

108TH CONGRESS  
1ST SESSION

# H. R. 3651

To account for all aliens unlawfully present in the United States by providing incentives for such aliens to register with the Secretary of Homeland Security, to provide immunity from criminal prosecution for the employer of such an alien if the employer pays all taxes and penalties owed by reason of such employment, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2003

Mr. ISSA introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To account for all aliens unlawfully present in the United States by providing incentives for such aliens to register with the Secretary of Homeland Security, to provide immunity from criminal prosecution for the employer of such an alien if the employer pays all taxes and penalties owed by reason of such employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alien Accountability  
5 Act”.

1 **SEC. 2. ACCOUNTING FOR ALL UNLAWFULLY PRESENT**  
2 **ALIENS.**

3 (a) REGISTRATION.—

4 (1) IN GENERAL.—In the case of each alien un-  
5 lawfully present in the United States on December  
6 8, 2003 (or in the case of each alien who is a resi-  
7 dent in a foreign contiguous territory and was habit-  
8 ually unlawfully present in the United States during  
9 the 6-month period ending on December 8, 2003)  
10 who registers with the Secretary of Homeland Secu-  
11 rity during the 6-month period beginning on a date  
12 (not later than 180 days after the date of the enact-  
13 ment of this Act) designated by the Secretary, and  
14 provides the Secretary with such biometric identi-  
15 fiers as the Secretary may require—

16 (A) if the alien is eligible for adjustment of  
17 status under section 251 of the Immigration  
18 and Nationality Act (as added by section 3 of  
19 this Act), the Secretary shall permit the alien to  
20 apply for such adjustment; or

21 (B) if the alien is not so eligible, or does  
22 not desire to apply for such adjustment, and  
23 has not been determined by an immigration  
24 judge to be inadmissible under paragraph (2) or  
25 (3) of section 212(a) of the Immigration and  
26 Nationality Act (8 U.S.C. 1182(a)) or deport-

1           able under paragraph (2)(A)(iii) or (4) of sec-  
2           tion 237(a) of such Act (8 U.S.C. 1227(a))—

3                   (i) the Secretary shall permit the alien  
4                   voluntarily to depart the United States at  
5                   the alien's own expense in lieu of being  
6                   subject to proceedings under section 240 of  
7                   such Act (8 U.S.C. 1229a) during a vol-  
8                   untary departure period not exceeding 120  
9                   days; and

10                   (ii) if the alien does so depart, the  
11                   Secretary shall disregard such unlawful  
12                   presence in the United States (and the  
13                   alien's unlawful entrance into the United  
14                   States, where applicable) for purposes of  
15                   any determination under such Act, or any  
16                   other immigration law of the United  
17                   States, made subsequent to such depar-  
18                   ture.

19           (2) EMPLOYER-EMPLOYEE JOINT REGISTRA-  
20           TION.—An alien unlawfully present in the United  
21           States may register under paragraph (1) alone or to-  
22           gether with the alien's present or former employer.

23           (3) EMPLOYER NOTIFICATION OF UNLAWFULLY  
24           EMPLOYED ALIEN.—If an employer desires to make  
25           a joint registration described in paragraph (2) with

1 an alien who has not yet registered under paragraph  
2 (1), but the alien refuses to do so, the employer may  
3 notify the Secretary of Homeland Security of such  
4 refusal.

5 (b) IMMUNITY FROM FINES AND PENALTIES FOR  
6 UNLAWFUL EMPLOYMENT OF ALIENS.—

7 (1) IN GENERAL.—In the case of an employer  
8 who submits a joint registration described in sub-  
9 section (a)(2) or a notification described in sub-  
10 section (a)(3), if the employer pays to the Secretary  
11 of the Treasury any Federal tax (including penalties  
12 and interest) owed by reason of the employment of  
13 the alien, the employer shall considered relieved of li-  
14 ability for any violation of section 274A of the Immi-  
15 gration and Nationality Act (8 U.S.C. 1324a) aris-  
16 ing out of such employment. Such immunity shall  
17 cover employment of the alien from the commence-  
18 ment of such employment through the earlier of—

19 (A) the end of the application period de-  
20 scribed in section 251(a)(1) of such Act (as  
21 added by section 3 of this Act), if the alien fails  
22 to submit an application under such section; or

23 (B) the date on which the application of  
24 the alien under such section is finally adju-  
25 dicated.

