No. ______________________

IN THE

SUPREME COURT OF THE UNITED STATES

KONSTANTINOS ZOGRAFIDIS
PETITIONER

VS.

UNITED STATES OF AMERICA
RESPONDENT

MOTION FOR LEAVE TO PROCEED IN *FORMA PAUPERIS*

The Petitioner, Konstantinos Zografidis, respectfully asks leave to file the accompanying Petition for a Writ of Certiorari without prepayments of costs and to proceed in *forma pauperis* pursuant to Rule 39 of the Rules of the Supreme Court. The undersigned counsel represents that he was appointed to represent the Petitioner pursuant to the Criminal Justice Act of 1964, 18 U.S.C. section 3006A, in the District Court and in the Court of Appeals. Accordingly, pursuant to 18 U.S.C. section 3006A(d)(6) and Rule 39.1, no declaration in compliance with 28 U.S.C. section 1746 is required.

Respectfully submitted
William T. Koch, Jr.

William T. Koch, Jr. Esq. Fed. Bar CT #04781
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wmtkochjr@aol.com
Attorney for the Petitioner

PROOF OF SERVICE

I, William T. Koch, Jr., certify that pursuant to Supreme Court Rules 29.3 and 29.4 that I have served the preceding Motion for Leave to Proceed in *Forma Pauperis* on each party to this proceeding by depositing an envelope containing this motion in the United States mail properly addressed and with first-class postage prepaid on June 11, 2018.

The names and addresses of those served are as follows:

The Solicitor General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530-0001

Office of the United States Attorney
ATT: Vanessa Richards, AUSA
1000 Lafayette Blvd. 10th Floor
Bridgeport, CT 06604

Office of the United States Attorney
ATT: Sandra Glover, AUSA
157 Church Street 25th Floor
New Haven, CT 06510

By William T. Koch, Jr.
William T. Koch, Jr. Esq., Ct Fed. Bar #04781

No. ______________________________

IN THE

SUPREME COURT OF THE UNITED STATES

KONSTANTINOS ZOGRAFIDIS
PETITIONER

VS.

UNITED STATES OF AMERICA
RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted

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QUESTION PRESENTED

Should Rule 11(b)(1)(O) of the Rules of Criminal Procedure be changed such that the Rule 11 plea canvass of a defendant, who is not a United States citizen, who is entering a guilty plea to a narcotics trafficking offense, is in strict, literal compliance with this Court's decision in Lee v. United States, 137 S.Ct. 1958 (2017)?

LIST OF PARTIES

All parties to this Petition appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

No. ______________________________

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

KONSTANTINOS ZOGRAFIDIS
Petitioner

vs.

UNITED STATES OF AMERICA
Respondent

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

Petitioner, Konstantinos Zografidis, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Second Circuit dated April 4, 2018.

Opinion Below

The decision of the Court of Appeals is a Summary Order and is set forth in pages 1-10 of the Petitioner's Appendix.

Jurisdiction

The Court of Appeals opinion in this case was filed on April 4, 2018. This Court's jurisdiction is invoked under 28 U.S.C. section 1254(1).

The basis for subject matter jurisdiction in the District Court was 18 U.S.C. section 3231, jurisdiction over offenses against the United States. The basis for the jurisdiction of the Court of Appeals was 28 U.S.C. section 1291, appeals from final judgments of the District Courts and Federal Rule of Appellate Procedure 4(b), appeals from criminal convictions.

Constitutional, Statutory and Regulatory Provisions Involved

Rule 11 of the Federal Rules of Criminal Procedure provides in pertinent part that:

"Before the court accepts a plea of guilty or nolo contender, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(O) that, if convicted, a defendant who is not a United States citizen **may** be removed from the United States, denied citizenship, and denied admission to the United States in the future." (emphasis added)

Statement of the Case

Konstantinoa Zografidis came to the United States, from Greece, as a lawful permanent resident when he was a young child. However, he never became an American citizen. On June 24, 2014, Konstantinos Zografidis entered a guilty plea before the Hon. Jeffrey A. Meyer, U.S.D.J., to conspiring to distribute cocaine in violation of 21 U.S.C. sections 846 and 841(b)(1)(c).

