, where EPA invited him to speak, when he was informed of the settlement.
18 FAC ¶ 59. At the conference, Newell asked then-EPA Administrator Lisa P. Jackson to rescind
19 the agreement, reopen negotiations with the complainants’ participation, and remedy the
20 discrimination identified in the preliminary finding. FAC ¶ 60. Shortly thereafter, Newell and
21 other individuals met with Jackson to discuss his request. FAC ¶ 61.

22 On January 9, 2012, Newell met with California Environmental Protection Agency
23 (“California EPA”) Secretary Matthew Rodriquez to discuss Newell’s complaints. FAC ¶ 62.
24 “Rodriquez indicated that California EPA was willing to meet with EPA and [Newell] to discuss
25 whether to reopen the settlement agreement, as allowed by paragraph 23 of the agreement.” FAC
26 ¶ 62. On January 18, 2012, Newell and other environmental justice advocates met with Jackson to
27 discuss reopening the agreement and including the complainants in any subsequent negotiations
28 about *Angelita C.*, and mentioned that Rodriquez was willing to discuss doing so; “Jackson

1 unequivocally committed to contacting Secretary Rodriguez herself to discuss the matter.” FAC
2 ¶ 61.

3 In a February 24, 2012, letter from OCR Director DeLeon to Newell, DeLeon informed
4 Newell that EPA contacted Rodriguez, but Rodriguez said that Newell was not authorized to
5 represent that Rodriguez was willing to consider reopening the settlement.” FAC ¶ 64. “Under
6 these circumstances,” DeLeon wrote, “EPA does not intend to reopen the settlement agreement.”
7 FAC ¶ 64. Newell responded in a March 9, 2012, letter, which stated that “he believed
8 miscommunication between EPA and Rodriguez caused EPA to react” the way it did, and that
9 after speaking with Rodriguez, Rodriguez would send a separate letter to clarify EPA’s
10 misunderstanding of his position. FAC ¶ 65. In a March 9, 2012, letter from Rodriguez to
11 DeLeon, Rodriguez stated that California EPA “would be willing to participate in discussions of
12 potential modifications to the settlement, especially if US EPA was interested in such
13 discussions.” FAC ¶ 66. In addition, Rodriguez also stated that “[b]eyond the specific issues
14 involved in the *Angelita C.* settlement, we would be open to discussing the process used to resolve
15 any Title VI complaints in the future. It is our sense that the process would be more credible if
16 complainants in these matters were provided with an opportunity to further explain the bases for
17 their claims before US EPA initiated settlement negotiations or other efforts to resolve a
18 complaint.” FAC ¶ 66.

19 On April 13, 2012, counsel for Garcia and other environmental justice advocates met
20 Administrator Jackson and senior EPA staff to discuss EPA’s inadequate enforcement of Title VI
21 more broadly and as exemplified by the *Angelita C.* settlement agreement. Deputy EPA
22 Administrator Bob Perciasepe stated that EPA would not reopen the settlement regardless of
23 Secretary Rodriguez’s willingness to meet and consider reopening the settlement. FAC ¶ 67.

24 According to the plaintiffs, “EPA has a longstanding history of failing to process Title VI
25 complaints in a timely manner.” FAC ¶ 68. On October 14, 1996, 16 Title VI complainants sent a
26 letter to EPA Administrator to complain about EPA’s failure to adhere to its regulatory deadlines
27 to process Title VI complaints—all 16 of those complaints failed to meet those deadlines. FAC
28 ¶ 68. In a December 9, 1996, response, the EPA Administrator recognized the problem and said

1 that EPA had taken steps to address the concerns, including increasing staff and establishing a
2 working group and task force to address the back lot of Title VI complaints. FAC ¶ 69. The
3 problems seem to have persisted.

4 Between 2006 and 2007, EPA failed to process a single Title VI complaint in accordance
5 with regulatory deadlines. FAC ¶ 71 (citing *Rosemere Neighborhood Ass'n v. EPA*, 581 F.3d
6 1169, 1175 (9th Cir. 2009)). A privately conducted report found that EPA complied with the 20-
7 day period to accept, reject, or refer a complaint in only six percent of cases the report examined.
8 FAC ¶ 72. The report attributed the delays, in part, to a lack of standard operating procedures and
9 supporting resources. FAC ¶ 72. In a court declaration, DeLeon proposed recommendations for
10 reform and reported that the median time for deciding whether to accept a complaint is 118 days,
11 and the median time for investigating and issuing decisions is 321.5 days, well over the 180-day
12 deadline. FAC ¶ 74. An EPA chart showed that EPA complied with the 20-day “jurisdictional
13 determination” in only two instances out of 136. FAC ¶ 75. A number of complaints have not
14 been resolved years after they were accepted for investigation, including one dating back to 1994.
15 FAC ¶ 75.

16 With regard to *Angelita C.*, the plaintiffs allege that EPA: failed to determine whether
17 exposure to methyl bromide and other toxic pesticides and fumigants resulted in a disparate
18 adverse effect in violation of EPA’s regulations implementing Title VI; failed to investigate
19 whether the actual health consequences experienced; arbitrarily and capriciously executed the
20 voluntary compliance agreement, which did not provide substantive protection against future
21 actual and disparate adverse effects from the exposures; and arbitrarily and capriciously excluded
22 the complainants from the investigation and settlement negotiations. FAC ¶ 11.

23 Plaintiff Maria Garcia is the mother of plaintiffs David Marcia and Angelica Guzman.
24 FAC ¶ 20. David Garcia was 14 years old when *Angelita C.* was filed and a student at Rio Mesa
25 High School in Oxnard, California. David Garcia now has two children, one- and three-years old,
26 that live in Oxnard in the Rio School District and Oxnard Union School District and will attend
27 Rio Lindo Elementary School, Rio del Valle Middle School, and Rio Mesa High School. FAC
28 ¶ 21. Plaintiff Guzman also lives in Oxnard and has two children, who live in the Rio School

1 District and Oxnard Union School and will attend Rio del Valle Middle School and Rio Mesa
2 High School in Oxnard, California. FAC ¶ 22. The plaintiffs are concerned that their children and
3 grandchildren suffer or will suffer disparate adverse effects from exposure to methyl bromide,
4 chloropicrin, or other pesticides and fumigants. FAC ¶ 22. David Garcia and Guzman both
5 attended Rio Mesa High School, where “EPA’s Exposure Assessment and Disparity Analysis”
6 found that it “exceeded all twelve exposure scenarios by which EPA measured exceedances
7 beyond federally established health-based standards.” FAC ¶ 24.

8 For the 2012-2013 school year, Rio Lindo Elementary School had a 91 percent Latino and
9 97.6 percent non-white student body. FAC ¶ 25. For the same year, Rio del Valle Middle School
10 had an 82 percent Latino and 95 percent non-white student body. FAC ¶ 26.

11 Compared to the rest of California, the three schools are among the top 10 percent of ZIP
12 code areas with the highest environmental pollution, with 99.9 percent of the pollutants being
13 pesticides. FAC ¶ 78. Use of soil fumigants in 2011 is still very high around Rio Mesa High
14 School, and the area is in the 90th percentile of fumigant use in California. FAC ¶ 79, Figure 2.

15 **PROCEDURAL BACKGROUND**

16 The plaintiffs filed this action on August 23, 2013. Dkt. No. 1. They filed the FAC on
17 October 7, 2013. Dkt. No. 10. The plaintiffs bring the following causes of action: (1) arbitrary
18 and capricious agency action under 5 U.S.C. §§ 702 & 706(2)(A); (2) denial of procedural due
19 process under the Fifth Amendment; and (3) injunctive relief.

20 The plaintiffs seek a declaration that EPA arbitrarily and capriciously settled and dismissed
21 *Angelita C.* and seeks injunctive relief to vacate the agreement and dismissal. FAC ¶ 12. The
22 plaintiffs also seek a declaration that EPA deprived them of property without due process of law
23 and seeks injunctive relief to prevent EPA from continuing specific systemic practices and policies
24 that deny the plaintiffs and similarly-situated complainants procedural due process, to require
25 amendment of EPA’s regulations to provide sufficient procedural protections, and to remedy the
26 disparate adverse effects against Latino schoolchildren from exposure to methyl bromide and other
27 fumigants. FAC ¶ 14.

28 The plaintiffs argue that the Court has subject matter jurisdiction under 28 U.S.C. § 1331

1 because this action involves the United States as a defendant and arises under federal law, namely,
2 the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, and the Due Process Clause
3 of the Fifth Amendment of the United States Constitution. FAC ¶ 16.

4 On November 20, 2013, the defendants moved to dismiss for lack of subject matter
5 jurisdiction and for failure to state a claim. Dkt. No. 20. The plaintiffs filed an opposition brief,
6 Dkt. No. 23, to which the defendants filed a reply, Dkt. No. 25.

