No. 26-93

In the Supreme Court of the United States

JOHN REAM, PETITIONER

v.

DEPARTMENT OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

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QUESTION PRESENTED

Whether the prohibition on the "production of distilled spirits * * * in any dwelling house" or "in any shed, yard, or inclosure connected with any dwelling house," 26 U.S.C. 5178(a)(1)(B), is necessary and proper for carrying into execution Congress's enumerated power to lay and collect taxes.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-30) is reported at 174 F.4th 480. The opinion and order of the district court (Pet. App. 31-54) is reported at 771 F. Supp. 3d 998.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 2026. The petition for a writ of certiorari was filed on July 20, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Since the First Congress, the federal government has imposed taxes on the distillation of spirits. The first such tax was proposed by Secretary of the Treasury Alexander Hamilton as a means of funding the federal government and paying the debts from the American Revolution. 2 *The Works of Alexander Hamilton* 176-184 (Henry Cabot Lodge ed., 1904). Hamilton underscored the "expediency" of taxing distilled spirits and viewed the "mode of collection" as the "only point about which a difficulty or question can arise." *Id.* at 178. On that point, Hamilton "lamented" that experience with similar state taxes had demonstrated that the "vigilance of the public officers" and the "integrity of individuals" were "inadequate" to ensure collection. *Id.* at 178-179 (emphasis omitted). When Pennsylvania enacted such a tax, for example, "nearly every farmer distilled his own whiskey and deemed it his inalienable right to evade the tax, and resist the collector." Gallus Thomann, *Liquor Laws of the United States* 58 (1885); see *id.* at 57-58.

To address concerns with collection, Congress imposed a number of requirements and prohibitions related to the tax. See Act of Mar. 3, 1791 (1791 Act), ch. 15, 1 Stat. 199. For example, distillers were prohibited from removing spirits from a distillery "at any other times than between sun rising and sun setting, except by consent and in presence of" an officer charged with securing payment of the taxes due. *Id.* § 20, 1 Stat. 204. Such officers were also permitted to enter the "houses, store-houses, ware-houses, buildings and places" registered for distilling "at all times in the daytime, upon request." *Id.* § 29, 1 Stat. 206; see *id.* § 25, 1 Stat. 205

(requiring distillers within ten miles of an office of inspection to register as distillers).

The tax was met with hostility and resistance, culminating in the Whiskey Rebellion of 1794. Anthony A. Cilluffo & Jane G. Gravelle, Congressional Research Serv., *Alcohol Excise Taxes: An Overview* 1 (Sept. 12, 2024), https://www.congress.gov/crs-product/R48181. Although the Whiskey Rebellion was quelled, the tax remained unpopular and was regularly evaded. Tun Yuan Hu, *The Liquor Tax in the United States 1791-1947*, at 30 (1950). Over the following decades, the tax was raised, lowered, briefly repealed, and reenacted. *Id.* at 30-38.

In 1866, Congress amended the existing excise tax on distilled spirits and added a provision prohibiting the use of any still in specified locations associated with evasion, including "in any dwelling-house." Act of July 13, 1866 (1866 Act), ch. 184, § 25, 14 Stat. 154; see Cong. Globe, 39th Cong., 1st Sess. 2839, 2841 (1866). In the Treasury Secretary's annual report for that year, the Secretary observed that "[t]he provisions of law bearing upon the distillation of spirits were essentially defective prior to the act of July," and had proved to be "insufficient, even in the hands of the most experienced and vigilant officers, to prevent frauds, either in large or small distilleries." U.S. Dep't of the Treasury, *Report of the Secretary of the Treasury on the State of the Finances for the Year 1866*, at 55 (1866) (Treasury Report). The report noted specifically that "[g]reat numbers of small stills, for the illicit manufacture of rum from molasses, were secreted in the garrets and cellars of the most populous cities." *Ibid.* Such stills had been found in the "cellar" of a "dwelling-house," Testimony attached to H.R. Rep. No. 24, 39th Cong., 2d Sess. 35 (1867) (House Report), and "concealed among the machinery of a large lager-beer brewery," where it had proved "impossible" for inspectors "to reach them," Cong. Globe, 39th Cong., 1st Sess. at 2841. A report from the Revenue Commission underscored the necessity of meaningful inspections and the difficulty of carrying them out, absent additional restrictions. H.R. Doc. No. 62, 39th Cong., 1st Sess. 36 (1866). "Without inspection—constant and watchful," the report explained, "fraud will prevail; while to allow every individual to engage in the manufacture of spirits without some proper restrictions, will render inspection impossible." *Ibid.*

Upon reviewing the evidence, a House select committee asserted that "the most stupendous frauds" were being perpetrated "daily" against federal "collection of the internal revenue on distilled spirits." House Report 1. By the committee's estimate, "at least seven-eighths of the entire amount of spirits manufactured" had "escaped taxation." *Ibid.* Following those reports, Congress adopted additional restrictions on the location of stills. Act of July 20, 1868 (1868 Act), ch. 186, § 12, 15 Stat. 130.