During the plea canvass on June 24, 2014, the following transpired:

[The Court]: Okay. Are you a U.S. Citizen?

[Mr. Zografidis]: No, I'm not, Your Honor.

[The Court]: Well, very likely, since you're not a U.S. citizen you **could** be subject to deportation or removal from the United States, you would be denied citizenship and denied admission to the United States in the future. Do you understand? (emphasis added)

[Mr. Zogradfidis]: I understand what they say, Your Honor, but I'm more American than anybody else. I love my country. This is my home. I'll have to take that up with the Immigration Department **if** it comes to that. (emphasis added)

[The Court]: But you should assume, for purposes of today, you're going **to face** that kind of proceeding. (emphasis added)

[Mr. Zografidis]: I understand that, Your Honor. I know that, Your Honor.......

[The Court]: Have you [Attorney O'Reilly] advised him of the collateral consquences, as we discussed, including the **possibility he could be subject to deportation?** (emphasis added)

[Attorney O'Reilly]: I've discussed that with him on numerous occasions, Your Honor. That's obviously something of very grave concern to him. Transcript of the proceedings in the District Court of June 24, 2014, page 22 line 21 to page 23, line 10; p. 24 line 11 to line 16.

On November 21, 2014, Mr. Zografidis filed a *pro se* motion to withdraw his guilty plea and to proceed to trial. The government filed a memorandum in opposition. On

January 24, 2015, the undersigned, as new, standby CJA counsel, filed a supplement to Mr. Zografidis' *pro se* motion. In the supplement to Mr. Zografidis' *pro se* motion, he challenged the adequacy of the Rule 11 plea canvass specifically claiming that he was not adequately advised of the consequences of his guilty plea as it related to being deported. The government filed a supplemental memorandum in opposition.

On July 14, 2015 there was an evidentiary hearing before the Hon. Warren W. Eginton, U.S.D.J., concerning Mr. Zografidis' motion to withdraw the guilty plea he had entered before Judge Meyer. Judge Eginton denied the motion without making any factual or legal findings.

On January 27, 2016, Judge Meyer sentenced Mr. Zografidis to the custody of the Bureau of Prisons for 72 months. Mr. Zografidis filed a timely *pro se* Notice of Appeal to the United States Court of Appeals for the Second Circuit on February 2, 2016.

On November 23, 2016, the undersigned filed a brief and appendix on behalf of Mr. Zografidis with the Court of Appeals. The first and primary issue raised on appeal to the Second Circuit was whether the District Court's Rule 11 plea canvass was constitutionally defective regarding the deportation consequences that Mr. Zografidis faced by pleading guilty to a federal narcotics distribution charge.

On June 23, 2017, this Court issued its decision in Lee v. United States, 137 S.Ct. 1958 (2017). Mr. Lee was not an American Citizen. Lee entered a guilty plea to possessing ecstasy with intent to distribute in violation of 21 U.S.C. section 841(a)(1). This Court held that Lee's conviction "meant that Lee was subject to mandatory deportation from this country." *Id.* at 1962.

On March 19, 2018, at oral argument, the undersigned argued to the Court of Appeals that this Court's decision in Lee v. United States, changed what was required in a Rule 11 plea canvass when the defendant is not a citizen and the defendant is pleading guilty to a drug trafficking offense. The Court of Appeals, however, ignored the Lee decision, disagreed and found that Fed. R. Crim. P. 11(b)(1)(O), which only uses the word "may" be removed from the United States, was sufficient. Petitioner's Appendix p. 7-8. cf. Padilla v. Kentucky, 559 U.S. 356 (2010).

Reasons for Granting the Petition

This Court should grant this Petition so that it can use it's supervisory powers to immediately clarify Fed. R. Crim. P. 11(b)(1)(O) such that the Rule is in conformance with the Court's decision in Lee v. United States, supra. This is a compelling situation involving defendants who are not citizens entering guilty pleas to federal narcotics trafficking offenses.