7 **LEGAL STANDARD**

8 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(1) if the court
9 lacks subject matter jurisdiction. FED. R. CIV. P. 12(b)(1).

10 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the
11 pleadings fail to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). The
12 Court must “accept factual allegations in the complaint as true and construe the pleadings in the
13 light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519
14 F.3d 1025, 1031 (9th Cir. 2008). The complaint “does not need detailed factual allegations,” but
15 instead only needs enough factual allegations “to raise a right to relief above the speculative
16 level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “However, conclusory allegations
17 and unwarranted inferences are insufficient to defeat a motion to dismiss.” *Oklevueha Native Am.*
18 *Church of Haw., Inc. v. Holder*, 676 F.3d 829, 834 (9th Cir. 2012).

19 **DISCUSSION**

20 It is worth stating what this case and motion are and are not about at the outset of this
21 discussion. This case is not about whether EPA met the timeframes required by the regulations to
22 investigate the plaintiffs’ complaint (which is not to say that twelve years is an acceptable
23 timeframe in which to resolve an administrative complaint, particularly since the regulations only
24 provide for 180 days). Nor is this motion about whether the Court may opine on the adequacy of
25 the settlement or the wisdom of excluding the plaintiffs from the investigation and settlement of
26 the case they started. Rather, the Court is limited to the issue of what legal recourse the plaintiffs
27 have against the EPA to force it to remedy the serious problems they allege.

28 The plaintiffs urge, in essence, that the broad anti-discriminatory purpose and language of

1 Title VI provide a basis for the Court to find that EPA’s enforcement action and settlement with
2 CDPR are not within its complete discretion, despite *Heckler v. Chaney*, 470 U.S. 821 (1985), and
3 its progeny. While the facts, as alleged, point to serious problems that the EPA could have
4 addressed more meaningfully, the law does not allow the Court to wade into this dispute.

5 **I. TITLE VI AND EPA’S IMPLEMENTING REGULATIONS**

6 Title VI of the Civil Rights Act of 1964 prohibits a recipient of federal funds from
7 discriminating based on race, color, or national origin. 42 U.S.C. § 2000d. Congress authorized
8 federal agencies to issue rules, regulations, and orders of general applicability to ensure
9 compliance with Title VI and to terminate federal funding for non-compliance. 42 U.S.C.
10 § 2000d-1. Pursuant to Title VI, EPA promulgated regulations prohibiting discrimination and
11 established an administrative complaint process to enforce Title VI’s prohibitions. The
12 regulations, along with the APA, provide the parameters within which the Court can review EPA’s
13 actions.

14 EPA’s regulations implementing Title VI state, “No person shall be excluded from
15 participation in, be denied the benefits of, or be subjected to discrimination under any program or
16 activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of
17 sex” 40 C.F.R. § 7.30. “EPA’s Administrator, Director of the Office of Civil Rights, [] and
18 other responsible officials shall seek the cooperation of applicants and recipients³ in securing
19 compliance” 40 C.F.R. § 7.105. “A person who believes that he or she or a specific class of
20 persons has been discriminated against in violation of this part may file a complaint [with EPA].”
21 40 C.F.R. § 7.120(a). Within 20 days of receiving a complaint, “the OCR will review the
22 complaint for acceptance, rejection, or referral to the appropriate Federal agency.” 40 C.F.R.
23 § 7.120(d)(1)(i). If the complaint is accepted, OCR must notify the complainant and the accused
24 party. 40 C.F.R. §7.120(d)(1)(ii). The recipient has 30 days to respond to the complaint. 40
25 C.F.R. § 7.120(d)(1)(iii). “OCR shall attempt to resolve complaints informally whenever possible.
26 When a complaint cannot be resolved informally, OCR shall follow the [following] procedures.”

27 _____
28 ³ “Recipients” refers to the recipients of federal funding subject to Title VI. In this case, the
recipient is CDPR.

1 40 C.F.R. §§ 7.120(d)(2)(i).

2 Within 180 days of the start of the investigation, “the OCR will notify the recipient . . . of:
3 (i) Preliminary findings; (ii) Recommendations, if any, for achieving voluntary compliance; and
4 (iii) Recipient’s right to engage in voluntary compliance negotiations where appropriate.” 40
5 C.F.R. § 7.115(c). The agency must first determine whether compliance can be “secured by
6 voluntary means” before taking other steps. 42 U.S.C. § 2000d-1. All voluntary compliance
7 agreements must be in writing and explain the specific steps agreed to. 40 C.F.R. § 7.115(f). EPA
8 regulations do not provide for participation by third parties in the voluntary compliance
9 negotiations. Br. 3 (citing 40 C.F.R. §§ 7.115, 7.120).

10 Once EPA finishes its initial investigation, it must send the preliminary findings to the
11 recipient, who may either agree to OCR’s recommendations, explain why the findings are
12 incorrect, or describe how compliance may be achieved through steps other than those
13 recommended by OCR. 40 C.F.R. § 7.115(d). If the recipient does not take one of these actions
14 within 50 days of receiving the preliminary findings, the OCR must issue a formal written
15 determination of noncompliance to the recipient and notify the Assistant Attorney General for the
16 United States Department of Justice’s Civil Rights Division within 14 days thereafter. 40 C.F.R.
17 §§ 7.115(d), 7.25. “The recipient will have ten (10) calendar days from receipt of the formal
18 determination of noncompliance in which to come into voluntary compliance. If the recipient fails
19 to meet this deadline, the OCR must start proceedings” to “deny, annul, suspend or terminate EPA
20 assistance.” 40 C.F.R. §§ 7.115(e), 7.130(b).

21 While proceedings must be initiated, cutting off funding is not mandatory: “If
22 compliance . . . cannot be assured by informal means, EPA *may* terminate or refuse to award or to
23 continue assistance. EPA *may* also use any other means authorized by law to get
24 compliance” 40 C.F.R. § 7.130(a) (emphasis added). By implication, cutting off EPA
25 finding only occurs after a formal written determination of noncompliance. *See* 40 C.F.R.
26 § 7.115(e). The recipient has the opportunity to appeal OCR’s formal determination to the Chief
27 Administrative Law Judge (“ALJ”) of the EPA, and then to appeal the ALJ’s determination to the
28 EPA Administrator. 40 C.F.R. §§ 7.130(b)(2) & (3).

1 Any agency actions under these laws “shall be subject to such judicial review as may
2 otherwise be provided by law for similar action taken by such department or agency on other
3 grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to
4 grant or to continue financial assistance upon a finding of failure to comply with any requirement
5 imposed pursuant to section 2000d-1 of this title, any person aggrieved . . . may obtain judicial
6 review of such action in accordance with [the APA], and such action shall not be deemed
7 committed to unreviewable agency discretion within the meaning of that chapter.” 42 U.S.C.
8 § 2000d-2.

9 Title VI and the regulations discussed above apply here because EPA provides financial
10 assistance to the CDPR, which “regulates the manufacture, distribution, sale, and use of pesticides
11 in California.” Br. 2 (quoting *Californians for Alternatives to Toxics v. Calif. Dep’t of Pesticide*
12 *Regulation*, 136 Cal. App. 4th 1049, 1055 (Ct. App. 2006)).

13 **II. FIRST CAUSE OF ACTION: VIOLATION OF THE APA**

14 The plaintiffs allege four problems with EPA’s actions: (1) it limited its investigation to
15 methyl bromide exposure only, and only from 1995 to 2001; (2) it did not inform the complainants
16 about the negotiations and agreement, and did not include them in the process; (3) the settlement
17 does not require CDPR’s compliance with Title VI as required by 40 C.F.R. § 7.115; and (4) the
18 settlement does not remedy the disparate adverse effects of methyl bromide and other pesticide
19 exposures to Latino schoolchildren. FAC ¶¶ 87, 88.

20 EPA responds that none of those problems is justiciable. It asserts that its decision to settle
21 the complaint through voluntary compliance is committed to its discretion and the Court lacks
22 jurisdiction to review it except to determine if EPA exceeded its statutory or regulatory authority.
23 Because it did not exceed its regulatory, statutory, or constitutional authority, EPA argues that its
24 actions were within the bounds of the law. Br. 4. In addition, EPA argues that the Court lacks
25 jurisdiction over the plaintiffs’ APA claim because they have another adequate remedy in court—a
26 state court suit challenging the issuance of permits to use pesticides near schools. Br. 1.

