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Home Distilling in the United States: Legal Background and the Current Court Fight Over the Federal Ban

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Make bourbon in your own garage, and you could be committing a federal felony, punishable by up to five years in prison and a $10,000 fine for every batch. That has been the law for roughly 150 years, buried in the tax provisions of the Internal Revenue Code. It has now triggered a federal court fight that could reshape not just home distilling, but the outer limits of federal regulatory power itself. It is a fight the beverage alcohol industry should be watching closely.

Why This Is on the Industry's Radar Now

Two circuit courts of appeals have reached opposite conclusions on whether the ban survives constitutional scrutiny, and the case is now headed toward the Supreme Court on a petition that reaches well beyond stills and spirits. Unlike home beer and wine making, which Congress expressly exempted from taxation and licensing rules for personal use, home distillation gets no such carve-out. Two provisions of Title 26 do the work: one bars a distilled spirits plant from being located anywhere near a residence, and the other makes it a federal felony to distill there anyway, punishable by up to five years in prison and a $10,000 fine. The rule traces to an 1868 Reconstruction-era crackdown on whiskey tax evasion and has barely changed since. The TTB, which administers the ban today, will not even consider a permit for beverage alcohol distilling at a home address.

In December 2023, the Hobby Distillers Association and individual member Scott McNutt, who had received a formal government warning over his home distilling plans, sued the TTB and Department of Justice in Texas federal court. They argued the ban exceeds Congress's constitutional powers under the Taxation Clause, the Necessary and Proper Clause, and the Commerce

Clause. In July 2024, the district court agreed on all three grounds and struck the provisions down, reasoning that a law which criminalizes conduct before any tax liability attaches cannot fairly be called a tax measure at all. On April 10, 2026, the Fifth Circuit affirmed, holding that the statute does not raise revenue: it simply "prohibits and penalizes distillation."

Eleven days later, the Sixth Circuit went the other way. In *Ream v. U.S. Department of the Treasury*, a divided panel upheld the same provisions, finding that Congress could reasonably treat the home distilling ban as necessary to protect its tax base against a historically "rampant" source of evasion. As a result, the ban is unenforceable in Texas, Louisiana, and Mississippi, but stands as valid law in Kentucky, Michigan, Ohio, and Tennessee, and remains on the books everywhere else pending further litigation.

A Fight Bigger Than Home Stills

This is where the story turns from a regional curiosity into something the entire beverage alcohol sector should track. *Ream* has now petitioned the Supreme Court for review, and the petition does not stop at home distilling. It asks the Court to overrule or sharply narrow *Gonzales v. Raich*, the 2005 decision that has anchored federal regulatory authority over purely local, non-commercial conduct for two decades. The government filed a response on August 14, 2026, with the Court's first chance to act at its September 28, 2026 conference.

That combination, a live, government acknowledged circuit split plus an invitation to revisit one of the Court's most consequential statements on federal power, is exactly the profile that draws certiorari. If the Court takes the case, the ripple effects will reach far past hobbyist stills: any federal rule that reaches into local, in home, or small scale conduct, including parts of the regulatory architecture governing beverage alcohol production, distribution, and licensing, could be tested against a freshly narrowed Commerce Clause. For an industry already navigating a patchwork of federal and state rules, a Supreme Court decision to even take up *Ream* would be a signal worth acting on well before any ruling arrives. Businesses in hospitality, beverage alcohol, and hobbyist-adjacent retail should be tracking the government's response, the September conference, and any parallel challenges emerging in other circuits, because the direction the Court takes here could define the next chapter of federal regulatory reach.

Contact Us

If you have any questions, please contact Jeffrey O'Brien or an Alcohol Beverage attorney at Husch Blackwell.