

1 POOLER, *Circuit Judge*, concurring in part and dissenting in part:

2 I concur with the dispositions in this case with one exception: affirming the
3 sentence. The district court did not err in calculating the Guidelines range, and it
4 articulated various reasons for imposing 480 months—40 years—of imprisonment.
5 Nevertheless, I decline to affirm a sentence that effectively requires Kourani to spend
6 the rest of his adult life in prison, especially when Kourani’s actions have not directly
7 injured anyone. Such a disproportionate sentence “shock[s] the conscience.” *United*
8 *States v. Rigas*, 583 F.3d 108, 124 (2d Cir. 2009) (internal quotation marks omitted).

9 Other defendants who have committed similar crimes received lesser sentences.
10 *See, e.g.*, Sentencing Memorandum by USA, Minute Entry, *United States v. Abdurasal*
11 *Hasanovich Juraboev*, No. 15-CR-95 (E.D.N.Y. 2017), ECF Nos. 244, 251 (sentencing a
12 defendant who was affiliated with ISIS, wanted to kill President Obama, and schemed
13 to bomb Coney Island to 180 months’, or 15 years’, imprisonment); Sentencing
14 Submission by USA, Judgment in a Criminal Case, *United States v. Wesam El-Hanafi*, No.
15 10-CR-162 (S.D.N.Y. 2015), ECF Nos. 197, 211 (sentencing a defendant who provided
16 financial support and surveillance information to Al Qaeda to 15 years’ imprisonment);
17 Sentencing Memorandum by USA, Filed Judgment in a Criminal Judgment, *United*
18 *States v. Mohamed Ibrahim Ahmed*, No. 10-CR-131 (S.D.N.Y. 2013), ECF Nos. 96, 101
19 (sentencing a defendant to 111 months’, or 9.25 years’, imprisonment for providing
20 money to and engaging in weapons training with Al-Shabab). These shorter, yet still

21 very serious sentences, for comparable conduct suggest that Kourani's sentence is
22 "greater than necessary to achieve the goals of § 3553(a)." *United States v. Dorvee*, 616
23 F.3d 174, 188 (2d Cir. 2010) (internal quotation marks omitted).

24 Here, had the district court ordered the sentences imposed for each of his
25 convictions to run concurrently, Kourani would have served 20 years in prison and
26 subsequently been deported. This is sufficient to accomplish the goals of imposing an
27 adequate punishment, deterring future criminal conduct, and avoiding unwarranted
28 sentencing disparities. *See* 18 U.S.C. § 3553(a). Instead, Kourani must serve twice that.
29 Although a 20-year sentence is below the Guidelines range, in certain areas of the law,
30 without careful consideration of an individual defendant's circumstances, the
31 Guidelines may "generate unreasonable results." *Dorvee*, 616 F.3d at 188; *see United*
32 *States v. Stewart*, 590 F.3d 93, 153 (2d Cir. 2009) (Calabresi, J., concurring) (noting that
33 the terrorism enhancement is "undeniably broad" and "has dramatic consequences on
34 the applicable Guidelines range"). Growing concern exists about the fairness of the
35 exceedingly high sentencing enhancements on "material support" of terrorism crimes,
36 particularly where the support is nonviolent. *See, e.g.,* Laura Rovner & Jeanne
37 Theoharis, *Preferring Order to Justice*, 61 AM. U. L. REV. 1331, 1348-49 & n.72 (2012)
38 (explaining that sentences subject to the terrorism enhancement tend to be 7.8 times
39 longer than those that are not); James P. McLoughlin, Jr., *Deconstructing United States*
40 *Sentencing Guidelines Section 3A1.4: Sentencing Failure in Cases of Financial Support for*

41 *Foreign Terrorist Organizations*, 28 LAW & INEQ. 51, 57-58 (2010) (explaining how the
42 terrorism enhancement results in sentences “often disproportionate to the conduct of
43 conviction” (footnote omitted)).

44 Ultimately, Kourani received a fair trial and was properly adjudicated guilty by a
45 jury. His crimes were undeniably serious. It is not lost on me that Kourani’s actions
46 could have culminated in far more injurious results. Nevertheless, they did not, and
47 accordingly, the sentence imposed is disproportionately high.