27 **A. EPA’s Action Was Committed To Its Discretion.**

28 Federal law provides for judicial review of agency actions except where “agency action is

1 committed to agency discretion by law.” 5 U.S.C. § 701. This exception applies “if the statute is
2 drawn so that a court would have no meaningful standard against which to judge the agency’s
3 exercise of discretion.” *Heckler v. Chaney*, 470 U.S. 821, 830 (1985). But even where the
4 substance or result of a decision is committed fully to an agency’s discretion, “a federal court has
5 jurisdiction to review agency action for abuse of discretion when the alleged abuse of discretion
6 involves violation by the agency of constitutional, statutory, regulatory or other legal mandates or
7 restrictions.” *Drakes Bay Oyster Co. v. Jewell*, 729 F.3d 967, 976 (9th Cir. 2013) (citation
8 omitted). “In such circumstances, a federal court lacks only jurisdiction to review an alleged
9 abuse of discretion regarding ‘the making of an informed judgment by the agency.’” *Id.* at 976-
10 77. “[F]inal agency action for which there is no other adequate remedy in a court are subject to
11 judicial review.” 5 U.S.C. § 704. A court may “hold unlawful and set aside agency action,
12 findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise
13 not in accordance with law.” 5 U.S.C. § 706.

14 Where an agency is “authorized” to perform some action, but not required to do so, a court
15 “may review only whether the [agency] followed whatever legal restrictions applied to [its]
16 decision-making process.” *Drakes Bay*, 729 F.3d at 977. Words like “may” in laws or regulations
17 suggest that an agency has discretion. *See Ass’n of Irrigated Residents v. E.P.A.*, 494 F.3d 1027,
18 1032-33 (D.C. Cir. 2007). “Even where statutory language grants an agency unfettered discretion,
19 its decision may nonetheless be reviewed if regulations or agency practice provide a meaningful
20 standard by which this court may review its exercise of discretion.” *Spencer Enters., Inc. v.*
21 *United States*, 345 F.3d 683, 688 (9th Cir. 2003) (citation and quotation marks omitted).

22 The Supreme Court “has recognized on several occasions over many years that an
23 agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a
24 decision generally committed to an agency’s absolute discretion.” *Chaney*, 470 U.S. at 831. This
25 presumption exists because “an agency decision not to enforce often involves a complicated
26 balancing of a number of factors which are peculiarly within its expertise” and “the agency must
27 not only assess whether a violation has occurred, but whether agency resources are best spent on
28 this violation or another, whether the agency is likely to succeed if it acts, whether the particular

1 enforcement action requested best fits the agency’s overall policies, and, indeed, whether the
2 agency has enough resources to undertake the action at all.” *Id.* at 831.

3 However, “the decision is only presumptively unreviewable; the presumption may be
4 rebutted where the substantive statute has provided guidelines for the agency to follow in
5 exercising its enforcement powers.” *Id.* at 832-33. The Court must then see if Congress has
6 provided “law to apply.” “If [Congress] has indicated an intent to circumscribe agency
7 enforcement discretion, and has provided meaningful standards for defining the limits of that
8 discretion, there is ‘law to apply’ under § 701(a)(2), and courts may require that the agency follow
9 that law; if it has not, then an agency refusal to institute proceedings is a decision ‘committed to
10 agency discretion by law’ within the meaning of that section.” *Id.* at 834-35.

11 Courts have held that the government’s decision to settle a case is within its discretion and
12 subject to the *Chaney* presumption. *See, e.g., Ass’n of Irrigated Residents*, 494 F.3d at 1031
13 (“Although the Supreme Court’s decision in *Chaney* applies directly to agency decisions not to
14 enforce a statute, we have also applied it to an agency’s decision to settle an enforcement
15 action.”); *Baltimore Gas & Elec. Co. v. F.E.R.C.*, 252 F.3d 456, 457 (D.C. Cir. 2001); *see also*
16 *United States v. Carpenter*, 526 F.3d 1237, 1241-42 (9th Cir. 2008) (concluding that decision to
17 settle is within agency discretion but not applying *Chaney* presumption).

18 The plaintiffs challenge EPA’s enforcement actions (or alleged lack thereof). They
19 recognize that while the *Chaney* presumption has been extended to settlement agreements
20 executed by an agency, “[a] plaintiff may [] rebut the *Chaney* presumption when the substantive
21 statute or an agency’s regulations provide law for the Court to apply.” *Opp’n* 11 (citing *Chaney*,
22 470 U.S. at 932-33; *Greater L.A. Council on Deafness, Inc. v. Baldrige*, 827 F.2d 1353, 1361
23 (9th Cir. 1987)). As discussed above, an agency’s decision whether to enforce or not enforce a
24 statute, or to settle a case, is generally within its discretion and therefore unreviewable. The most
25 that the Court may do is assess whether EPA followed the procedures set out in the regulations for
26 investigating complaints. The Court is not persuaded, however, that EPA violated those
27 procedures in any way, nor have the plaintiffs sufficiently pointed to any examples of EPA doing
28 so.

1 Consider the four problems alleged by plaintiffs. First, the plaintiffs argue that EPA
2 wrongfully limited its investigation to methyl bromide exposure only, and only from 1995 to
3 2001. FAC ¶ 87. But while the law provides the plaintiffs the right to file a complaint with EPA,
4 nowhere does it give them the right to define the scope of EPA’s investigation, nor does it
5 mandate what EPA must investigate. Upon receiving and reviewing a complaint, EPA may
6 accept, reject, or refer the complaint to another agency. 40 C.F.R. § 7.120(d)(1)(i). The law does
7 not set out any criteria EPA must use to accept, reject, or refer; the decision about what to do with
8 a complaint appears committed to agency discretion. Having discretion to determine whether to
9 accept or reject a complaint for investigation necessarily entails discretion to determine the subject
10 matter and extent of an investigation. The plaintiffs say that EPA should not have limited its
11 investigation to methyl bromide exposure from 1995 to 2001 only as opposed to other chemicals
12 and other time periods, but they do not dispute that EPA could have rejected their complaint
13 altogether. But there is also no requirement that in investigating the allegations in a complaint
14 EPA’s investigation must be of the same scope as the complaint. The scope of EPA’s
15 investigation is within its discretion and therefore is unreviewable.

16 Second, the plaintiffs complain that EPA did not inform the complainants about the
17 negotiations and settlement agreement, and did not include them in the process. FAC ¶ 87. They
18 argue that the very fact that EPA excluded the complainants from settlement discussions
19 constitutes arbitrary and capricious behavior. Opp’n 13. But there is no requirement that EPA
20 inform or include the complainants during settlement. After a complainant files a complaint, if it
21 is accepted, OCR must notify the complainant of the acceptance and the accused party of the
22 allegations. 40 C.F.R. §7.120(d)(1)(ii). Beyond notice of receipt, acceptance, and dismissal of a
23 complaint, the law does not require EPA to provide the complainant with any other notice or to
24 include the complainant in any process. The plaintiffs concede that they received these notices.
25 Given the fact that the regulations *do* contain multiple notice provisions for other events, the
26 drafters of the regulations could have included a notice requirement for the complainant about
27 negotiations or settlement if the drafters wanted to. They did not. The plaintiffs appear to suggest
28 that EPA should have used them as a source of information and that excluding them from the

1 investigative process was incorrect. EPA’s decision might have been imprudent, but the law does
2 not specify what sources of information EPA must rely upon in its investigation. While EPA must
3 make “findings,” and elsewhere the regulations have record-keeping requirements for funding
4 recipients, the regulations do not dictate where EPA must look in forming its conclusions or how
5 EPA must make those determinations. *See generally* 40 C.F.R. §§ 7.85, 7.115. These decisions
6 are committed to the agency’s discretion, and EPA did not act improperly.

7 The third and fourth problems may be discussed together. The plaintiffs assert that the
8 settlement wrongfully fails to require CDPR’s compliance with Title VI as required by 40 C.F.R.
9 § 7.115 and does not remedy the disparate adverse effects of methyl bromide and other pesticide
10 exposures to Latino schoolchildren. FAC ¶¶ 87, 88. The Court assumes for purposes of this
11 motion that the plaintiffs’ allegations are true. Even so, as discussed earlier, and as the plaintiffs
12 concede, courts have held that the decision to settle and the terms of the settlement are within an
13 agency’s enforcement discretion. *See, e.g., Ass’n of Irrigated Residents*, 494 F.3d at 1031;
14 *Baltimore Gas & Elec.*, 252 F.3d at 457; *see also Carpenter*, 526 F.3d at 1241-42.