Today, much of that system remains in place. Federal taxes on distilled spirits attach as soon as a spirit is "in existence," 26 U.S.C. 5001(b), and are based on the spirit's volume and alcohol content, 26 U.S.C. 5001(a)(1), 5002(a)(10)-(11). Location restrictions provide that a distilled-spirits plant may not be located (1) "in any dwelling house," (2) "in any shed, yard, or inclosure connected with any dwelling house," (3) "on board any vessel or boat," (4) "on premises where beer or wine is made or produced, or liquors of any description are retailed," or (5) "on premises where any other business is carried on" (unless the business is authorized under an exception that will not "jeopardize the revenue"). 26 U.S.C. 5178(a)(1)(B) and (b).

In addition to the location restrictions imposed by statute, Congress authorized the Secretary to regulate the "location" and "construction" of distilled-spirits plants as he deems necessary to facilitate inspection and "afford adequate security to the revenue." 26 U.S.C. 5178(a)(1)(A) and (C). Any person who "uses, or possesses with intent to use, any still, boiler, or other utensil for the purpose of producing distilled spirits" in a prohibited location is subject to a fine of up to $10,000, imprisonment of up to five years, or both. 26 U.S.C. 5601(a)(6).

As with the earlier laws, the location restrictions are part of an "elaborate system [that] has been set up by legislation and regulations thereunder to protect the revenue on distilled spirits." *United States* v. *Goldberg*, 225 F.2d 180, 187 (8th Cir. 1955); see, *e.g.*, 1866 Act, §§ 24, 38, 14 Stat. 153-154, 159-160; 1868 Act, §§ 5, 14, 15 Stat. 126, 130-131. For example, Congress has required distilling systems to be constructed "to prevent the unauthorized removal of distilled spirits" before the tax is calculated, and to be secured "to facilitate inspection and afford adequate security to the revenue." 26 U.S.C. 5178(a)(2)(B)-(C); see 26 U.S.C. 5178(a)(1)(A), (2)(C)(ii) (permitting the Secretary to "order and require" fastenings, locks, and seals as necessary to secure the revenue). Distillers must register their stills and distilled-spirits plants, 26 U.S.C. 5171(c), 5179, and must obtain a distilling permit from the government, 26 U.S.C. 5171(d)(1); 27 U.S.C. 203-204; see 1868 Act, §§ 5, 14, 15 Stat. 126, 130 (requiring the same). The statute also requires distillers to "furnish" to the Secretary "such keys as may be required for internal revenue officers to gain access to the premises," 26 U.S.C. 5203(a), and it permits such officers to enter "at all times, as well by night as by day," as necessary to examine the operations and take inventory, 26 U.S.C. 5203(b).

2. Petitioner is an individual who wishes to distill whiskey at home. Pet. App. 32. He brought a pre-enforcement suit in the United States District Court for the Southern District of Ohio challenging the constitutionality of the longstanding statutory restriction on distilling spirits at home. *Ibid.*

The district court granted respondents' motion to dismiss, holding that petitioner lacks standing. Pet. App. 31-54. The Court explained that to have standing in a pre-enforcement suit, a plaintiff must demonstrate that he has "'an intention to engage in a course of conduct arguably affected with a constitutional interest'"; that the course of conduct "is proscribed by the statute at issue"; and that "the threat of future enforcement is 'certainly impending.'" *Id*. at 40 (quoting *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158, 160 (2014)). The court reasoned that petitioner had no constitutional right to distill alcohol, Pet. App. 43-46, that he had not taken several necessary steps to begin home distilling and thus had not shown a serious intent to engage in proscribed conduct, *id*. at 46-49, and that he had not shown any credible threat of prosecution, *id*. at 49-53. The court distinguished petitioner's circumstances from those in *Hobby Distillers Ass'n* v. *Alcohol and Tobacco Tax and Trade Bureau*, 740 F. Supp. 3d 509 (N.D. Tex. 2024), aff'd as modified, 173 F.4th 204 (5th Cir. 2026), in which another district court had found that one individual had standing to challenge the restriction on home distilling, Pet. App. 53. In that case, the court explained, the individual plaintiff had "received a notice of criminal liability" from the enforcing agency and had taken actions like "possessing a still for business purposes that could easily be transported to his residence," making the "threat of prosecution imminent and credible" in that case. *Ibid.*

