The Future of Data Driven Litigation

Presented By:

David Walton, Shareholder

Stuart Claire, Counsel

eDiscovery and Practice Advisory Services

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Agenda

1. Controlling the Data Narrative to Win
2. Spoliation of Electronic Data
3. Cyber Subro

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Controlling the Data Narrative to Win

Internet of Things
Connect the World

- Everyday objects go online
- Smart objects and wearable computing
- Recording Data
- “Black Box”

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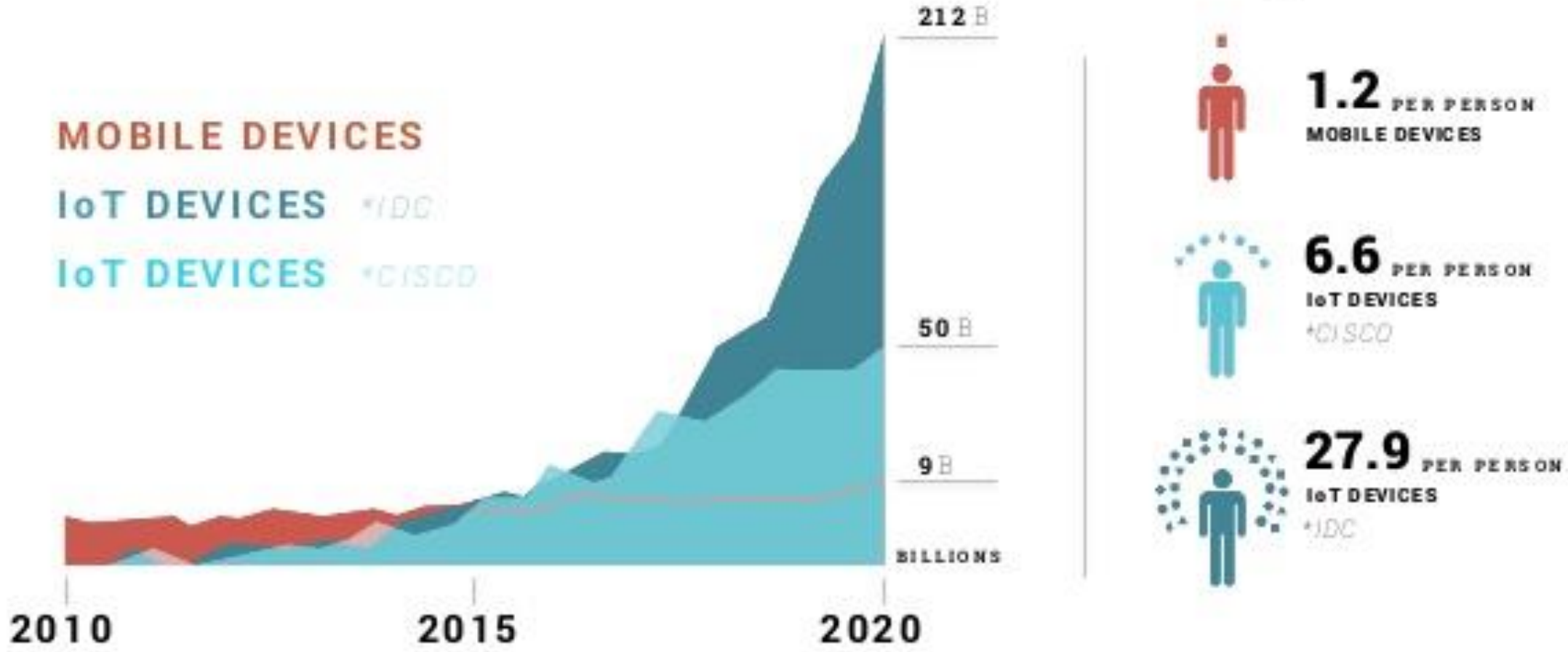
212BB Connected Devices by 2020



Recording Data

heart rate	Amount of time online and when and where	location tracking
body temperature	timing of visitors	medications
blood pressure	who is visiting	gps
weight	fitness patterns	calendar entries
food intake	activity patterns	phone and text logs
room/food temperature	sleep patterns	contacts
settings in home	timing of activities	video/pictures
usernames/passwords	online chats (gaming or other)	voice recordings

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Vehicle Data Recorders “Black Box”

IVE REPORT

CASE #2015-001-0502

VEHICLE: 2014 FORD EXPLORER

Original report is 325 pages. Phone numbers and Lat/Long redacted.