15 This conclusion is further bolstered by the fact that while the regulations say that EPA
16 must seek “compliance,” that term is undefined. The law is silent about what constitutes
17 compliance and what sort of settlement is adequate, if one is sought. There is no standard by
18 which the Court may decide those questions. The “General Prohibition” laid out in Title VI’s
19 implementing regulations simply states that “[n]o person shall be excluded from participation in,
20 be denied the benefits of, or be subjected to discrimination under any program or activity receiving
21 EPA assistance on the basis of race, color, national origin, or on the basis of sex” 40 C.F.R.
22 § 7.30. The regulations then only speak generally of “securing compliance” and provide
23 procedures for EPA to do so, but nowhere does Title VI or its regulations explain what constitutes
24 “compliance” or what the criteria are for determining whether an individual was wrongfully
25 “excluded” or “subjected to discrimination.” *See, e.g.,* 40 C.F.R. § 7.105. The laws are “drawn so
26 that a court would have no meaningful standard against which to judge the agency’s exercise of
27 discretion.” *Chaney*, 470 U.S. at 830. Therefore, EPA’s actions in this case are not subject to
28 judicial review because they fall within the exception of “agency action [that] is committed to

1 agency discretion by law.” 5 U.S.C. § 701.

2 In addition, the adequacy of a settlement and compliance necessarily bleeds into the issue
3 of the scope of an investigation, which, as discussed earlier, is also committed to EPA’s
4 discretion: what constitutes compliance depends upon the breadth and content of what EPA was
5 investigating. The terms of a settlement are within EPA’s discretion and therefore are
6 unreviewable, and the plaintiffs have not shown any arbitrary and capricious action, an abuse of
7 discretion, or action contrary to law. In none of the areas about which the plaintiffs complain do
8 they identify the “law to apply.”

9 The plaintiffs nonetheless argue that 42 U.S.C. § 2000d-2 “specifically allows for judicial
10 review given EPA’s finding of discrimination and decision to continue funding CDPR without
11 protecting Garcia and other similarly situated parents and children.” Opp’n 10-11. The plaintiffs
12 assert that 42 U.S.C. § 2000d and 40 C.F.R. § 7.35(b) “limit EPA’s enforcement discretion to
13 continue funding CDPR after finding methyl bromide use inflicted disparate adverse effects and
14 ignoring the discriminatory effects of the fumigants replacing methyl bromide.” Opp’n 11-12.
15 Because EPA is required to first secure compliance using voluntary compliance agreements before
16 mandating other remedies, the plaintiffs contend that 42 U.S.C. § 2000d-1 and 40 C.F.R. § 7.115
17 “together limit EPA’s enforcement discretion by requiring EPA to actually ensure compliance
18 with Title VI in a voluntary compliance agreement before resorting to other remedies required in
19 40 C.F.R. § 7.130(a) and (b).” Opp’n 12 (citing *Adams v. Richardson*, 480 F.2d 1159, 1161-63
20 (D.C. Cir. 1973)⁴). The Court may therefore use Title VI and EPA’s regulations to review EPA’s
21 investigation and settlement to determine whether it acted arbitrarily, capriciously, or not in
22 accordance with the law. Opp’n 12.

23 EPA replies that it did precisely what the law requires: attempt to resolve an
24

25 ⁴ At the hearing on the motion, the plaintiffs argued that *Adams*—a case they cite once, but do not
26 discuss, in their briefs—should control here. *Adams* held that a district court could review the
27 decision of an agency that “consciously and expressly adopted a general policy which is in effect
28 an abdication of its statutory duty.” 480 F.2d at 1162. That is factually distinct from this case,
where EPA did investigate the complaint, made preliminary findings, and secured a settlement. In
any event, the plaintiffs acknowledge that *Adams*, a D.C. Circuit decision, predates *Chaney*, a
Supreme Court decision. To the extent *Adams* is factually similar, it does not control.

1 administrative enforcement action through a voluntary compliance agreement. Reply 3. The laws
2 only dictate a procedure; they do not constrain EPA’s enforcement discretion. EPA, not the
3 plaintiffs or the Court, has the discretion to determine whether CDPR’s promised actions were
4 sufficient. Reply 4 (citing *Schering Corp. v. Heckler*, 779 F.2d 683, 687 (D.C. Cir. 1985); *Ass’n*
5 *of Irrigated Residents*, 494 F.3d at 1031-33, 1034-35). For the reasons discussed earlier, the Court
6 agrees with EPA.

7 The plaintiffs argue that the Court “should interpret [42 U.S.C. § 2000d-2] broadly to
8 effectuate the Civil Rights Act’s remedial purpose.” Opp’n 14. “The first sentence of [42 U.S.C.
9 § 2000d-2] dictates that judicial review of agency action should proceed under existing law.”
10 Opp’n 14 (citing *Marlow v. U.S. Dep’t of Educ.*, 820 F.2d 581, 582 (2d Cir. 1987)). “Such
11 existing law includes the APA, subject to the limitation on review of agency action committed to
12 agency discretion by law.” *Id.* The plaintiffs then argue that the second sentence of 42 U.S.C.
13 § 2000d-2 makes EPA’s actions reviewable because the statement that “any aggrieved person”
14 may obtain judicial review “demonstrates Congressional intent to accord standing to the fullest
15 extent permitted.” Opp’n 14-15. The plaintiffs say that the fact that EPA’s findings were
16 preliminary does not matter because the statute “does not require the finding of noncompliance to
17 be final; rather Congress omitted such a qualification.” Opp’n 15.

18 Finally, the plaintiffs argue that judicial review is available even though EPA allowed
19 continued funding after a finding of noncompliance. Opp’n 16. They premise their argument on
20 “the structure of Title VI.” “[42 U.S.C. § 2000d-2] allows for judicial review of actions to
21 continue federal financial assistance.” Opp’n 16. “Thus, Congress allowed for judicial review,
22 notwithstanding agency discretion, because EPA found noncompliance, executed a settlement
23 agreement, and continued federal financial assistance to CDPR.” Opp’n 16.

24 The plaintiffs are incorrect. 42 U.S.C. § 2000d-2 explicitly states that judicial review is
25 available “as may otherwise be provided by law for similar action taken by such department or
26 agency on other grounds” or “[i]n the case of any action terminating, or refusing to grant or
27 continue, assistance because of failure to comply with a requirement imposed pursuant to this
28 section”—in the latter circumstance, review is not available if funding continues. As discussed

1 above, the law does not provide for judicial review.

2 At the hearing on the motion, the plaintiffs argue that EPA’s understanding of 42 U.S.C.
3 § 2000d-1, renders either “terminating” or “refusing . . . to continue” redundant, thereby violating
4 the “cardinal rule of statutory interpretation that no provision should be construed to be entirely
5 redundant.” *Spencer Enters.*, 345 F.3d at 691. The Court rejects the plaintiffs’ interpretation.
6 The most natural reading of the statute is that “refusing” modifies both “grant” and “continue.”
7 First, the phrase “refusing to grant or continue” is separated from the rest of the provision by
8 commas, suggesting it is an independent clause, with “refusing” modifying both “grant” and
9 “continue.” Second, the identical simple present tenses of “grant” and “continue” suggest that
10 they are modified by “refusing to”; to read “continue” as being independent, as the plaintiffs wish
11 the Court to do, would result in an ungrammatical sentence that essentially reads, “in the case of
12 any action terminating . . . or continue[] assistance” The verb tenses would not be parallel.
13 EPA’s interpretation is also consistent with 40 C.F.R. § 7.130(a), which states that “If compliance
14 with this part cannot be assured by informal means, EPA may terminate or refuse to award or to
15 continue assistance.”

16 The Court concludes that EPA’s actions in negotiating, settling, and dismissing *Angelita C.*
17 were committed to its discretion and that the Court is precluded from reviewing it. 5 U.S.C.
18 § 701(a)(2). Title VI’s regulations were drawn in such a way that the Court has no meaningful
19 standard against which to judge EPA’s actions. Under *Chaney*, that means that such actions are
20 committed to EPA’s discretion. *Chaney*, 470 U.S. at 830. Even if EPA’s actions were
21 reviewable, the Court finds that EPA did not act in a manner that was “arbitrary, capricious, an
22 abuse of discretion, or otherwise not in accordance with law.”⁵ 5 U.S.C. § 706.

23 **B. The Plaintiffs Have An Alternative Adequate Remedy.**

24 Even if the plaintiffs were correct that EPA’s actions were not wholly discretionary, the
25 Court still lacks the authority to address the merits because the plaintiffs have an alternative
26

27 ⁵ The FAC makes numerous references to the fact that EPA appears to have exceeded the time
28 limits prescribed in the regulations. The plaintiffs state that they are not challenging any delay on
EPA’s part. Opp’n 13 n.7.