In the future, notwithstanding the language in the written plea agreement[1], a Rule 11 plea canvass involving a defendant who is not a United States Citizen who is entering a guilty plea to a narcotics trafficking offense, should be paramount and should include the following from the Lee case:

[The District Court]: Has your attorney told you that if you plead guilty to this federal narcotics trafficking crime **deportation is mandatory**?

[The District Court]: Notwithstanding what your attorney has told you, I am telling you that if you plead guilty to this federal narcotics trafficking crime **deportation is mandatory**.

[1] Mr. Zografidis' plea agreement indicated that deportation was "presumptively mandatory."

The plea canvass of Mr. Zografidis, by the District Court, did not make it clear that Mr. Zografidis was subject to mandatory deportation. The words and phrases used in good faith by the District Court at that time fall below what should be required under the Lee case:

a.) "likely"... you could be subject to deportation;"

b.) "you're going to face that kind of proceeding," and

c.) "the possibility he could be subject to deportation."

Mr. Zografidis' answer highlighted above in which he uses the word "if" reflects that he believed at the time of his guilty plea that there was a possibility that he might not have to face deportation.

Conclusion

The Petitioner, Konstantinos Zografidis, respectfully requests that a Writ of Certiorari issue to review the Judgment and opinion of the United States Court of Appeals for the Second Circuit such that the process of changing Fed. R. Crim. P. 11(b)(1)(O) to be in compliance with the Court's decision in Lee v. United States, 137 S.Ct. 1958 (2017) can begin.

Respectfully submitted,

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Attorney for the Petitioner

PROOF OF SERVICE

I, William T. Koch, Jr., certify that pursuant to Supreme Court Rules 29.3 and 29.4 that I have served the preceding Petition for a Writ of Certiorari and attached Appendix on each party to this proceeding by depositing an envelope containing the Petition and Appendix in the United States mail properly addressed and with first-class postage prepaid on June 11 2018.

The names and addresses of those served are as follows:

The Solicitor General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530-0001

Office of the United States Attorney
ATT: Vanessa Richards, AUSA
1000 Lafayette Blvd. 10th Floor
Bridgeport, CT 06604

Office of the United States Attorney
ATT: Sandra Glover, AUSA
157 Church Street 25th Floor
New Haven, CT 06510

By William T. Koch, Jr.

William T. Koch, Jr. Esq., Ct Fed. Bar #04781

No. ______________________

IN THE

SUPREME COURT OF THE UNITED STATES

KONSTANTINOS ZOGRAFIDIS
PETITIONER

VS.

UNITED STATES OF AMERICA
RESPONDENT

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respectfully submitted

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16-325-cr(L)
United States v. Zografidis, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "Summary Order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of April, two thousand eighteen.

Present:
ROBERT D. SACK,
PETER W. HALL,
CHRISTOPHER F. DRONEY.
Circuit Judges.

United States of America,

Appellee,

v.

16-325-cr;
16-2306-cr

Demetrios Papadakos, AKA "Jimmy the Greek", AKA "Jimmy"; David Solano, AKA "Bobby", AKA "Papi"; Domenick Ribustello, AKA "Dom", AKA "D"; George Tkaczyk, Jr., AKA "Georgie"; Vasiliki Papadakos, AKA "Vaso"; John Yerinides; Ioannis Papachristou, AKA "Johnny"; Dimitrios Karpipdis; Savvas Giannoglou, AKA "Steve"; Carlos Hendricks, AKA "Carlito"; James Lyons; Qasim Seyal; Efstrati Papadakos, AKA "Steve"; Julio Brinez, AKA "Diesel", AKA "D",

Defendants,

Konstantinos Zografidis, AKA "Gus", AKA "Poncho"; Alfred Catino, AKA "the Old Man", AKA "Anthony Vitacco", AKA "Frank Ross", AKA "Alphonse Catino", AKA "Chico", AKA "Frank Russo", AKA "Herbie",

Defendants-Appellants.

For Appellee:	VANESSA RICHARDS (Marc H. Silverman, of counsel, *on the brief*), *for* John H. Durham, United States Attorney for the District of Connecticut, New Haven, CT.
For Defendant-Appellant Zografidis:	WILLIAM T. KOCH, JR., Law office of William T. Koch, Jr., Old Lyme, CT.
For Defendant-Appellant Catino:	BENJAMIN M. DANIELS (James I. Glasser, *on the brief*), Wiggin and Dana LLP, New Haven, CT.