3. The court of appeals reversed the district court's order dismissing the case for lack of jurisdiction and remanded with instructions to enter judgment in favor of respondents on the merits. Pet. App. 1-30. In an opinion by Judge Kethledge, the court first held that petitioner had established standing because he had argued that the Constitution invalidates a statute, *id.* at 9, he had asserted that he wished to engage in home distilling prohibited by the statute, *ibid.*, and he faced a credible threat of prosecution because the government had not disavowed enforcement of the ban, *id.* at 9-10.

Turning to the merits, the Sixth Circuit upheld the constitutionality of the challenged restriction, reasoning that it is a necessary and proper means of collecting the federal excise tax on distilled spirits. Pet. App. 11-19. Relying on the lengthy history of evasion of the tax on distilled spirits, the court held that the challenged restriction is "'plainly adapted' to a legitimate constitutional end." *Id.* at 12 (quoting *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819)); see *id.* at 13-15. As the court observed, "stills are more easily hidden in homes than in bonded premises dedicated to distilling spirits," making it more difficult for revenue officers to detect tax evasion. *Id.* at 14. The court likewise concluded that the challenged restriction is proper because its "purpose is actually to collect revenue." *Id.* at 16. And the court rejected petitioner's assertion that under its reasoning, the federal government could tax and prohibit other at-home activities, like baking and sewing. *Id.* at 18. That argument, the court explained, "would strip away nearly all the particular facts on which the judgment here is based," including the historical grounding of the location restriction and the evidence on which Congress based its empirical judgment that such restrictions are necessary to combat rampant tax evasion. *Ibid.*; see *id*. at 16-19.

Judge Mathis dissented on standing. Pet. App. 19-30. He would have held that petitioner failed to establish a credible threat of enforcement to bring a pre-enforcement suit. *Id*. at 24-29. He emphasized that the location restriction had not previously been enforced against petitioner and that petitioner had not received any warning letters from the government. *Id*. at 24-26. Like the district court, Judge Mathis distinguished the case from one in which the plaintiffs had standing because the government had advised them that it would deny them permits to distill in their homes and had sent a warning letter to one plaintiff. *Id*. at 28 (citing *McNutt* v. *U.S. Department of Justice*, 173 F.4th 204, 214 (5th Cir. 2026)); see *ibid.* ("*McNutt* just reinforces that Ream lacks standing.").

DISCUSSION

Petitioner contends (Pet. 9-13) that the Sixth Circuit's decision upholding the challenged location restriction conflicts with the Fifth Circuit's contrary decision in *McNutt* v. *U.S. Department of Justice*, 173 F.4th 204 (5th Cir. 2026), and warrants this Court's review. The government agrees that the question whether the location restrictions are a necessary and proper means for carrying out Congress's taxing power warrants this Court's review. The government today is thus filing a petition for a writ of certiorari in *McNutt*. Because that case provides a better vehicle, the Court should grant review in *McNutt* and hold this case pending *McNutt*.

Petitioner separately contends (Pet. 13-30) that this Court should address whether the restriction on home distilling is a valid exercise of Congress's commerce power and that the Court should overrule or clarify *Gonzales* v. *Raich*, 545 U.S. 1 (2005). That question was not addressed by either lower court in this case, and it does not warrant this Court's consideration.

1. As the government has explained, the question whether the location restrictions are a valid exercise of Congress's power under the Necessary and Proper Clause to carry into execution its taxing power warrants this Court's review. See Pet. at 10-14, *United States Department of Justice* v. *McNutt,* No. 26-___ (filed Aug. 14, 2026). The Fifth Circuit in *McNutt* held a federal statute unconstitutional, and this Court's "usual" approach in such circumstances is to grant certiorari. *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019).

The need for this Court's review is further underscored by the circuit split on the question. See Pet. at 10-12, *McNutt*, *supra* (No. 26-___). The Sixth Circuit in this case upheld the restriction on home distilling as a "necessary and proper means of collecting the federal excise tax on distilled spirits" in light of the longstanding history of tax evasion, Pet. App. 4, whereas the Fifth Circuit in *McNutt* disregarded that history and held that the location restrictions are not necessary and proper because they would reduce revenue by prohibiting taxable conduct, 173 F.4th at 219.