1 adequate remedy. The APA states, “Agency action made reviewable by statute and final agency
2 action for which there is no other adequate remedy in a court are subject to judicial review.” 5
3 U.S.C. § 704. The APA premises jurisdiction on the absence of an adequate alternative remedy in
4 court. 5 U.S.C. §§ 702, 704. “[D]oubtful and limited relief . . . is not [] adequate.” *Bowen v.*
5 *Mass.*, 487 U.S. 879, 901 (1988). However, “a statutory remedy specifically against the
6 discriminating entity [can be] ‘adequate,’ and therefore preclusive of a default remedy under the
7 APA.” *Women’s Equity Action League v. Cavazos*, 906 F.2d 742, 750-51 (D.C. Cir. 1990) “[T]he
8 alternative remedy need not provide relief identical to relief under the APA, so long as it offers
9 relief of the ‘same genre.’” *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009). “Suits directly
10 against the discriminating entities may be more arduous, and less effective in providing systemic
11 relief, than continuing judicial oversight of federal government enforcement. But under our
12 precedent, situation-specific litigation affords an adequate, even if imperfect, remedy.” *Women’s*
13 *Equity Action League*, 906 F.2d at 751.

14 “An alternative remedy is adequate if it would remedy the injury about which the plaintiff
15 complains.” Br. 10 (citing *Coker v. Sullivan*, 902 F.2d 84, 90 n.5 (D.C. Cir. 1990)). EPA argues
16 that the “Plaintiffs have an adequate alternative remedy, namely, state law action challenging the
17 Ventura County Agricultural Commissioner’s decision to award permits for the use of methyl
18 bromide and other pesticides to farms in proximity to the elementary school attended by plaintiff
19 Angelica Guzman’s two children.” Br. 10; Reply 6 (citing *Jacobs Farm/Del Cabo, Inc. v.*
20 *Western Farm Servs., Inc.*, 119 Cal. Rptr. 3d 529, 541 (Ct. App. 2010); CAL. FOOD AND AGRIC.
21 CODE § 14009; CAL. CODE CIV. P. § 1094.5). This remedy is adequate, EPA claims, because it
22 would allow plaintiffs to remedy the injury about which they claim, i.e., the exposure to methyl
23 bromide and other pesticides. Br. 10.

24 In this regard, EPA notes that the remedy need not affect the challenged agency action to
25 be adequate. *Id.* “[C]ourts have routinely concluded that the APA precludes suits against the
26 federal government because the plaintiff can sue the recipient directly.” Br. 11 (citing *Stimac v.*
27 *Barr*, 10 F.3d 808 (9th Cir. 1993) (unpublished); *Vilsack*, 563 F.3d at 522-23 (“[T]he alternative
28 remedy need not provide relief identical to relief under the APA, so long as it offers relief of the

1 ‘same genre.’”) (citation omitted); *Women’s Equity Action League*, 906 F.2d at 745; *Preskar v.*
2 *United States*, 248 F.R.D. 576, 584 (E.D. Cal. 2008)). Because California regulates pesticides
3 such as methyl bromide and requires permits for their use, and because California law permits any
4 interested person to challenge in court the grant of a permit, EPA contends that the plaintiffs have
5 an adequate remedy to alleviate the injury of which they complain. Br. 11-12.

6 The plaintiffs make two arguments in response. First, citing *Bowen v. Massachusetts*, 487
7 U.S. at 903, they assert that Congress must be the one that provides the remedies to preclude
8 review under the APA, and Congress did not provide a remedy here. Opp’n 11. Second, they
9 complain that the proposed remedy is inadequate. Neither argument is persuasive.

10 The plaintiffs assert that EPA’s reliance on *Coker v. Sullivan*, 902 F.2d 84 (D.C. Cir.
11 1990), to argue that a state law remedy is adequate and precludes judicial review is misplaced
12 because there, Congress specifically mandated state remedial procedures, whereas it did not here.
13 Opp’n 17. “Furthermore, and as EPA is well aware, Garcia and other similarly situated aggrieved
14 persons have no private right of action to enforce EPA’s disparate impact regulations on which
15 EPA based its Preliminary Finding.” Opp’n 17. The plaintiffs say that since Congress did not
16 authorize the claimed state remedy, Garcia has no right of action against CDPR.

17 EPA rejects the plaintiffs’ arguments. EPA distinguishes *Bowen* since it only “held that a
18 suit for damages in the Court of Claims was not an adequate remedy” because it “does not have
19 the general equitable powers of a district court to grant prospective relief,” but *Bowen* “did not
20 address the adequacy of remedies created by state law.” Reply 7 (citing *Ariz. Christian Sch.*
21 *Tuition Org. v. Winn*, 131 S. Ct. 1436, 1448-49 (2011); *United States v. L.A. Tucker Truck Lines,*
22 *Inc.*, 334 U.S. 33, 37-38 (1952)). EPA also asserts that *Coker* is squarely on point because among
23 the remedies found to be adequate alternatives in *Coker* were state administrative hearings that
24 could result in state judicial review, which is what EPA argues is adequate here.

25 EPA has the better argument. While EPA concedes that there is no case expressly stating
26 that a remedy not provided by Congress can be “adequate,” the Court is persuaded that the text of
27 the statute, which only requires an “adequate remedy in a court,” is broad enough to encompass
28 state remedies. If Congress wanted to be more specific, it could have been. The APA states that

1 judicial review of agency actions is available in “a court of the United States,” 5 U.S.C. § 702, but
2 it does not place such a limitation in § 704. The Court will not impute one.

3 Second, the plaintiffs argue that the state remedies identified by EPA are inadequate
4 because the plaintiffs cannot obtain the same remedies that are available under the APA and “must
5 challenge multiple permits to apply restricted use pesticides every year their children attend”
6 school. Opp’n 11. They seek declaratory and injunctive relief vacating the settlement, which
7 would not be available in state court proceedings. Opp’n 17-18 (citing *Tucson Airport Auth. V.*
8 *Gen. Dynamics Corp.*, 136 F.3d 641, 645 (9th Cir. 1998)). “The Supreme Court has repeatedly
9 upheld an aggrieved party’s prompt access to the district court when it provides greater redress
10 and broader opportunity to develop a claim than is available in a more limited statutory scheme.”
11 *Chang v. United States*, 327 F.3d 911, 923 (9th Cir. 2003). The plaintiffs dispute EPA’s reliance
12 on *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.*, 190 Cal. App. 4th 1502 (Ct. App.
13 2010), which allowed negligence, trespass, and nuisance claims based on the defendant’s use of
14 pesticides that harmed the plaintiff’s adjacent lands. In dicta, the court suggested that the plaintiff
15 could have challenged the pesticide permits issued by the state commissioner. But here, “Garcia
16 would have to file multiple challenges each year until their children graduate . . .” Opp’n 19.

17 EPA responds that the issue “is not whether the proposed remedy would undo the agency’s
18 action, but whether, if successful, it would alleviate the injury about which the plaintiff
19 complains.” Reply 7 (citing *Coker*, 902 F.2d at 90 n.5). EPA says the proposed remedy would
20 alleviate the plaintiffs’ alleged injuries by reducing pesticide exposure. In addition, EPA argues
21 that it cannot, through a Title VI action, force CDPR to implement more stringent pesticide
22 requirements. Reply 8. EPA could cut off funding to CDPR, but doing so would not change the
23 state’s requirements; on the other hand, the proposed alternative remedy would allow the plaintiffs
24 to directly curb pesticide exposure. Reply 8. The fact that the plaintiffs may need to file multiple
25 challenges does not render the remedy inadequate, according to EPA. Reply 8 (citing *Council of*
26 *& for the Blind of Delaware Cnty. Valley, Inc. v. Regan*, 709 F.2d 1521, 1532 (D.C. Cir. 1983)
27 (“Even if we agreed that one nationwide suit would be more effective than several [] suits, that
28 does not mean that the remedy provided by Congress is *inadequate*.”)). The existence of this

1 alternative remedy eliminates the Court’s jurisdiction over the plaintiffs’ APA claims.

2 Although the plaintiffs conclude that they have an *inadequate* remedy, they are essentially
 3 arguing that they cannot get the *same* remedy as here. *See* Opp’n 17-18 (“Here, Garcia seeks
 4 declaratory and injunctive relief vacating the settlement and reopening the Title VI complaint,
 5 relief that would not be available in the state court proceeding EPA suggests.”). But “the
 6 alternative remedy need not provide relief identical to relief under the APA, so long as it offers
 7 relief of the ‘same genre.’” *Vilsack*, 563 F.3d at 522. Nor must the alternative remedy affect the
 8 challenged agency or its actions. So long as the injury is redressable through other recourse, the
 9 APA bars judicial review. *Coker*, 902 F.2d at 90 n.5.