1           (2) RECOUPMENT OF CERTAIN COSTS.—The  
2       Secretary of the Treasury may impose a fee on an  
3       employer paying taxes, penalties, or interest under  
4       paragraph (1), to be set at a level necessary to re-  
5       cover the costs of collecting and processing such  
6       payments.

7           (3) PROVISION OF INFORMATION TO STATES.—  
8       The Secretary of the Treasury shall provide to any  
9       State in which an employer conducts (or has con-  
10      ducted) business information that is collected by the  
11      Federal Government pursuant to the employer’s sub-  
12      mission of a joint registration described in sub-  
13      section (a)(2) or a notification described in sub-  
14      section (a)(3), or pursuant to the employer’s pay-  
15      ment of taxes, penalties, or interest under paragraph  
16      (1), but only if the State agrees to accept payment  
17      of all State and local taxes (including penalties and  
18      interest) owed by the employer in lieu of criminal  
19      prosecution.

20          (c) EXIT PROGRAM.—The Secretary of Homeland Se-  
21      curity shall implement an exit program to ensure that ap-  
22      propriate data are collected about aliens departing volun-  
23      tarily under subsection (a)(1)(B).

24          (d) MINORS.—In the case of an alien who is under  
25      18 years of age, a parent or legal guardian of the alien

1 may exercise the authorities under this section on behalf  
2 of the alien.

3 (e) LIMITATION ON REGISTRATION.—Any alien  
4 whose unlawful presence in the United States is known  
5 to officials of the Bureau of Immigration and Customs  
6 Enforcement of the Department of Homeland Security (as  
7 evidenced by documentary records) at any time prior to  
8 the alien’s registration under this section is ineligible for  
9 such registration. Any purported registration by such an  
10 alien, or any purported notification made by an employer  
11 under subsection (a)(3) with respect to such an alien, shall  
12 be deemed null and void.

13 (f) LIMITATIONS ON VOLUNTARY DEPARTURE.—

14 (1) FINANCIAL MEANS.—No alien may be per-  
15 mitted to depart voluntarily under this section un-  
16 less the alien has established by clear and convincing  
17 evidence that the alien has the means to depart the  
18 United States and intends to do so.

19 (2) BOND.—An alien permitted to depart volun-  
20 tarily under this section shall be required to post a  
21 voluntary departure bond, in an amount necessary to  
22 ensure that the alien will depart, to be surrendered  
23 upon proof that the alien has departed the United  
24 States within the time specified.

1           (3) ALIENS NOT ELIGIBLE.—The Secretary of  
2           Homeland Security shall not permit an alien to de-  
3           part voluntarily under this section if the alien is sub-  
4           ject to pending civil or criminal proceedings, impris-  
5           oned, sentenced to imprisonment, or on parole, su-  
6           pervised release, or probation.

7           (4) CIVIL PENALTY FOR FAILURE TO DE-  
8           PART.—In addition to being subject to removal pro-  
9           ceedings under section 240 of the Immigration and  
10          Nationality Act (8 U.S.C. 1229a), if an alien is per-  
11          mitted to depart voluntarily under this section and  
12          fails to do so within the time period specified, the  
13          alien shall be subject to a civil penalty in accordance  
14          with section 240B(d) of such Act (8 U.S.C.  
15          1229e(d)).

16 **SEC. 3. ADJUSTMENT OF STATUS FOR CERTAIN REG-**  
17 **ISTRANTS.**

18          (a) IN GENERAL.—Chapter 5 of title II of the Immi-  
19          gration and Nationality Act (8 U.S.C. 1255 et seq.) is  
20          amended by inserting after section 250 the following:

21 **“SEC. 251. ADJUSTMENT OF STATUS FOR CERTAIN REG-**  
22 **ISTRANTS.**

23          “(a) ADJUSTMENT OF STATUS.—The Secretary of  
24          Homeland Security shall adjust the status of an alien who  
25          has registered under section 2(a) of the Alien Account-

1 ability Act to that of a nonimmigrant under section  
2 101(a)(15)(W) if the alien meets the following require-  
3 ments:

4           “(1) APPLICATION PERIOD.—The alien applies  
5 for such adjustment during the 6-month period be-  
6 ginning on a date designated by the Secretary and  
7 occurring not later than 6 months after the termi-  
8 nation of the registration period described in such  
9 section.