2. Because the government's petition in *McNutt* provides a better vehicle, the Court should grant that petition and hold this case pending *McNutt*.

As illustrated by the district court and panel dissent in this case, the plaintiffs' standing in *McNutt* is on firmer footing than petitioner's standing here. See Pet.

App. 47-49, 53; *id.* at 28 (Mathis, J., dissenting). In *McNutt*, plaintiff Scott McNutt owned a still that he had been using to "legally distill[] fuel alcohol," had received a "Notice of Potential Civil and Criminal Liability" from the Alcohol and Tobacco Tax and Trade Bureau (TTB) based on information that McNutt "may have purchased a still capable of producing alcohol and/or equipment and materials that may be used in the manufacture of a still," and had been informed by a TTB employee that he "could not acquire [a] permit[] to distill at home." 173 F.4th at 211, 213-214. Based on those facts, every judge to have considered the question held that McNutt had shown a serious intention to distill alcohol at home and a credible threat of prosecution, *id.* at 213-214; see *Hobby Distillers Ass'n* v. *Alcohol and Tobacco Tax and Trade Bureau*, 740 F. Supp. 3d 509, 520 (N.D. Tex. 2024), and the government does not dispute McNutt's standing.

Here, by contrast, petitioner has not alleged that he has purchased a still, has not sought a distilling permit, and has not received a warning letter from TTB. Pet. App. 20, 28 (Mathis, J., dissenting). Petitioner's ability to show a serious intention to engage in prohibited conduct or a credible threat of enforcement is therefore weaker than in *McNutt*. Because this Court must satisfy itself that Article III standing exists, see *Summers* v. *Earth Island Inst.*, 555 U.S. 488, 499 (2009), granting certiorari in *McNutt* and holding this case would better ensure that the Court will have the opportunity to address the merits of the dispute—especially since the Fifth Circuit in *McNutt* also upheld the standing of a membership association, 173 F.4th at 214, which protects against potential mootness concerns, see *Parents Involved in Community Schools* v. *Seattle School Dist. No. 1*, 551 U.S. 701, 718 (2007).

In addition, the government's petition in *McNutt* presents only the question that the lower courts have addressed and on which there is a circuit split. Rather than pursue that course here, petitioner has devoted the majority of his petition to a discussion of the commerce power. See Pet. 13-32. But neither the lower courts here, nor the Fifth Circuit in *McNutt*, addressed the question whether the location restrictions are a valid exercise of Congress's commerce power. Indeed, in *McNutt*, the Fifth Circuit noted that the government had declined to rely on the commerce power. 173 F.4th at 214 n.5. The government likewise is no longer advancing that theory in this case. Petitioner thus focuses his efforts on arguments the government is not making and that no court of appeals has addressed. This Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), and petitioner identifies no sound reason for this Court to address his Commerce Clause arguments in the first instance.

3. The Fifth Circuit's decision is also the better vehicle for review because the Sixth Circuit's decision is correct: The challenged restriction is a valid exercise of Congress's authority under the Necessary and Proper Clause to effectuate the federal tax on distilled spirits.

a. The Constitution grants Congress the power to "lay and collect Taxes." U.S. Const. Art. I, § 8, Cl. 1. Congress has long employed that power to impose excise taxes, and it is undisputed that the excise tax on distilled spirits—which dates back to the First Congress—is a lawful exercise of Congress's taxing power.

While the Constitution vests Congress with certain enumerated powers, the Framers also understood that "a government, entrusted with such ample powers * * * must also be entrusted with ample means for their execution." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 408 (1819). The Necessary and Proper Clause accordingly provides that Congress may "make all Laws which shall be necessary and proper for carrying into Execution" an enumerated power. U.S. Const. Art. I, § 8, Cl. 18. A law is necessary and proper if it is "convenient[] or useful" for carrying an enumerated power into execution, and the means chosen need only be rationally related, or at most "plainly adapted," to such a "legitimate" end. *United States* v. *Comstock*, 560 U.S. 126, 133-134 (2010) (quoting *McCulloch*, 17 U.S. at 413, 421). In short, the Necessary and Proper Clause gives Congress "great latitude in exercising its powers." *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 537 (2012) (opinion of Roberts, C.J.).

