

1 in contrast, is the proper method of challenging ‘conditions of . . . confinement.’”
2 *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*,
3 411 U.S. at 498-99); *see also Young v. Kenny*, 907 F.2d 874, 875 n.1 (1990).

4 Petitioner’s claims as presently alleged do not implicate the legality or duration of
5 confinement, but rather concern the conditions of confinement.

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

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

16
17 DATED: January 24, 2013.



18
19 S. JAMES OTERO
United States District Judge

20 Presented by:

21
22 /S/ FREDERICK F. MUMM
23 FREDERICK F. MUMM
United States Magistrate Judge