10           “(2) FEE.—The alien (or a present or former  
11 employer of the alien) pays a fee established by the  
12 Secretary in accordance with subsection (g).

13           “(3) ABANDONMENT OF OTHER APPLICATIONS  
14 FOR RELIEF.—The alien must withdraw or otherwise  
15 demonstrate voluntary abandonment or termination  
16 of any other application for relief from removal  
17 under this Act, or any other Federal immigration  
18 law, which may have been pending prior to the sub-  
19 mission of the application under paragraph (1), and  
20 the alien must permanently relinquish the oppor-  
21 tunity subsequently to submit any such application.

22           “(4) EMPLOYMENT OR SPONSORSHIP.—The  
23 alien, or an employer or other sponsor of the alien,  
24 has satisfied the requirements of subsection (b).



1           “(5) CONTINUOUS UNLAWFUL RESIDENCE OR  
2           HABITUAL PRESENCE.—

3           “(A) IN GENERAL.—The alien must estab-  
4           lish that the alien entered the United States be-  
5           fore December 8, 2003, and has resided con-  
6           tinuously in the United States in an unlawful  
7           status since such date and through the date the  
8           application is filed under this subsection.

9           “(B) NONIMMIGRANTS.—

10           “(i) IN GENERAL.—In the case of an  
11           alien who entered the United States as a  
12           nonimmigrant before December 8, 2003,  
13           the alien must establish that the alien’s pe-  
14           riod of authorized stay as a nonimmigrant  
15           expired before such date through the pas-  
16           sage of time.

17           “(ii) EXCHANGE VISITORS.—If the  
18           alien was at any time a nonimmigrant ex-  
19           change alien (as defined in section  
20           101(a)(15)(J)), the alien must establish  
21           that the alien was not subject to the two-  
22           year foreign residence requirement of sec-  
23           tion 212(e) or has fulfilled that require-  
24           ment or received a waiver thereof.

1           “(C) HABITUAL BORDER CROSSERS.—Not-  
2           withstanding subparagraph (A), in the case of  
3           an alien who is a resident of a foreign contig-  
4           uous territory and has not established a resi-  
5           dence in the United States, the alien must es-  
6           tablish that the alien was habitually unlawfully  
7           present in the United States during the 6-  
8           month period ending on December 8, 2003.

9           “(6) CRIMINAL, SECURITY, OR RELATED  
10          GROUNDS.—The alien must establish that the alien  
11          has not been determined by an immigration judge to  
12          be inadmissible under paragraph (2) or (3) of sec-  
13          tion 212(a) or deportable under paragraph  
14          (2)(A)(iii) or (4) of section 237(a).

15          “(7) COOPERATION.—The alien must have pro-  
16          vided truthful answers to all questions posed by offi-  
17          cials of the Department of Homeland Security, and  
18          otherwise have cooperated in investigative efforts by  
19          such officials.

20          “(b) MEANS OF SUPPORT.—

21          “(1) EMPLOYMENT.—An employer employing  
22          an alien in the United States may demonstrate (to  
23          the satisfaction of the Secretary pursuant to such  
24          standards as the Secretary shall by regulations es-  
25          tablish) that such employment produces adequate

1 means financially to support the alien, and depend-  
2 ents of the alien, for the duration of the period dur-  
3 ing which the alien will be a nonimmigrant described  
4 in section 101(a)(15)(W). Alternatively, if the em-  
5 ployer of the alien does not desire to make such  
6 demonstration, the alien may do so using adequate  
7 employment documentation established by the Sec-  
8 retary.

9 “(2) SPONSORSHIP.—In the case of an alien  
10 who is not able to satisfy the requirements of para-  
11 graph (1), if the alien is a financial dependent of an-  
12 other individual, the alien may demonstrate (to the  
13 satisfaction of the Secretary pursuant to such stand-  
14 ards as the Secretary shall by regulations establish)  
15 that such individual possesses lawful means ade-  
16 quately to support the alien financially and has  
17 agreed (in a legally enforceable writing promulgated  
18 by the Secretary under such regulations) to provide  
19 such support for the duration of the period during  
20 which the alien will be a nonimmigrant described in  
21 section 101(a)(15)(W).

22 “(c) IDENTIFICATION DOCUMENT.—

23 “(1) IN GENERAL.—Each alien provided status  
24 under section 101(a)(15)(W) shall be given an iden-  
25 tification document that uses biometric identifiers.

