

1 timely filed, and petitioner was not entitled to equitable tolling based on either petitioner's
2 depression or his claim of actual innocence. Petitioner's motion fails to meet any of the elements
3 set forth above, instead re-visiting the same fruitless grounds that have been previously and
4 properly considered and adjudicated.¹ Petitioner cites no newly discovered evidence or
5 intervening change in controlling law and makes no showing that the court has "committed clear
6 error or the initial decision was manifestly unjust." See Zamani v. Carnes, 491 F.3d 990, 997 (9th
7 Cir. 2007).

8 Furthermore, although petitioner renews his request to conduct discovery relating to his
9 actual innocence claim, he has not shown why the magistrate judge's previous order denying his
10 motion for discovery should be overturned.

11 Accordingly, IT IS ORDERED that: petitioner's motion to amend or alter the judgment
12 (ECF No. 36) is denied.

13 DATED: August 26, 2015

14 /s/ John A. Mendez

15 UNITED STATES DISTRICT COURT JUDGE
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23 ¹ Not only did petitioner fail to present evidence to support his allegations, the allegations
24 themselves-- an alleged Miranda violation, an alleged tampering with fingerprint and DNA
25 evidence-- do not really touch upon "actual innocence." Petitioner does not allege that he did not
26 commit the crime; he attacks evidence that was used to convict him. While his allegations may
27 touch upon other potential constitutional violations such as involuntary confession and perjured
28 evidence, these violations, even if ultimately proven, do not mean that petitioner did not commit
the crimes of conviction. That is, for example, a defendant may have committed a crime even if
he was not advised of his Miranda rights after arrest by the police. Some evidence could have
been altered or fabricated, but this does not mean that valid evidence does not exist which points
to that defendant's guilt.