1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA 8 9 10 MISS ROSE ANN FERNANDEZ, No. EDCV 13-93 SJO (FFM) 11 Petitioner, ORDER RE SUMMARY **DISMISSAL OF ACTION** 12 v. 13 WARDEN MR. GARETA, ET AL., 14 Respondents. 15 16 On January 15, 2013, petitioner filed what is captioned a Petition for Writ 17 of Habeas Corpus by a Person in State Custody ("Petition"). 18 As best the Court can glean from the face of the Petition, petitioner's claims 19 are not directed to the legality or duration of petitioner's current confinement. 20 Rather, petitioner's claims are directed to conditions of confinement allegedly experienced by petitioner at California Institution for Women, in Corona, 21 22 California ("CIW"). Petitioner appears to be contending that the officials at CIW 23 have failed to protect her, assaulted her, prevented her from reporting sexual harassment, verbally abused her and were responsible for a "fraudulent issue of 24 felony." 25 26 The Writ of Habeas Corpus is limited to attacks upon the legality or 27 duration of confinement. Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979) 28 (citing Preiser v. Rodriguez, 411 U.S. 475, 484-86 (1973)). "A civil rights action,

in contrast, is the proper method of challenging 'conditions of . . . confinement.'" *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*, 411 U.S. at 498-99); *see also Young v. Kenny*, 907 F.2d 874, 875 n.1 (1990). Petitioner's claims as presently alleged do not implicate the legality or duration of confinement, but rather concern the conditions of confinement.

The Court does have discretion to construe petitioner's habeas petition as a civil rights complaint. *See Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Hansen v. May*, 502 F.2d 728, 729-30 (9th Cir. 1974). *But cf.* 42 U.S.C. § 1997e (a) (requiring prisoners to exhaust administrative remedies before filing action with respect to prison conditions). In this instance, however, the Court chooses not to exercise such discretion, because it is not clear that petitioner has exhausted her administrative remedies.

Pursuant to Rule 4 of the Rules Governing Section 2254 cases in the United States District Court, it is therefore ordered that this action be dismissed without prejudice.

DATED: January 24, 2013.

5. Jame Otens

S. JAMES OTERO United States District Judge

Presented by:

/S/ FREDERICK F. MUMM
FREDERICK F. MUMM
United States Magistrate Judge