

**Zachary Price**

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**Academic Appointments**

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| <b>U.C. HASTINGS COLLEGE OF THE LAW</b><br>Associate Professor (2015 - )<br>Visiting Assistant Professor (2013-2015) | 2013 -      |
| <b>STANFORD CONSTITUTIONAL LAW CENTER</b><br>Fellow  | 2012 - 2013 |
| <b>UNIVERSITY OF BALTIMORE SCHOOL OF LAW</b><br>Adjunct Professor  | Fall 2009   |

**Professional Experience**

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|---|-------------|
| <b>OFFICE OF LEGAL COUNSEL, U.S. DEPT. OF JUSTICE</b><br>Attorney Adviser | 2009 - 2012 |
| <b>JONES DAY</b><br>Associate, Issues and Appeals Group                   | 2007 - 2009 |

**Clerkships**

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| <b>ASSOCIATE JUSTICE ANTHONY M. KENNEDY</b><br>United States Supreme Court                             | 2005 - 2006 |
| <b>HONORABLE DAVID S. TATEL</b><br>United States Court of Appeals for the District of Columbia Circuit | 2004 - 2005 |
| <b>HONORABLE CATHERINE C. BLAKE</b><br>United States District Court for the District of Maryland       | 2003 - 2004 |

**Education**

**HARVARD LAW SCHOOL**, J.D., *magna cum laude*, June 2003

- First-Year Lawyering Instructor, Board of Student Advisers
- Articles Editor, *Harvard Journal on Legislation*

**FULBRIGHT SCHOLARSHIP**, Copenhagen University, 1998-1999

**STANFORD UNIVERSITY**, A.B., with Honors and Distinction, June 1998

Major: Modern Thought & Literature  
Minor: Slavic Languages & Literatures

**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

**Publications & Works in Progress**

*Symmetric Constitutionalism: An Essay on Masterpiece Cakeshop and the October 2017 Supreme Court Term* (work in progress)

*Reliance on Executive Constitutional Interpretation* (work in progress)

*Precedent in a Polarized Era*, 94 NOTRE DAME L. REV. \_\_ (forthcoming 2019) (reviewing RANDY J. KOZEL, *SETTLED VERSUS RIGHT: A THEORY OF PRECEDENT* (2017)) (invited book review based on invited presentation at book event)

*Our Imperiled Absolutist First Amendment*, 20 U. PA. J. CONST. L. 821 (2018) (invited symposium contribution)

*Funding Restrictions and Separation of Powers*, 71 VAND. L. REV. 357 (2018)

- Finalist paper in 2018 AALS Junior Scholars Paper Competition
- Featured on *Notice & Comment Blog* of the Yale Journal on Regulation
- Early draft selected for presentation at the 2017 American Constitution Society Junior Scholars Public Law Workshop

*Reliance on Nonenforcement*, 58 WILLIAM & MARY L. REV. 937 (2017)

- Presented at Harvard-Yale-Stanford Junior Faculty Forum (June 2016) (selected through blind peer review as winning paper in criminal justice category)
- Presented at Vanderbilt Law School Branstetter New Voices in Civil Justice Workshop (May 2016) (selected through blind peer review)

*Law Enforcement as Political Question*, 91 NOTRE DAME L. REV. 1571 (2016)

- Featured in posts on Scotusblog and Dorf on Law

*Seeking Baselines for Negative Authority: Constitutional and Rule-of-Law Arguments Over Nonenforcement and Waiver*, 8 J. LEGAL ANALYSIS 235 (2016) (peer reviewed journal) (invited paper for March 2015 symposium at Stanford University on “The Role of Executive Power and Discretion under the Rule of Law”)

*Politics of Non-Enforcement*, 65 CASE W. RESERVE L. REV. 1 (2015) (invited paper for symposium at Case Western Reserve Law School on “Executive Discretion and the Administrative State”)

*Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671 (2014)

- Downloaded over 1,700 times from SSRN
- Cited in *Arpaio v. Obama*, 797 F.3d 11, 30 (D.C. Cir. 2015) (Brown, J., concurring), and *United States v. Rodriguez*, 137 F. Supp. 3d 1278 (D.N.M. 2015)
- Discussed in popular writings by George Will, Eric Posner, and Laurence Tribe and Joshua Matz

*Dividing Sovereignty in Tribal and Territorial Criminal Jurisdiction*, 113 COLUM. L. REV. 657 (2013)

