

SCALIA, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 99–2035

COOPER INDUSTRIES, INC., PETITIONER *v.*
LEATHERMAN TOOL GROUP, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 14, 2001]

JUSTICE SCALIA, concurring in the judgment.

I was (and remain) of the view that excessive punitive damages do not violate the Due Process Clause; but the Court held otherwise. See *BMW of North America, Inc. v. Gore*, 517 U. S. 559 (1996); *id.*, at 598 (SCALIA, J., dissenting). And I was of the view that we should review for abuse of discretion (rather than *de novo*) fact-bound constitutional issues which, in their resistance to meaningful generalization, resemble the question of excessiveness of punitive damages—namely, whether there exists reasonable suspicion for a stop and probable cause for a search; but the Court held otherwise. See *Ornelas v. United States*, 517 U. S. 690 (1996); *id.*, at 700 (SCALIA, J., dissenting). Finally, in a case in which I joined a dissent that made it unnecessary for me to reach the issue, the Court categorically stated that “the question whether a fine is constitutionally excessive calls for . . . *de novo* review.” *United States v. Bajakajian*, 524 U. S. 321, 336–337, n. 10 (1998); see *id.*, at 344 (KENNEDY, J., joined by REHNQUIST, C. J., and O’CONNOR and SCALIA, JJ., dissenting). Given these precedents, I agree that *de novo* review of the question of excessive punitive damages best accords with our jurisprudence. Accordingly, I concur in the judgment of the Court.