This Court long ago applied those principles in the context of the taxing power and held that Congress may "prescribe any rule or regulation which is not in itself unreasonable" with respect to the "manufacture and handling of goods which are subjected to an internal revenue tax." *Felsenheld* v. *United States*, 186 U.S.126, 132 (1902). In that case, the Court upheld a provision requiring that tobacco packages "contain nothing but the article which is taxed," based on Congress's judgment that the provision was "necessary or advisable for the purposes of effectually securing the payment of the tax imposed." *Id.* at 131-132. The Court deferred to Congress's judgment that the prohibition should be "absolute," rejecting the contention that the Constitution would require the provision to contain "an exception [for] those articles or things which by virtue of their minute size or weight do not apparently affect the collection of the tax." *Id.* at 132. Because it was "perfectly reasonable" for Congress to draw bright-line, administrable rules in regulating the contents of the packages it taxed, the Court held that the law fell within Congress's authority. *Ibid.*

Congress's regulation of the location of distilling operations is likewise constitutional. As with tobacco, Congress has long imposed an excise tax on distilled spirits, which is based on the volume and alcohol content of a spirit and attaches "as soon as [it] is in existence." 26 U.S.C. 5001(a)(1), (b), 5002(a)(10)-(11); see 1791 Act, § 15, 1 Stat. 203. Rampant evasion of the tax soon followed. See pp. 3-4, *supra*. Before Congress enacted the full set of location restrictions, a select committee of the House of Representatives estimated that "at least seven-eighths of the entire amount of spirits manufactured" had "escaped taxation." House Report 1; see *id.* at 21-22. And Congress had before it evidence that small stills in particular were being hidden in locations —including homes—where inspection was rendered effectively impossible. See *id.* at 35 (Testimony of Alexander Skinner); Cong. Globe, 39th Cong., 1st Sess. at 2841. In direct response to such widespread tax evasion, Congress enacted the challenged location restriction. As this Court observed thereafter, it is "clear" that "[a]ll the regulations for the manufacture * * * of distilled spirits" "were adopted with one purpose only, namely, to secure the payment of the tax imposed by law upon distilled spirits." *United States* v. *Ulrici*, 111 U.S. 38, 40 (1884).

The text of Section 5178 underscores that Congress adopted the location restrictions as a means of safeguarding tax revenue. Section 5178(a)(1)(B) prohibits distilling in a range of locations that are unified by one feature: Each is a place that particularly facilitated tax evasion. As the Sixth Circuit explained, "dwelling houses" are legally and practically difficult to access for the necessary inspections. Pet. App. 14. The mobility of a "vessel or boat," 26 U.S.C. 5178(a)(1), renders tax evasion more likely and inspection more difficult. And in locations where "beer or wine is made or produced" or "other business is carried on," 26 U.S.C. 5178(a)(1)(B), stills "may be concealed among the machinery," making it "impossible" for inspectors "to reach them," Cong. Globe, 39th Cong., 1st Sess. at 2841. Confirming the connection between the locations and revenue collection, Congress provided an exception that allows distilling to occur on premises where other business is carried on when the Secretary finds that doing so "will not jeopardize the revenue." 26 U.S.C. 5178(b); see 26 U.S.C. 5178(a)(1)(B) (prohibiting distilling in such locations "except when authorized under subsection (b)").

In addition, the location restrictions in Section 5178(a)(1)(B) are nested between two provisions that likewise expressly link Congress's concerns about particular locations to the ability to "afford adequate security to the revenue." 26 U.S.C. 5178(a)(1)(A) and (C). While Section 5178(a)(1)(B) imposes certain location restrictions that Congress deemed necessary, Section 5178(a)(1)(A) permits the Secretary to prescribe additional "regulations relating to the location * * * of distilled spirits plants as he deems necessary to facilitate inspection and afford adequate security to the revenue." 26 U.S.C. 5178(a)(1)(A). And Section 5178(a)(1)(C) likewise ties location to revenue by permitting the Secretary to "approve the location * * * of any establishment which was qualified to operate" prior to the statute's effective date, if the Secretary "deems that such location * * * will afford adequate security to the revenue." 26 U.S.C. 5178(a)(1)(C). Each of those provisions indicates that Congress viewed the locations of distilled-spirits plants as fundamentally connected with the government's ability to collect taxes on the spirits produced.