- Referenced by majority and dissent in *Pueblo v. Sanchez Valle*, 192 D.P.R. 594 (Puerto Rico S.Ct. 2015), *rev'd*, *Puerto Rico v. Sanchez Valle*, 579 U.S. \_\_ (2016)

**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

**NAMUDNO's *Non-Existent Principle of State Equality*, 88 N.Y.U. L. REV. ONLINE 24 (2013)**

- Featured in Scotusblog symposium on *Shelby County v. Holder*

***The Rule of Lenity as a Rule of Structure*, 72 FORDHAM L. REV. 885 (2004)**

- Discussed by Iowa Supreme Court in *State v. Hearn*, 797 N.W.2d 577 (Iowa 2011)
- Excerpt included in PAUL ROBINSON ET AL., CRIMINAL LAW: CASE STUDIES & CONTROVERSIES (4th ed. 2016)

**Recent Developments, *The Bankruptcy Abuse Prevention and Consumer Protection Act*, 39 HARV. J. LEG. 237 (2002)**

**Blog Posts, Columns, and Op-Eds**

**Regular Contributor, TAKE CARE (legal blog addressing administration-related issues):**

Representative posts:

- *Polarization, Deregulation, and Situational Legalism* (Jan. 16, 2018)
- *Why Enjoining DACA's Cancellation Is Wrong* (Jan. 12, 2018) (cited in *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 421 n.9 (E.D.N.Y. 2018))
- *Against Cutting the President's Purse Strings* (Jan. 6, 2018) (cross posted on NOTICE & COMMENT BLOG)
- *DACA's Cancellation: What Happens Next?* (Sept. 7, 2017)
- *Law, Politics, and Interbranch Conflict* (Aug. 24, 2017) (for on-line symposium on JOSH CHAFETZ, CONGRESS'S CONSTITUTION (2017))
- *Attacking North Korea Would Be Illegal* (Aug. 10, 2017)
- *How Might Congress Reinforce NATO* (May 30, 2017)
- *Trump's Mistaken Signing Statement on Marijuana Enforcement* (May 16, 2017)
- *Real Reasons To Worry About Filibuster Repeal* (April 10, 2017)
- *Congress's Vital Power of the Purse* (April 5, 2017)
- *When Due Process Reliance Defenses May Bar Enforcement* (March 24, 2017)
- *Reliance Defenses in the Trump Era and Beyond* (March 23, 2017)
- *Republican (and Democratic) Hypocrisy on Faithful Execution* (March 17, 2017)

**Other Representative Publications:**

*Constitutional Law: Reliance on Nonenforcement*, UC HASTINGS JUDGES' BOOK: SCHOLARSHIP FOR THE BENCH (forthcoming Sept. 2018)

*Against Cutting the President's Purse Strings*, NOTICE & COMMENT BLOG, YALE JOURNAL ON REGULATION (Jan. 2018)

*Federal Law Enforcement: Law Enforcement as Political Question*, UC HASTINGS JUDGES' BOOK: SCHOLARSHIP FOR THE BENCH (Sept. 2017)

*Congress's Bet Against Equal Sovereignty*, SCOTUSBLOG (Aug. 2017) (invited post for on-line symposium on *Christie v. National Collegiate Athletic Association*)

**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

*Enforcement Discretion Amid the Political Maelstrom*, ADMINISTRATIVE & REGULATORY NEWS (Spring 2017) (invited article in quarterly publication of ABA's Section of Administrative Law & Regulatory Practice)

*Could the Trump Administration Entrap Dreamers?*, WASHINGTON POST (Nov. 24, 2016) (unsolicited op-ed selected for publication)

*Federal Policy and Due Process*, DAILY JOURNAL (September 12, 2016) (invited guest column)

*The Court After Scalia: The Rule of Lenity*, SCOTUSBLOG (September 2016) (invited post for on-line symposium on the Supreme Court after Justice Scalia)

*The Immigration Punt*, SCOTUSBLOG (June 2016) (invited post for on-line symposium on *United States v. Texas*)

*Dividing Sovereignty: Commonwealth of Puerto Rico v. Sanchez Valle*, BALKINIZATION (Jan. 2016) (discussing then-pending Supreme Court case *Puerto Rico v. Sanchez Valle*)

*Assessing the Roberts Court*, CALIFORNIA LAWYER (Dec. 2014) (reviewing LAURENCE TRIBE & JOSHUA MATZ, UNCERTAIN JUSTICE: THE ROBERTS COURT AND THE CONSTITUTION)