10 The Court finds this to be a close question but concludes that the alternative remedy
 11 proposed by EPA, while quite different than what plaintiffs hope for, is adequate. California law
 12 governs and restricts the use of pesticides. CAL. FOOD AND AGRIC. CODE § 14001. As the
 13 California Court of Appeals noted, “It is an understatement to say that the use of pesticides in
 14 California is highly regulated.” *Jacobs Farm*, 119 Cal. Rptr. 3d at 538. Methyl bromide, in
 15 particular, is explicitly regulated. CAL. FOOD AND AGRIC. CODE §§ 14081, 14082. Any use of
 16 pesticides for agricultural purposes must be conducted pursuant to a permit granted by the state.
 17 CAL. FOOD AND AGRIC. CODE § 14006.5. In establishing the permitting process, the CDPR must
 18 consider the “[d]anger of impairment of public health.” CAL. FOOD AND AGRIC. CODE §
 19 14004.5(a). Granted permits are generally effective for one year. CAL. FOOD AND AGRIC. CODE §
 20 14007. Receiving a permit “does not relieve any person from liability for any damage to the
 21 person or property of another person which is caused by the use of any restricted material.” CAL.
 22 FOOD AND AGRIC. CODE § 14001. “Before issuing a permit for any pesticide the [CDPR-licensed]
 23 commissioner shall consider local conditions including . . . [u]se in vicinity of schools.” CAL.
 24 FOOD AND AGRIC. CODE § 14006.5(a).

25 The regulations provide for review by the commissioner, CDPR, and the state courts.
 26 “Any interested person may request the commissioner to review his or her action in issuing,
 27 refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material.
 28 The commissioner shall review the request and issue a written decision in response to the request

1 to review within 10 days of receipt of the request, or as soon as practicable. The commissioner
2 may affirm, modify, or cancel the permit action reviewed. A directly affected person may
3 thereafter appeal to the director to review the commissioner’s action.” CAL. FOOD AND AGRIC.
4 CODE § 14009; *see also* CAL. FOOD AND AGRIC. CODE § 14025. Judicial review of any such
5 decision by the commissioner is available. CAL. FOOD AND AGRIC. CODE § 14009(g). The
6 reviewing court may issue an order setting aside any grant of a permit. CAL. CODE CIV. P.
7 § 1094.5(f).

8 Although the Court is unaware of any challenges under these provisions, and the parties
9 have pointed the Court to none, the Court is persuaded that California law provides a different but
10 adequate remedy to address the harm about which the plaintiffs complain. The California Court of
11 Appeals has recognized the procedure described, and it would provide direct relief to the plaintiffs
12 if they prevailed. Under the Title VI procedure, EPA can cut off funding to CDPH, but it cannot
13 force the CDPH to alter the state’s pesticides requirements. *See Council of & for the Blind of Del.*
14 *Cnty. Valley*, 709 F.2d 1521, 1532 (D.C. Cir. 1983) (“although [the agency] could seek voluntary
15 compliance, [it] could not order the local government to stop the discrimination”). By pursuing
16 the available state remedies of challenging the issuance of permits, the plaintiffs would have
17 control over their case and could achieve more direct relief than EPA could offer (if it was so
18 inclined).

19 The plaintiffs correctly note that the one case cited by EPA as an example of an adequate
20 state remedy, *Jacobs Farm*, 119 Cal. Rptr. 3d 529, did not involve legal action against the state.
21 There, the California Court of Appeals affirmed a jury verdict finding a defendant liable for
22 negligence, trespass, and nuisance because pesticides that the defendant used on nearby fields
23 migrated to the plaintiff’s organic farm and damaged its crops. Even though *Jacobs Farm* was not
24 an action challenging the issuance of a permit, the plaintiffs recognize that the “court suggests that
25 the plaintiff [in *Jacobs Farm*] could have challenged the pesticide permits issued by the County
26 Agricultural Commissioner through the process set forth in California Food & Agricultural Code
27
28

1 Section 14009.” Opp’n 18 (citing *Jacobs Farm*, 190 Cal. App. 4th at 1520).⁶

2 The plaintiffs assert that challenging permits is not feasible, however, because they “would
3 have to file multiple challenges each year . . . a ridiculous proposition with an unclear remedial
4 outcome.” Opp’n 19. But the fact that the alternative remedy “may be more arduous, and less
5 effective in providing systemic relief” does not make it inadequate. *Women’s Equity Action
6 League*, 906 F.2d at 751. For the reasons stated, it is not at all clear to the Court that challenges
7 through the state process would be less effective than what the plaintiffs want the EPA to do in
8 this action, let alone that they would be ineffective. Leaving that aside, beyond arguing that the
9 alternative remedy would require much time and effort, the plaintiffs never argue that California
10 law is actually ineffective. As the Supreme Court has said, “Actions directly against the states are
11 not merely adequate; they are also more suitable avenues for plaintiffs to pursue the relief they
12 seek [if t]he states are the immediate cause of the injuries of which the [plaintiffs]
13 complain” *Coker*, 902 F.2d at 90. The presence of adequate remedies afforded by state law
14 prevents the Court from reviewing EPA’s actions.

15 Because the enforcement action and settlement were within the discretion of EPA, and, as
16 an independent basis, plaintiffs have an adequate alternative remedy at law, the Court concludes
17 that it lacks jurisdiction to consider the plaintiffs’ APA claim.⁷

18 **III. SECOND CAUSE OF ACTION: VIOLATION OF DUE PROCESS**

19 The plaintiffs allege that EPA’s actions violated their Fifth Amendment Due Process rights
20 in two ways. First, EPA deprived them of a property right to a remedy for discrimination by
21 entering into a settlement agreement that failed to protect against the disparate adverse effects
22 EPA found. FAC ¶ 98. Second, EPA deprived the plaintiffs’ children of their property right in a
23

24 ⁶ In addition, *Jacobs Farm* makes clear that tort remedies are available against the alleged
25 pesticide users.

26 ⁷ EPA also argues that the plaintiffs lack standing to seek relief for alleged future injury that their
27 children—who are between the ages of one and five— may experience in middle or high school
28 because the harm is too speculative given that a number of intervening events could occur such
that the plaintiffs cannot assert that the injury is “certainly impending.” Br. 10. n.6. The only
injury that could be asserted is for exposure at Rio Lindo Elementary School, where Guzman’s
children currently attend. The plaintiffs dispute this. Opp’n 18-19 n.10. Given the Court’s
conclusion, there is no need to address the standing issue here.

1 public education by continuing to fund the CDPR and by entering into an agreement that does not
2 protect them against exposure to methyl bromide and other pesticides.⁸ FAC ¶ 100.

3 EPA argues that the plaintiffs’ Due Process claim fails because (1) EPA did not act against
4 them; (2) they lack a cognizable property right to redress; and (3) EPA did not deprive anyone of a
5 public education. Br. 1.

6 A person claiming a deprivation of property without due process must have had a property
7 right in the thing of which the person was allegedly deprived. *Cleveland Bd. of Educ. v.*
8 *Loudermill*, 470 U.S. 532, 538 (1985). “[P]roperty interests protected by procedural due process
9 extend well beyond actual ownership of real estate, chattels, or money.” *Bd. of Regents of State*
10 *Colleges v. Roth*, 408 U.S. 564, 571-72 (1972). “To have a property interest in a benefit, a person
11 clearly must have more than an abstract need or desire and more than a unilateral expectation of it.
12 He must, instead, have a legitimate claim of entitlement to it.” *Town of Castle Rock, Colo. v.*
13 *Gonzales*, 545 U.S. 748, 756 (2005) (quotation marks omitted); *id.* at 576. “Such entitlements
14 are . . . not created by the Constitution. Rather, they are created and their dimensions are defined
15 by existing rules or understandings that stem from an independent source such as state law.” *Id.*;
16 *Loudermill*, 470 U.S. at 538. But not every governmental action that detrimentally affects a
17 protected property interest constitutes a deprivation because “the due process provision of the
18 Fifth Amendment does not apply to the indirect adverse effects of governmental action.”
19 *O’Bannon v. Town Ct. Nursing Ctr.*, 447 U.S. 773, 789 (1980)). Governmental “action that is
20 directed against a third party and affects the citizen only indirectly or incidentally” does not
21 amount to an unconstitutional deprivation. *Id.* at 788.

22 **A. EPA’s Actions Did Not Deprive The Plaintiffs Of An Alleged Right to Redress.**

23 The plaintiffs argue that “EPA directly and adversely affected Garcia’s constitutionally
24 protected property interests by conducting an inadequate investigation, negotiation, settlement and
25 resolution of *Angelita C.* that did not redress or prohibit racial discrimination. EPA’s actions
26 deprived Garcia of entitlements to the right to redress racial discrimination” Opp’n 20.

27 _____
28 ⁸ For purposes of this discussion, the Court assumes, without deciding, that the plaintiffs have standing to seek relief for their children.