Congress's conclusion on that score accords with common sense. At the time of enactment, Congress had before it evidence highlighting the "[g]reat numbers of small stills" that could be "secreted in the garrets and cellars of the most populous cities," Treasury Report 55, including in the "cellar[s]" of "dwelling-house[s]," House Report 35 (Testimony of Alexander Skinner), and among the machinery of beer breweries, rendering inspection effectively impossible, see Cong. Globe, 39th Cong., 1st Sess. at 2841. Those practical realities have not changed. Today, as at the time of enactment, a distiller can more easily conceal a distilling operation (or conceal a spirit's strength and avoid the proper tax rate) if a still is located at a dwelling-house or another business. See Pet. App. 14-15. Restricting the location of distilled-spirits plants thus directly promotes collection of the distilling tax by channeling distilling activities to locations that facilitate the government's efforts to inspect distilling operations and prevent evasion of the tax.

b. Petitioner's contrary arguments are incorrect. Petitioner contends (Pet. 12) that the challenged restriction "pushes would-be home distillers outside of the tax regime." That argument focuses only on the conduct of those who stop distilling altogether rather than comply with the location restriction. That blinkered focus would render any condition on taxable conduct impermissible. Requiring distillers to register their distilled-spirits plants, for example, would reduce taxable conduct of those who would decline to register. See 26 U.S.C. 5171(c)(1). The proper inquiry instead considers whether *compliance* with the condition furthers tax collection. Here, compliance with the location restrictions plainly does so, as they require distilling to occur in places where tax evasion is easier to detect and prevent. Congress made the empirical judgment that the revenue gain from increased collection would outweigh any loss to the overall tax base from those who may choose to forgo distilling. That is the type of legislative judgment that this Court has declined to second-guess. Where, as here, "it can be seen that the means adopted are really calculated to attain the end" of increased tax collection, "the degree of their necessity, [and] the extent to which they conduce to the end * * * are matters for congressional determination alone." *Comstock*, 560 U.S. at 135 (quoting *Burroughs* v. *United States*, 290 U.S. 534, 547-548 (1934)).

Petitioner further errs in analogizing the challenged restriction to the ban on the sale of certain illuminating oils at issue in *United States* v. *Dewitt*, 76 U.S. (9 Wall.) 41 (1869). See Pet. 11. This Court there rejected the government's argument that a ban on one type of illuminating oils was "in aid and support of the internal revenue tax imposed on other illuminating oils." *Dewitt*, 76 U.S. at 44. But its reason was that banning an untaxed product in order to indirectly "increas[e] the production and sale of" separate, taxed products, is not a "plainly adapted means" of carrying out the taxing power. *Ibid.* By contrast, limiting production of the taxed product to locations where tax collection is practicable is closely connected to the taxing power. The Court in *Dewitt* thus expressly distinguished the ban on illuminating oils from existing laws "regulating the business of distilling liquors" because such regulations "are restricted to the very articles which are the subject of taxation, and are plainly adapted to secure the collection of the tax imposed." *Ibid.*

Nor is petitioner correct that the Sixth Circuit's holding lacks any limiting principle. Pet. 12-13. As the court itself explained, speculation that Congress could tax and ban any at-home activity "would strip away nearly all the particular facts on which the judgment here is based." Pet. App. 18; see *ibid.* (rejecting the argument that Congress could impose an excise tax on bread-baking or clothes-making and then prohibit those activities at home "on the theory that home-sewers or home-bakers are less likely to pay the tax"). Congress attempted to collect the tax on distilled spirits for years without success. Only when such efforts failed did Congress regulate the location of distilling as a means to collect that tax. See pp. 3-4, *supra*. That history firmly grounds the location restrictions in the taxing power. See Pet. App. 17.

"[S]hould Congress, under the pretext of executing its powers" of taxation, "pass laws for the accomplishment of objects not entrusted to the government," this Court would have the "painful duty" to hold such laws unconstitutional. *McCulloch*, 17 U.S. at 423. But here, "[t]here is no suggestion * * * that Congress enacted" Section 5178(a)(1)(B) within the tax code "as a 'pretext' " to ban home distilling for its own sake, and "the connection" between the ban and Congress's tax power is not nearly "so attenuated as to undermine the enumeration of powers." *Jinks* v. *Richland County*, 538 U.S. 456, 464 (2003). In these circumstances, the Sixth Circuit correctly accounted for the relevant history and Congress's judgment as to the necessity of this protective measure.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's consideration of the petition for a writ of certiorari in *United States Department of Justice* v. *McNutt*, No. 26-___ (filed Aug. 14, 2026), and then disposed of as appropriate in light of the Court's disposition of that case.

Respectfully submitted.

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