1 In carrying out the preceding sentence, the Sec-  
2 retary of Homeland Security shall select from among  
3 biometric identifiers recognized by domestic and  
4 international standards organizations.

5 “(2) COST.—The cost of producing and issuing  
6 the identification documents described in paragraph  
7 (1) shall be taken into account in establishing fees  
8 under subsection (g).

9 “(d) BENEFITS.—

10 “(1) WORK AUTHORIZATION.—The Secretary of  
11 Homeland Security shall authorize an adult alien  
12 whose status has been adjusted under subsection (a)  
13 to engage in employment in the United States dur-  
14 ing the term of the alien’s lawful status and shall  
15 provide the alien with an ‘employment authorized’  
16 endorsement or other appropriate document signi-  
17 fying authorization of employment.

18 “(2) CHANGE IN NONIMMIGRANT CLASSIFICA-  
19 TION; ADJUSTMENT OF STATUS.—In the case of a  
20 nonimmigrant having lawful status under section  
21 101(a)(15)(W), the Secretary of Homeland Security  
22 may authorize a change of nonimmigrant classifica-  
23 tion, or may adjust the status of the alien to that  
24 of an alien lawfully admitted for permanent resi-

1       dence, if the alien otherwise satisfies the require-  
2       ments for such change or adjustment.

3           “(3) TRAVEL ABROAD.—The Secretary of  
4       Homeland Security shall permit the alien to travel  
5       abroad for temporary periods without the prior con-  
6       sent of the Secretary during periods of lawful status  
7       as a nonimmigrant under section 101(a)(15)(W).

8           “(4) INAPPLICABILITY OF CERTAIN GROUNDS  
9       FOR REMOVAL.—For purposes of obtaining the bene-  
10      fits described in this subsection, and for purposes of  
11      any other determination under the immigration laws  
12      of the United States, any ground for removal or de-  
13      nial of admission applicable to an alien granted sta-  
14      tus under section 101(a)(15)(W) shall be dis-  
15      regarded if the ground is reflected in the records of  
16      the Department of Homeland Security or the De-  
17      partment of State on the date on which the alien  
18      first applied for such status.

19          “(5) SPECIAL RULE FOR HABITUAL BORDER  
20      CROSSERS.—Notwithstanding any other provision of  
21      this section, in the case of an alien described in sub-  
22      section (a)(5)(C), the Secretary of Homeland Secu-  
23      rity shall have the discretion to impose conditions on  
24      the alien’s status under section 101(a)(15)(W) de-  
25      signed to permit the alien to engage solely in those

1 activities in the United States in which the alien en-  
2 gaged during the 6-month period described in sub-  
3 section (a)(5)(C).

4 “(6) FAMILY MEMBERS MAY NOT FOLLOW TO  
5 JOIN.—No relative of an alien having status under  
6 section 101(a)(15)(W) may follow to join the alien.

7 “(e) MINORS.—In the case of an alien who is under  
8 18 years of age, a parent or legal guardian of the alien  
9 may exercise the authorities under this section on behalf  
10 of the alien.

11 “(f) PERIOD OF AUTHORIZED ADMISSION.—

12 “(1) IN GENERAL.—The initial period of au-  
13 thORIZED admission as a nonimmigrant described in  
14 section 101(a)(15)(W) shall be 1 year.

15 “(2) RENEWAL.—Such initial period may be re-  
16 newed by the Secretary of Homeland Security up to  
17 5 times, in 1-year increments. The Secretary of  
18 Homeland Security shall impose a fee on applicants  
19 for status renewal in accordance with subsection (g).  
20 Renewal shall be contingent on the alien, or an em-  
21 ployer or other sponsor of the alien, demonstrating  
22 continuous satisfaction of the employment or spon-  
23 sorship requirements of subsection (b).

24 “(3) EMPLOYMENT OR SPONSORSHIP TERMI-  
25 NATION.—If at any time the employment or sponsor-

1 ship conditions described in subsection (b) that were  
2 the predicate for an initial or subsequent grant of  
3 status as a nonimmigrant under section  
4 101(a)(15)(W) terminate or change, the non-  
5 immigrant shall notify the Secretary of Homeland  
6 Security. The Secretary shall grant the alien 30  
7 days to arrange new employment or sponsorship so  
8 as to satisfy such conditions. Such 30-day period  
9 may be extended by the Secretary in 30-day incre-  
10 ments not more than twice. If the alien is unable to  
11 satisfy such conditions within the period granted by  
12 the Secretary, the Secretary shall terminate the  
13 alien's authorization to remain in the United States.  
14 If the Secretary determines that an alien has failed  
15 to comply with the notification requirement of this  
16 paragraph, the Secretary shall terminate the alien's  
17 authorization to remain in the United States.