1 Because Congress made federal agencies the sole enforcer of beneficiaries’ rights to freedom from
2 discrimination, EPA’s failure to require the CDPD to stop its discrimination directly affects the
3 plaintiffs’ interests. Opp’n 20.

4 A cognizable property interest is a necessary element of a wrongful deprivation claim.
5 *Loudermill*, 470 U.S. at 538. However, the plaintiffs provide no authority demonstrating that they
6 have the property interest they claim. Nothing in Title VI’s regulations explicitly (or implicitly)
7 creates such a right, and no case says that they do. At the hearing on this motion, the plaintiffs
8 conceded that they know of no case recognizing such a right. The Court concludes that the
9 plaintiffs fail to state a claim for deprivation without due process of a “constitutionally-protected
10 property interest in their right to redress from racially discriminatory effects prohibited by EPA’s
11 regulations implementing Title VI.” FAC ¶ 97.

12 While the plaintiffs cite *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 431 (1982), for the
13 proposition that “[t]he Supreme Court has specifically held that the ‘right to redress’
14 discrimination prohibited by statu[t]e is a protected due process right,” Opp’n 25, the plaintiffs’
15 characterization of that case is both incorrect and inapplicable here because the *Logan* plaintiff
16 was explicitly granted a cause of action through state law. That is not true here, where Title VI’s
17 implementing regulations give federal agencies the authority to enforce Title VI but do not afford
18 individuals the right to sue federal funding recipients; at most, they may seek judicial review of
19 agency action. As the plaintiffs correctly recognize, “the Supreme Court made federal agencies
20 the sole enforcers of beneficiaries’ rights to freedom from [] discriminatory effects,” Opp’n 20
21 (citing *Alexander v. Sandoval*, 532 U.S. 275, 281, 289 (2001)), and precluded implying a private
22 cause of action under 42 U.S.C. § 2000d-1. Indeed, the Supreme Court in *Logan* specifically
23 distinguished situations in which an individual’s “right to redress [to redress discrimination] is
24 guaranteed by the State” from situations in which the law entrusts “enforcement action[s]” to
25 government agencies, like the National Labor Relations Board, and the “refusal to issue a
26 complaint is generally not reviewable . . . by the courts.” 455 U.S. at 431 & n.6. Similarly, while
27 the EPA must “review [each] complaint for acceptance, rejection, or referral,” it has discretion not
28 to accept a complaint and initiate an investigation. 40 C.F.R. § 7.120(d)(1)(i).

1 Little in Title VI’s regulations indicates an intention to create an entitlement to “redress.”
 2 The plaintiffs are not even guaranteed that any complaint they submit to EPA will be accepted. 42
 3 U.S.C. § 2000d-1 only speaks of ways in which agencies “may” effect compliance, as well as “any
 4 other means authorized by law”—this is strong evidence that Congress intended agencies to retain
 5 broad discretion to enforce Title VI. *See also* 40 C.F.R. § 7.130(a). Moreover, as the Supreme
 6 Court has stated, “Our cases recognize that a benefit is not a protected entitlement if government
 7 officials may grant or deny it in their discretion.” *Town of Castle Rock*, 545 U.S. at 756. The fact
 8 that the plaintiffs may be the ultimate beneficiaries of regulations enacted pursuant to 42 U.S.C.
 9 § 2000d-1 does not mean that they have a property interest in the benefits conferred (if cutting off
 10 funding to a third party may even be characterized as a “benefit”). As EPA observes, “[I]f
 11 Congress or EPA had intended to create an entitlement to redress for [the plaintiffs], then one
 12 would expect the statute and regulation to provide for complainants’ inclusion in the enforcement
 13 process after the filing of an administrative complaint,” as well as more robust requirements for
 14 EPA, but they did not. Reply 13.

15 EPA argues that *Town of Castle Rock*, 545 U.S. 748, also shows that the plaintiffs have no
 16 cognizable property interest. In that case, the female plaintiff asserted a property interest in police
 17 enforcement of a restraining order she had against her husband; the Supreme Court ruled that she
 18 did not have one. Where the order stated that the police must “use every reasonable means, up to
 19 and including arrest, to enforce the order’s terms,” the Court found that “[s]uch indeterminacy is
 20 not the hallmark of a duty that is mandatory” and that no one “can be safely deemed ‘entitled’ to
 21 something when the identity of the alleged entitlement is vague.” *Id.* at 763. Here, EPA’s
 22 regulations only state that it “may” seek compliance but is not obligated to do so. Br. 16 (citing 40
 23 C.F.R. § 7.130). The use of the term “may” signifies that EPA has discretion, not an obligation, to
 24 act. Br. 16 (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 347 (2005)).
 25 EPA argues that “the content of the supposed entitlement is too vague to establish a mandatory
 26 duty,” and the plaintiffs do not explain what “redress” would be adequate. Br. 16; Reply 12.
 27 *Town of Castle Rock* requires something less vague to confer a property interest. Br. 17.

28 The plaintiffs contend that *Town of Castle Rock* is inapplicable because police officers are

1 afforded more discretion than federal agencies in protecting against discrimination. EPA’s
2 citation to the permissive term “may” ignores the law’s mandate that EPA “shall” first attempt to
3 secure voluntary compliance before implementing other remedies. Opp’n 22 (citing 42 U.S.C.
4 § 2000d-1). Then it “shall” initiate procedures to deny or rescind federal funding. Opp’n 23
5 (citing 40 C.F.R. § 7.115(e); 40 C.F.R. § 7.130(b)). Otherwise, “Title VI and EPA’s regulations
6 do not provide EPA with discretion to continue federal financial assistance for discrimination.”
7 Opp’n 23.

8 The principles stated in *Town of Castle Rock* are applicable outside the criminal context.
9 The Ninth Circuit applied *Town of Castle Rock* to claims seeking an entitlement to benefits in
10 *Doyle v. City of Medford*, 606 F.3d 667, 674-75 (9th Cir. 2010). Further, despite the fact that the
11 laws cited by the plaintiffs state “shall,” they do not dictate any substantive outcome. Indeed,
12 EPA must only terminate funding after a formal determination of noncompliance, which has not
13 occurred here. Reply 11 (citing 40 C.F.R. §§ 7.115(e), 7.130(b)). The Ninth Circuit has also
14 reminded that “[p]articularly when used in a statute that prospectively affects government action,
15 ‘shall’ is sometimes the equivalent of ‘may.’” *Sierra Club v. Whitman*, 268 F.3d 898, 904 (9th
16 Cir. 2001). In any event, 40 C.F.R. § 7.130(a) states that an agency “may” terminate funding if
17 voluntary compliance does not occur, not “shall” or “must.” Reply 11-12.

18 The Court agrees with EPA’s reading of *Town of Castle Rock*. The laws at issue here are
19 too “indeterminate” and “vague” to create an entitlement for the plaintiffs. Where the language is
20 clear, it shows that EPA is given broad discretion to investigate and resolve alleged violations by
21 federal funding recipients. To be sure, *Town of Castle Rock* is not wholly on point because the
22 plaintiff there is not the ultimate beneficiary of any law, whereas the plaintiffs here are the
23 ultimate beneficiaries of Title VI’s regulations. 545 U.S. at 764-66. However, that does not create
24 a property interest deriving from 42 U.S.C. § 2000d-1 and regulations passed pursuant to it. The
25 plaintiffs are entitled to no more than the statute and regulations say, and they only say that the
26 plaintiffs may file a complaint with EPA if they are aggrieved, nothing more. The Supreme Court
27 even casts doubt on that as a property right, saying that “an entitlement to nothing but procedure
28 [is something] we have held inadequate even to support standing.” *Id.* at 764. Though the APA

1 affords the plaintiffs an opportunity to seek judicial review of agency action, as explained above
2 the limited circumstances in which judicial review is available are not present here.

3 The plaintiffs argue that *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975), contradicts EPA’s
4 argument that “because EPA has discretion under its regulations to determine the remedy, it has
5 discretion to withhold the property interest in a remedy.” Opp’n 23. EPA argues that *Goss* does
6 not apply. EPA is correct. *Goss* holds that a property interest in education, once given, cannot be
7 taken away without due process; here, EPA’s point “is that no property interest in redress has been
8 created.” Reply 12.

9 In addition to failing to show a cognizable property interest, the plaintiffs fail to show a
10 “deprivation.” The plaintiffs have a right to file a complaint with EPA, but the regulations do not
11 provide them with any further rights except for notification that their complaint was received,
12 accepted, or dismissed. 40 C.F.R. §§ 7.120(c), (d)(1)(ii), (g). The plaintiffs fail to allege what
13 they had or were owed by EPA, but which EPA did not give or wrongfully took from them, other
14 than a right to redress. And that, standing alone, is not a property right.