*Two Cheers for OLC's Opinion*, BALKINIZATION (Nov. 2014) (invited post for on-line symposium on Administrative Reform of Immigration Law)

*Enforcement Discretion and Executive Duty*, VOLOKH CONSPIRACY (Dec. 2013)

*Shelby County v. Holder: The Voting Rights Act Doesn't Need to Treat States Equally*, Online Symposium on *Shelby County v. Holder*, SCOTUSBLOG (Feb. 2013)

**Podcasts:**

*DACA and the Limits of Reliance*, DAILY JOURNAL PODCAST (Feb. 12, 2018)

*First Amendment Pressure Points?*, DAILY JOURNAL PODCAST (Oct. 20, 2017)

*"We're All Hypocrites" + Zachary Price*, VERSUS TRUMP PODCAST (May 4, 2017) (podcast associated with TAKE CARE BLOG)

*Dollar General Corporation v. Mississippi Band of Choctaw Indians—Post-Decision SCOTUScast*, FEDERALIST SOCIETY PODCAST SERIES (August 2016) (discussing Supreme Court decision)

*Dollar General Corporation v. Mississippi Band of Choctaw Indians—Post-Argument SCOTUScast*, FEDERALIST SOCIETY PODCAST SERIES (Dec. 2015) (discussing pending Supreme Court case)

**Select Talks & Conference Presentations**

**Academic Talks & Presentations**

- SEALS Annual Conference, Discussion Group on Public Law at the Mid-Term of the Trump Era** (Aug. 2018) (discussion group presentation)
- SEALS Annual Conference, New Scholars Workshop: *Reliance on Executive Constitutional Interpretation*** (Aug. 2018)
- Third Annual Administrative Law New Scholarship Roundtable: *Reliance on Executive Constitutional Interpretation*** (June 2018) (paper selected for presentation)
- Annual Symposium, Indiana International and Comparative Law Review, Indiana University Robert H. McKinney School of Law: *Can Congress Control Diplomacy (and Other Executive Powers) Through Appropriations?*** (Mar. 2018) (invited symposium presentation)
- National Conference of Constitutional Law Scholars, Roundtable Discussion: *Reliance on Executive Constitutional Interpretation*** (Mar. 2018) (invited paper presentation)
- Notre Dame Law School, Book Celebration for Professor Randy Kozel: *Precedent in a Polarized Era*** (invited presentation at event celebrating publication of RANDY J. KOZEL: SETTLED VERSUS RIGHT: A THEORY OF PRECEDENT (2017))
- Loyola Chicago Law School, Center for Compliance Studies, Conference on Regulatory Nonenforcement: *Reviewability and Reliance Limitations on Nonenforcement—and Why They Matter*** (Feb. 2018) (invited standalone conference presentation)
- AALS Annual Meeting, Criminal Law Section, Works in Progress Panel: *Reliance on the Office of Legal Counsel*** (Jan. 2018)
- George Mason University Antonin Scalia Law School, Center for the Study of the Administrative State: *Beyond Deference: Emerging Issues in Judicial Review of Agency Action*** (Dec. 2017) (invited panel presentation with honorarium)
- UC Hastings Conference on Deregulatory Frontiers: *Deregulation Past, Present, and Future*** (Nov. 2017) (introductory address)
- Loyola Chicago Annual Constitutional law Colloquium: *Funding Restrictions & Separation of Powers*** (Nov. 2017)
- SEALS Annual Conference, Discussion Group on Intersection of Administrative Law and Criminal Justice** (Aug. 2017) (invited discussion group presentation)
- SEALS Annual Conference, New Scholars Workshop: *Funding Restrictions & Separation of Powers*** (Aug. 2017)
- University of Pennsylvania Law School, Journal of Constitutional Law Symposium: *Responding to Hate Crimes Through Free Speech*** (Feb. 2017) (invited symposium presentation)

**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

**American Constitution Society, Junior Scholars Public Law Workshop: *Funding Restrictions and Separation of Powers*** (Jan. 2017) (presentation of paper selected through peer review)

**AALS, New Voices in Legislation Workshop: *Funding Restrictions and Separation of Powers*** (Jan. 2017) (presentation of paper selected through peer review)

**Yale Law School, Harvard-Yale-Stanford Junior Faculty Forum: *Reliance on Nonenforcement*** (June 2016) (invited presentation of paper selected through blind peer review in criminal justice category)