Appeal from final judgment entered January 29, 2016 and June 21, 2016, in the District of Connecticut (Meyer, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the district court's decisions and judgments are **AFFIRMED**.

Konstantinos Zografidis and Alfred Catino appeal from their convictions arising out of a large drug trafficking operation. Specifically, they appeal the district court's denial of their motions to suppress evidence gained through wiretap warrants, the district court's denial of their motion for a *Franks* hearing, the district court's denial of Zografidis's motion to withdraw his guilty plea, and the district court's denial of Zografidis's motion to suppress evidence seized from his home. We assume the parties' familiarity with the underlying facts, the procedural history, the arguments presented on appeal, and the district court's rulings which we reference only to explain our decision.

Zografidis and Catino first assert that the district court erred by denying their motions to suppress evidence gained through wiretap warrants because those warrants failed to articulate a full and complete statement of necessity. "In reviewing a ruling on a motion to suppress wiretap evidence, we accord deference to the district court." *United States v. Diaz*, 176 F.3d 52, 109 (2d Cir. 1999). "Our role in reviewing the issuance of a wiretap order is not to make a *de novo* determination of the sufficiency of the application, but to decide if the facts in the application were minimally adequate to support the determination that was made." *Id.* (quotation marks omitted).

"Although the required showing is to be tested in a practical and commonsense fashion, an affidavit offered in support of a wiretap warrant must provide some basis for concluding that less intrusive investigative procedures are not feasible." *United States v. Lilla*, 699 F.2d 99, 103 (2d Cir. 1983) (internal citation and quotation marks omitted); *see* 18 U.S.C. § 2518(3)(c) (providing that, before issuing the wiretap warrant, the judge must determine that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried"). At the same time, "the statute does not require that all possible techniques be tried before a wiretap may be authorized." *United States v. Martino*, 664 F.2d 860, 868 (2d Cir. 1981). "In short, the requirement is simply designed to assure that wiretapping is not resorted to in situations where traditional investigation techniques would suffice to expose the crime." *Id.* (internal quotation marks omitted).

In the wiretap warrant application as to Target Phone 1,[1] Task Force Officer Cisero offered detailed information as to why Zografidis was proving difficult to surveil—for example, making U-turns, driving in "circuitous" routes, and squaring blocks—as well as details showing how unwilling Zografidis was to deal with anyone he had not dealt with in the past, thus making it much more difficult to use an undercover officer or introduce someone willing to act as a confidential witness. The application also rejected investigative techniques like trash pulls, pole cameras, GPS tracking, grand juries, and interviews based on the officers' belief that they would either be ineffective or risk the investigation's detection. Those detailed facts are sufficient to show that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried." 18 U.S.C. § 2518(3)(c); *see also Martino*, 664 F.2d at 868 (holding that facts similar to those set out in the affidavit in this case met the requirement that the affidavit articulate a full and complete statement of necessity); *United States v. Fury*, 554 F.2d 522, 530 (2d Cir. 1977) (upholding a wiretap warrant where the supporting affidavit "stated that normal investigative techniques were attempted on thirteen specific dates, that

[1] On appeal, the parties state in a footnote that they "maintain[ ] [their] challenge to all the wiretaps through which [they were] intercepted in this case." Catino Br. 29 n.21. They acknowledge, however, that the briefing "focuses on the First Wiretap Affidavit because the subsequent applications depended on the First Wiretap and copied most of its contents verbatim." Catino Br. 29 n.21. For that reason, we focus only on the wiretap warrant application for Target Phone 1. We have, however, reviewed the remaining affidavits, and are satisfied that the requisite necessity showings were made in those affidavits.

the subjects were 'difficult to tail' because they were 'very careful and . . . constantly changing routes,'" and where the affidavit "also noted that [the defendant] often went to a location that had been previously 'bugged' successfully and that, as a result, the subjects were especially sensitive to police surveillance") (alteration in original); *United States v. Kirk Tang Yuk*, --- F.3d ---, No. 15-131, 2018 WL 1321081, at *12 (2d Cir. Mar. 15, 2018). Given the facts recited in the affidavit, the district court did not err in denying the defendants' motions to suppress.