15 **B. EPA’s Actions Did Not Deprive The Plaintiffs Of An Alleged Right To Education.**

16 The plaintiffs assert that “[b]y continuing to fund CDPR and failing to require CDPR to
17 take any meaningful action to decrease or mitigate the effects of the use of dangerous pesticides
18 and fumigants near majority Latino public schools . . . EPA denies Latino schoolchildren the full
19 benefits of public schooling, and substantially impinges on their property interest in a public
20 education.” FAC ¶ 100.

21 The plaintiffs fail to state a claim for deprivation without due process of their right to
22 education. The parties do not dispute that the plaintiffs have a protected interest in education. The
23 problem for the plaintiffs, however, is that they fail to show any “deprivation” of that protected
24 interest by EPA. EPA does not compel the plaintiffs’ attendance at school, nor does it apply the
25 pesticides complained of. The essence of the plaintiffs’ argument is that EPA’s allegedly failed to
26 protect the plaintiffs from exposure, but that does not amount to a “deprivation” of due process.
27 To the extent that EPA’s settlement with the CDPR has some relation to the alleged exposure, the
28 causation is too indirect and attenuated to be actionable as a constitutional “deprivation.”

1 *O'Bannon*, 447 U.S. at 788-90.

2 EPA argues that *O'Bannon v. Town Court Nursing Center* controls here and forecloses
3 plaintiffs' claim because governmental action that is directed at a third party that may have an
4 indirect effect on the plaintiffs is insufficient to state a claim. In *O'Bannon*, the Supreme Court
5 held that the Department of Health, Education, and Welfare's revocation of a nursing facility's
6 certification as a skilled nursing facility, which made it eligible to receive payments from the
7 Department for providing nursing care services to aged, disabled, and poor persons, did not
8 constitute a deprivation of an alleged right of the residents to continue living in the home of their
9 choice. 447 U.S. at 785. While the Court recognized that the residents had certain government-
10 conferred benefits, the agency action at issue was against a third party (the residence) and the
11 residents were therefore affected only "indirectly or incidentally," which does not amount to a
12 constitutional "deprivation." *Id.* at 788-90.

13 Similarly, EPA regulates the CDPH, not the plaintiffs. Accordingly, the plaintiffs were
14 only "indirectly" affected by EPA's actions. Br. 14 (citing *Castaneda v. U.S.D.A.*, 807 F.2d 1478,
15 1479-80 (9th Cir. 1987)). EPA concludes that because any harm the plaintiffs experienced was
16 "indirect and incidental," it does not amount to a deprivation of life, liberty, or property.⁹ Br. 12
17 (quoting *O'Bannon*, 447 U.S. at 787); Reply 9.

18 The plaintiffs argue that EPA's reliance on *O'Bannon* is wrong because in that case,
19 Medicare recipients had no property right to be in the nursing home of their choice. "Here, Title
20 VI provides a direct benefit to all persons by prohibiting EPA-funded discrimination" because the
21 law provides that "No person shall . . . be subjected to discrimination." Opp'n 20 (quoting 42
22 U.S.C. § 2000d). EPA is therefore wrong to argue that it regulates federal funding recipients, such
23 as CDPH, but that the victims of racial discrimination are merely incidental beneficiaries. Opp'n
24 21.

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27 _____
28 ⁹ In its briefs, EPA advanced this argument with regard to both the plaintiffs' asserted right to
redress and right to education. At the hearing, however, EPA stated that it will only advance this
argument with regard to the plaintiffs' right to education.

1 EPA says that the plaintiffs in *O'Bannon* articulated two different due process claims, and
2 the Supreme Court rejected one based on the absence of a property right. 447 U.S. at 785-86.
3 However, EPA relies on the Supreme Court's rejection of the second theory because someone who
4 is "only indirectly or incidentally" affected by government action does not suffer a due process
5 deprivation. Reply 9 (citing 447 U.S. at 788). "The existence of a property interest does not, by
6 itself, establish a violation of the Due Process Clause. A plaintiff must also establish that the
7 government's conduct rises to the level of a [deprivation]." Reply 9-10. *O'Bannon* explicitly
8 states there is a "distinction between government action that directly affects a citizen's legal rights,
9 or imposes a direct restraint on his liberty, and action that is directed against a third party and
10 affects the citizen only indirectly or incidentally" 447 U.S. at 789; *see also Castaneda v.*
11 *U.S.D.A.*, 807 F.2d 1478, 1479-80 (9th Cir. 1987)¹⁰; *Ridder v. Office of Thrift Supervision*, 146
12 F.3d 1035, 1041 (D.C. Cir. 1998). Here, EPA's action was directed at CDPR, and any negative
13 effect experienced by the plaintiffs is indirect, meaning that there is no due process deprivation.
14 Reply 10.

15 The Court agrees with EPA's reading of *O'Bannon*. Whatever entitlement the *O'Bannon*
16 plaintiffs had was only incidentally burdened by the Department's actions against their nursing
17 home. Similarly, whatever effect EPA's settlement had on the plaintiffs is also "indirect" and
18 "incidental." The alleged entitlement here is of a weightier nature than the inconvenience suffered
19 by the plaintiffs in *O'Bannon*. But to the extent the plaintiffs' right to education was affected by
20 EPA's actions, the Court concludes that any "deprivation" was only indirect and incidental to
21 EPA's exercise of its discretion in negotiating and settling *Angelita C.* and not actionable.

22 The plaintiffs argue that "EPA directly and substantially impinges on Garcia's entitlement
23 to a public school education guaranteed by the California Constitution." Opp'n 23. Any taking of
24

25 ¹⁰ In *Castaneda*, 807 F.2d at 1479-80, the Ninth Circuit affirmed the principle in *O'Bannon*.
26 There, the plaintiff was terminated from his job as a store manager after the Department of
27 Agriculture revoked his store's enrollment in the federal food stamp program upon learning that
28 the plaintiff was using food stamps to purchase beer and other ineligible items. The plaintiff then
sued the Department for deprivation of due process. Although the court pointed out that the
plaintiff had no property interest in his private employment, it also explained that he "was only an
indirect beneficiary of the government's statutory relationship" and "is not a direct target of the
government's disqualification decision." Therefore he had no due process rights.

1 property which is “significant” violates due process, and EPA’s deprivation of the
2 schoolchildren’s right to education is significant. Opp’n 24 (citing *Fuentes v. Shevin*, 407 U.S. 67,
3 86 (1972); *Goss*, 419 U.S. at 576). Here, EPA itself found that the exposure to methyl bromide
4 “adversely affects Latino schoolchildren’s ability to fully participate in their education.” Opp’n 24
5 (citing FAC ¶ 100). “EPA’s failure to protect and enforce the Garcias’ rights under Title VI
6 substantially impinges on, and unfairly restricts their property interest in, a public education.”
7 Opp’n 24.

8 The plaintiffs correctly cite *Fuentes* for the proposition that “[a]ny significant taking of
9 property by the State is within the purview of the Due Process Clause.” *Fuentes*, 407 U.S. 86.
10 But the plaintiffs put the cart before the horse because they do not adequately plead any “taking”
11 by EPA, let alone a significant one. Calling the investigation, negotiation, and settlement between
12 EPA and CDPR a “deprivation” or “taking” seriously strains the ordinary understanding of those
13 terms. The plaintiffs point to no cases in which conduct analogous to EPA’s actions here amount
14 to a deprivation. EPA has an obligation to follow the dictates of Title VI and its implementing
15 regulations, but as explained earlier, EPA has done so and has acted within its discretion. The
16 Court cannot disturb its decisions even if the Court thought that other alternatives would have
17 been preferable.

18 For all the reasons above, the Court concludes that the plaintiffs fail to state a claim for
19 violation of their Due Process rights.

20 **CONCLUSION**

21 The Court sympathizes with the plaintiffs and others similarly situated if the allegations in
22 the FAC are true. However, the Court is bound to apply the law as it stands. The Court lacks
23 jurisdiction to consider the plaintiffs’ APA cause of action. Further amendment would be futile,
24 so EPA’s motion to dismiss the First Cause of Action is GRANTED WITH PREJUDICE. The
25 plaintiffs also fail to state a claim for violation of their Due Process rights, and the Court is
26 skeptical that further pleading can rectify its defects. However, in the event the plaintiffs wish to
27 amend, they may do so within 20 days of this Order. The Court GRANTS WITH LEAVE TO
28 AMEND EPA’s motion to dismiss the Second Cause of Action. In the event no amended

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complaint is filed within that time period, this case will be dismissed and judgment entered in favor of EPA.

IT IS SO ORDERED.

Dated: January 16, 2014



WILLIAM H. ORRICK
United States District Judge