**Vanderbilt Law School, Branstetter Workshop for New Voices in Civil Justice: *Reliance on Nonenforcement*** (May 2016) (invited presentation of paper selected through blind peer review)

**Stanford Law School, Federalist Society Conference on Intellectual Diversity** (April 1, 2016) (moderated panel discussion on “political correctness on campus”)

**Harvard Law School, Conference on Presidential Power and Contentious Politics** (April 1, 2016) (invited panel presentation on “enforcement and nonenforcement”)

**Bay Area Administrative Law Forum, Workshop Presentation: *Reliance on Nonenforcement*** (March 22, 2016) (presentation of work in progress to Bay Area administrative law professors)

**George Mason University Law School, Faculty Colloquium: *Law Enforcement as Political Question*** (Sept. 22, 2015) (invited presentation of forthcoming article)

**Stanford Law School, Conference on the Constitution and the Administrative State: Past, Present, and Future: *Justiciability of Law Enforcement Questions*** (April 17-18, 2015) (invited panel presentation)

**Stanford University, Hoover Institution, Program on Regulation and the Rule of Law: *Waiving Rules of Law*** (March 5-6, 2015) (invited conference presentation)

**Case Western Reserve University Law School, Law Review Symposium on Executive Discretion and the Administrative State: *Politics of Non-Enforcement*** (November 14, 2014) (invited symposium presentation)

**University of San Francisco Law School, Faculty Workshop: *Enforcement Discretion and Executive Duty*** (Jan. 2014) (invited presentation of then-forthcoming article)

**Stanford Law School, Constitutional Conversation: *Recent Controversies Over Executive Non-Enforcement of Statutes*** (Nov. 20, 2013) (invited public presentation)

**UC Hastings College of the Law, Faculty Colloquium: *Dividing Sovereignty in Tribal and Territorial Criminal Jurisdiction*** (Jan. 22, 2013) (invited presentation of then-forthcoming article)

**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

**Other Talks & Presentations**

- American Constitution Society Bay Area, *Bureaucracy Privatization in the Trump Era*** (Jan. 2018) (moderated discussion with Professor Jon Michaels regarding his book CONSTITUTIONAL COUP: PRIVATIZATION'S THREAT TO THE AMERICAN REPUBLIC (2017))
- UC Hastings Annual Supreme Court Review and Preview** (Oct. 2017) (public panel discussion of recent and pending Supreme Court cases)
- San Francisco Bank Attorneys' Association, *Supreme Court Term in Review: Still the Kennedy Court*** (Sept. 2017) (invited presentation on recent decisions at the Supreme Court)
- California Bankers Association, Annual Bank Counsel Seminar, *Review of Supreme Court Term*** (June 2017) (invited presentation on Supreme Court term)
- Bar Association of San Francisco, *Balancing Power: Challenging Presidential Executive Orders in the Courts*** (May 2017) (invited presentation on panel for CLE event)
- San Francisco Bay Area Federal Executive Board, *Constitutional and Administrative Law Overview*** (March 2017) (invited presentation to attorneys from multiple federal agencies in the Bay Area)
- UC Hastings Alumni Association, *The New President, Congress, and the Supreme Court*** (Feb. 2017) (with Professor Rory Little) (multiple CLE events for alumni)
- San Francisco Bank Attorneys' Association, *Supreme Court Term in Review: End of the Kennedy Court?*** (Sept. 2016) (invited presentation regarding recent decisions at the Supreme Court)
- National Association of Attorneys General, State Solicitors General & Appellate Chiefs Conference: *When, if Ever, Should Attorneys General Decline to Defend State Law*** (June 18, 2015) (invited presentation on panel with three state attorneys general)
- UC Hastings Annual Supreme Court Review and Preview** (Oct. 2014) (public panel discussion of recent and pending Supreme Court cases)

**Select Media References**

- Jess Bravin, *Court to Weigh Conservative Goals*, WALL STREET JOURNAL, at A4 (Oct. 2, 2017) (quoting from interview on new Supreme Court term)
- Rose Cuison Villazor, *What Do Dreamers Do Now?*, Op-Ed, NEW YORK TIMES (Sept. 4, 2017) (referring to argument in *Reliance on Nonenforcement*)
- Bob Egelko, *What Trump Can Learn from Nixon*, SAN FRANCISCO CHRONICLE (May 17, 2017) (quoting from interview on impeachment requirements)
- Marcia Coyle, *Taking Care of the Take Care Clause*, NATIONAL LAW JOURNAL, SUPREME COURT BRIEF (Mar. 16, 2016) (transcript of interview)