Catino and Zografidis also appeal the district court's denial of their motion for a *Franks* hearing.[2] Specifically, they assert that they were entitled to a *Franks* hearing because they offered proof showing that Confidential Witness 1 was, in fact, multiple people, that Task Force Officer Cisero had failed to disclose that Confidential Witness 2 (CW 2) was a disbarred attorney receiving remuneration in exchange for his help in the case, and that the allegations as to Catino's alleged laundering of money through Tim Hortons gift cards were incorrect.

The affidavit they offered in support of their argument that Confidential Witness 1 was, in fact, two different individuals, was unclear and did not establish that Task Force Officer Cisero engaged in deliberate falsehood or reckless disregard

[2] "In *United States v. One Parcel of Property Located at 15 Black Ledge*, 897 F.2d 97 (2d Cir. 1990), we reviewed the denial of a *Franks* hearing in a forfeiture case for clear error to the extent that denial rested on factual findings." *United States v. Falso*, 544 F.3d 110, 126 n.21 (2d Cir. 2008). "We did not explain why that was the appropriate standard, however, and [there exists] a circuit split on the issue." *Id.*; *compare United States v. Reiner*, 500 F.3d 10, 14 (1st Cir. 2007) (reviewing for clear error the denial of a *Franks* hearing); *United States v. Buchanan*, 985 F.2d 1372, 1378 (8th Cir. 1993) (same); *United States v. Skinner*, 972 F.2d 171, 177 (7th Cir. 1992) (same), *with United States v.* Homick, 964 F.2d 899, 904 (9th Cir. 1992) (reviewing *de novo* the denial of a *Franks* hearing); *United States v. Martin*, 332 F.3d 827, 833 (5th Cir. 2003) (reviewing *de novo* the denial of a *Franks* hearing). To the extent that this issue remains an open one in our Court, we need not decide it in this case because, even under a *de novo* standard of review, denial of the *Franks* hearing was proper.

for the truth. *See Franks v. Delaware*, 438 U.S. 154, 171 (1978) (holding that to warrant a hearing "[t]here must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof"). And while the government concedes that the information as to the Tim Hortons money laundering scheme was incorrect and that Task Force Officer Cisero omitted information about the credibility of CW 2, even disregarding the allegations as to the money laundering scheme and CW 2, the affidavit in support of the wiretap warrant application contained sufficient factual information to support a finding of probable cause. *See Franks*, 438 U.S. at 171–72 ("[I]f, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required."). For example, Task Force Officer Cisero's affidavit included the following facts: Confidential Witness 3 making four controlled purchases of cocaine from Zografidis, Confidential Witness 1's experience of Zografidis refusing to deal with him or anyone else he had not dealt with in the past, and Zografidis's attempts to ensure that law enforcement was not "tailing" him. That information, along with the other facts set forth in the affidavit, provided a sufficient basis for determining there was probable cause even if we disregard the facts as to the money laundering scheme and CW 2. The government similarly had sufficient probable cause to execute wiretaps against Catino because the applications included, for example, evidence of intercepted conversations with him, fictitious subscriber information, and independently corroborated information from

Confidential Witnesses 1, 2, and 3. The district court did not err when it denied Catino and Zografidis's motion for a *Franks* hearing.

Zografidis appeals the district court's denial of his motion to withdraw his guilty plea, a decision we review for an abuse of discretion. *See United States v. Schmidt*, 373 F.3d 100, 101 (2d Cir. 2004). "Motions to withdraw guilty pleas before sentencing are governed by Federal Rule of Criminal Procedure 32(e)." *United States v. Torres*, 129 F.3d 710, 715 (2d Cir. 1997). "Although Rule 32(e) provides that a defendant may move to withdraw a guilty plea upon a showing of a 'fair and just reason,' it is basic that '[a] defendant has no absolute right to withdraw his guilty plea.'" *Id.* (quoting *United States v. Williams*, 23 F.3d 629, 634 (2d Cir. 1994)) (alteration in original). "The defendant bears the burden of demonstrating valid grounds for relief." *Id.* "A defendant's bald statements that simply contradict what he said at his plea allocution are not sufficient grounds to withdraw the guilty plea." *Id.*

