

LEGAL BRIEF | AFPI Legal

MALICIOUS PROSECUTION AND UNLAWFUL INVESTIGATIONS INTO JAN. 6: SEPARATING MYTH FROM FACT

Richard Lawson

TOPLINE POINTS

- ★ Many people believe that **January 6, 2026**, marks the deadline for prosecuting those thought to have maliciously or illegally prosecuted and investigated the protests of **January 6, 2021**.
- ★ In fact, the real statute of limitations deadline is unlikely to be reached before late 2027.

Myth: As of January 7, 2026, [18 U.S. Code § 3282](#) bars the Department of Justice from prosecuting malicious prosecutions and unlawful investigations into the protests on January 6, 2021, as such acts occurred outside of the typical five-year statute of limitations for federal offenses.

Fact: 18 U.S. Code § 3282 states:

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years after such offense shall have been committed.

While actions committed on January 6, 2021, are soon to be barred from prosecution due to the five-year statute of limitations, federal indictments can still be brought regarding subsequent investigations—such as those conducted by the “January 6th Select Committee” and Special Counsel Jack Smith—occurring more recently. For example, Jack Smith was “appointed” Special Counsel on November 18, 2022, and resigned January 10, 2025, while the Select Committee began convening on July 1, 2021, and ended public hearings on December 22, 2022. The Department of Justice has a five-year window to prosecute any action taken during the course of those activities. So, any fraud, investigation, false testimony, or other potentially illegal act remains viable for five years after each act was committed and is not tethered to the original date of January 6, 2021.

The Department of Justice has stated that it is reviewing the investigations into the events on January 6. As those investigations necessarily post-date January 6, 2021, the five-year anniversary of January 6 is completely irrelevant to the Department's investigation; in fact, the first real statute of limitations issue is unlikely to arise until the end of 2027.



AMERICA FIRST POLICY INSTITUTE