**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

Fred Barbash, *President or King? Translated, That's What the Supreme Court Is Asking About Obama*, WASH. POST (Jan. 25, 2016) (quoting from interview)

Tierney Sneed, *Is The Supreme Court Poised To Redefine Obama's Executive Power?*, TALKING POINTS MEMO (Jan. 21, 2016) (quoting from interview)

Joe Palazzolo, *In Immigration Case, Supreme Court Takes an Interest in 'Take Care' Clause*, WALL STREET JOURNAL LAW BLOG (Jan. 19, 2016) (quoting from interview)

LAURENCE TRIBE AND JOSHUA MATZ, *UNCERTAIN JUSTICE: THE ROBERTS COURT AND THE CONSTITUTION* (2014) (quoting *Enforcement Discretion and Executive Duty* in text)

Danny Vinik, *Obama's Executive Power Isn't What He Thinks It Is*, NEW REPUBLIC (Aug. 14, 2014) (discussing *Enforcement Discretion and Executive Duty*)

Reihan Salam, *Deferred Action for Almost Everyone?*, NATIONAL REVIEW ONLINE (Aug. 5, 2014) (quoting *Enforcement Discretion and Executive Duty*)

Eric Posner, *Boehner's Lawsuit is a Loser*, SLATE (July 11, 2014) (referring to *Enforcement Discretion and Executive Duty*)

Nicholas Bagley, *The Legality of Delaying Key Elements of the ACA*, NEW ENGLAND JOURNAL OF MEDICINE (May 22, 2014) (citing *Enforcement Discretion and Executive Duty*)

Jacob Gershman, *The Latest Obamacare Delay: A Lawless Rewrite or Proper Exercise of Authority?*, WALL STREET JOURNAL LEGAL BLOG (Feb. 12, 2014) (quoting from interview on justiciability of Affordable Care Act delays)

George Will, *Obama's Extreme Use of Executive Discretion*, WASHINGTON POST (Dec. 18, 2013) (discussing *Enforcement Discretion and Executive Duty*)

### **Teaching Experience**

#### **U.C. HASTINGS COLLEGE OF THE LAW**

- Constitutional Law II (Spring 2018, Spring 2017, Spring 2016, Spring 2014)
- Constitutional Law I (Spring 2018, Spring 2016, Spring 2015)
- Civil Procedure (Fall 2017, Fall 2016, Fall 2014, Fall 2013)
- Election Law Seminar (Spring 2014)

#### **UNIVERSITY OF BALTIMORE SCHOOL OF LAW**

- Recent Supreme Court Decisions (Adjunct Professor, Fall 2009)

#### **HARVARD LAW SCHOOL**

- First-Year Lawyering Instructor, Board of Student Advisers (2002-2003, 2001-2002)

### **Faculty Service**

#### **U.C. HASTINGS COLLEGE OF THE LAW**

- Appointments Committee (2017-2018)



**ZACHARY PRICE**  
Curriculum Vitae (cont'd)

- Career Placement and Judicial Clerkships Committee (2016-2017, 2015-2016, 2014-2015)
- Disqualified Students Committee (2016-2017; Chair, Spring 2017)
- Faculty Adviser, *Hastings Law Journal* (2017-2018, 2016-2017, 2015-2016)
- Inn Faculty for 1L Inn of Court (2017-2018, 2016-2017)

**Select Awards**

**UC Hastings, Geoffrey Hazard Junior Faculty Research Award (Dec. 2017)** (award stipend for excellence in scholarship)

**Hastings Foundation Faculty Award (March 2017)** (honorarium award for excellence in early-career scholarship)

**Harvard-Yale-Stanford Junior Faculty Forum (June 2016)** (*Reliance on Nonenforcement* selected through blind peer review as winning paper in criminal justice category)

**Branstetter Workshop for New Voices in Civil Justice, Vanderbilt Law School (May 2016)**  
(*Reliance on Nonenforcement* selected for presentation through blind peer review)

**Attorney General's Award for Exceptional Service in Indian Country, U.S. Justice Department (2013)** (award for work on criminal justice issues affecting Native Americans)

**Outside Activities**

**Board Member, 11/9 Foundation (Dec. 2016 - )** (bipartisan civil liberties organization)