18 “(g) AMOUNT OF FEES.—Fees collected under sub-  
19 section (a)(2), and upon renewal of nonimmigrant status  
20 pursuant to subsection (f)(2), shall be set at a level that  
21 ensures recovery of at least the following costs:

22 “(1) The cost of processing applications for ad-  
23 justment of status under subsection (a)(1) and ap-  
24 plications for status renewal under subsection (f)(2).

1           “(2) Other costs of administering this section  
2           and section 2 of the Alien Accountability Act.

3           “(3) The cost of increasing the personnel of the  
4           Bureau of Immigration and Customs Enforcement  
5           by the number established under section 5(a)(2) of  
6           such Act.

7           “(h) SUNSET.—The authority of the Secretary of  
8           Homeland Security to adjust the status of an alien under  
9           subsection (a) shall expire 6 years after the first day on  
10          which any alien is provided status under section  
11          101(a)(15)(W).

12          “(i) WORK AUTHORIZATION FOR APPLICANTS.—The  
13          Secretary of Homeland Security may authorize an alien  
14          who has applied for adjustment of status under subsection  
15          (a) to engage in employment in the United States during  
16          the pendency of such application and may provide the  
17          alien with an ‘employment authorized’ endorsement or  
18          other appropriate document signifying authorization of  
19          employment, except that if such application is pending for  
20          a period exceeding 180 days, and has not been denied,  
21          the Secretary shall authorize such employment. Notwith-  
22          standing the preceding sentence, the Secretary shall not  
23          be required to authorize employment for an alien described  
24          in subsection (a)(5)(C) unless the alien engaged in em-



1 ployment in the United States during the 6-month period  
2 described in such subsection.”.

3 (b) CLERICAL AMENDMENT.—The table of contents  
4 for the Immigration and Nationality Act is amended by  
5 inserting after the item relating to section 250 the fol-  
6 lowing:

“Sec. 251. Adjustment of status for certain registrants.”.

7 **SEC. 4. NEW NONIMMIGRANT VISA CATEGORY.**

8 Section 101(a)(15) of the Immigration and Nation-  
9 ality Act (8 U.S.C. 1101(a)(15)) is amended—

10 (1) in subparagraph (U), by striking “or” at  
11 the end;

12 (2) in subparagraph (V), by striking the period  
13 at the end and inserting “; or”; and

14 (3) by adding at the end the following:

15 “(W) an alien whose status is adjusted under  
16 section 251.”.

17 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR IN-**  
18 **CREASE IN NUMBER OF CERTAIN IMMIGRA-**  
19 **TION-RELATED PERSONNEL.**

20 (a) IN GENERAL.—There are authorized to be appro-  
21 priated for fiscal year 2005 and subsequent fiscal years  
22 such sums as may be necessary to enable the Secretary  
23 of Homeland Security to increase, above the number of  
24 positions for which funds were allotted for the preceding  
25 fiscal year, the total number of personnel of the Bureau

1 of Immigration and Customs Enforcement engaged in in-  
2 terior enforcement and alien removal functions by—

3 (1) 3,000, for the fiscal year in which this Act  
4 is enacted; and

5 (2) the number derived under subsection (b) for  
6 each subsequent fiscal year.

7 (b) INCREASE.—The number derived under this sub-  
8 section shall equal 1,000 for each 1,000,000 aliens initially  
9 granted status as nonimmigrants under section  
10 101(a)(15)(H)(W) of the Immigration and Nationality  
11 Act (as added by section 4 of this Act) during the previous  
12 fiscal year.

13 **SEC. 6. STUDY OF IMMIGRATION LEVELS.**

14 The Secretary of Homeland Security shall conduct a  
15 study to determine whether, for each program under Fed-  
16 eral immigration law for which a number of eligible aliens  
17 is specified for a year or otherwise, such number ought  
18 to be modified in view of the number of aliens registered  
19 under section 2.

○