Zografidis asserts that the district court abused its discretion by denying his motion to withdraw his guilty plea because, at his change-of-plea hearing, the court failed to make clear that deportation was "automatic" or "presumptively mandatory," i.e., that he would be, as opposed to could be, deported. The Federal Rules of Criminal Procedure require the court, before accepting a guilty plea, to "inform the defendant of, and determine that the defendant understands" that "if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future." Fed. R. Crim. P. 11(b)(1)(O). At the change-of-plea hearing, the district court made clear to Zografidis the deportation consequences of pleading guilty:

> The Court: Okay. Are you a U.S. Citizen?
>
> The Defendant: No, I'm not Your Honor.
>
> The Court: Well, very likely, since you're not a U.S. citizen, you could be subject to deportation or removal from the United States, you would be denied citizenship and denied admission to the United States in the future. Do you understand that?
>
> The Defendant: I understand what they say, Your Honor, but I'm more American than anybody else. I love my country. This is my home. I'll have to take that up with the Immigration Department if it comes to that.
>
> The Court: But you should assume, for purposes of today, you're going to face that kind of proceeding.
>
> The Defendant: I understand that, Your Honor. I know that, Your Honor.

Gov't Appx. 31–32. Moreover, Zografidis's plea agreement informed him that deportation was "presumptively mandatory," and Zografidis confirmed in open court that he had read the plea agreement and reviewed it with his attorney. And while Zografidis now asserts that he was not competent at the change-of-plea hearing to understand the district court's explanation of the deportation consequences, the record shows otherwise. Testifying under oath, Zografidis indicated throughout the hearing that he understood what was occurring and what rights he would be giving up by pleading guilty. At one point he told the court that he was "confident that [he] underst[ood] the nature of the proceedings." Gov't Appx. 24. Moreover, Zografidis had previously undergone a competency evaluation in this case, which concluded that he was competent, and the district court found him competent on the record at the time of his plea. Based on our review of the record, we hold that the district court did not exceed the bounds of its discretion when it denied Zografidis's motion to withdraw his guilty plea.[3]

Zografidis also asserts that his plea lacked a sufficient factual basis under Rule 11 because the factual statement concerning his acts and his intent were insufficient to make out the charged crimes. At the change-of-plea hearing, however, Zografidis himself stated "I participated in a involvement [sic], drug transactions, buy, sell, conspiracy, more or less. Knowingly, willfully, and voluntarily, okay. And I did all that, Your Honor. Possess drugs, yes, I did that. Distribute drugs, yes, I did that." Gov't Appx. 60. The record of the Rule 11 proceedings belies Zografidis's argument that his plea lacked a sufficient factual basis.

Zografidis also appeals the district court's denial of his motion to suppress evidence found during a search of his home, and Catino appeals the district court's denial of his motion for a *Fatico* hearing. *See United States v. Fatico*, 579 F.2d 707 (2d Cir. 1978). Both Zografidis and Catino waived the right to appeal those issues in their plea agreements. As a result, we will not consider those arguments.

---

[3] To the extent that Zografidis asserts an ineffective assistance of counsel claim related to his counsel's failure to explain to him that he was presumptively deportable, *see United States v. Al Halabi*, 633 F. App'x 801, 803 (2d Cir. 2015) (summary order) ("[W]here the law clearly dictates that removal is presumptively mandatory, a defense attorney's failure to advise his client of that fact falls below an objective standard of reasonableness."), we decline to address that claim on direct appeal, *see United States v. Khedr*, 343 F.3d 96, 99 92d Cir. 2003) ("[T]his court has expressed a baseline aversion to resolving ineffectiveness claims on direct review." (internal quotation marks omitted)).

We have considered the appellants' remaining arguments and find them to be without merit. Accordingly, the district court's judgments are **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe

UNITED STATES SECOND CIRCUIT COURT OF APPEALS