Details | Attached Devices | Text Messages (SMS) | Call Log Entries | Contacts | Locations | Events | Tracks | Files

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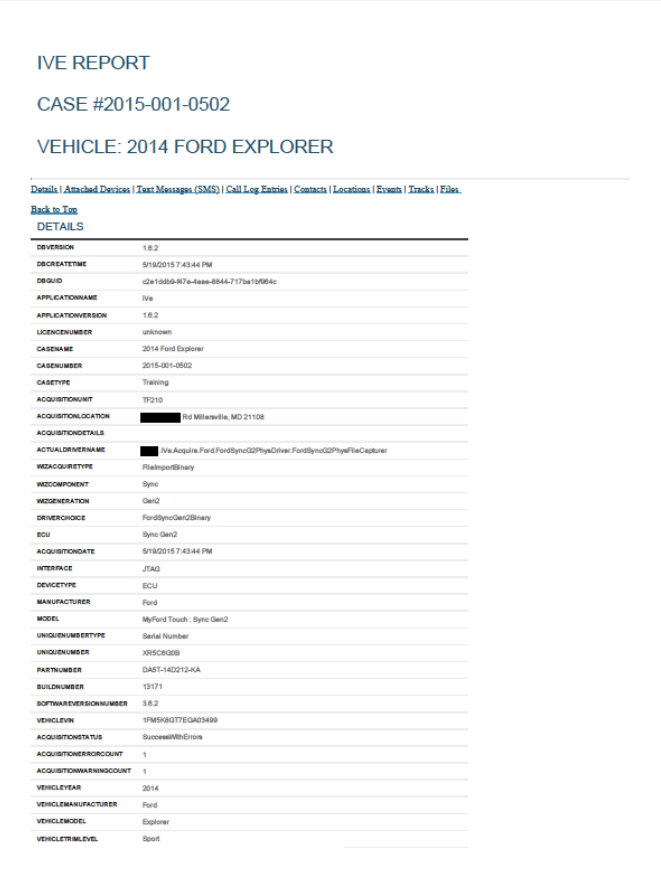
LOCATIONS

LOCATION NAME	LATITUDE	LONGITUDE	FLAGS	CITY	COUNTRY	STREET	STATE	ZIPCODE
My Home	39[redacted]	-76[redacted]	Favorite	Crownsville	USA	[redacted]	MD	*
OFFICE	39[redacted]	-76[redacted]	Favorite	Millersville	USA	[redacted]	MD	*
Pizza Choice	39[redacted]	-76[redacted]	PreviousDestination	Millersville	USA	[redacted]	MD	*
Forest Motel	39[redacted]	-76[redacted]	PreviousDestination	Glen Burnie	USA	[redacted]	MD	*
Ledo Pizza	39[redacted]	-76[redacted]	PreviousDestination	Crofton	USA	[redacted]	MD	*
Last Known Location	39[redacted]	-76[redacted]	None					

WI-FI EVENTS

EVENT TYPE	IDENTIFIER	ACTION	DATE TIME	LATITUDE	LONGITUDE	ALTITUDE
Wi-Fi	Connected to wifi network: 'Starbucks' - mac address: 'FE37147F3472'	Attached		[redacted]	[redacted]	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DETAILS

DBVERSION	1.8.2
DBCREATETIME	5/19/2015 7:43:44 PM
DBGUID	c2e1ddb9-f67e-4aaa-8844-717ba1bf964c
APPLICATIONNAME	IVe
APPLICATIONVERSION	1.8.2
LICENCENUMBER	unknown
CASENAME	2014 Ford Explorer
CASENUMBER	2015-001-0502
CASETYPE	Training
ACQUISITIONUNIT	TF210
ACQUISITIONLOCATION	[redacted] Rd Millersville, MD 21108
ACQUISITIONDETAILS	
ACTUALDRIVERNAME	[redacted] IVe.Acquire.Ford.FordSync02PhysDriver.FordSync02PhysFileCapturer
WIZACQUIRETYPE	FileImportBinary
WIZCOMPONENT	Sync
WIZGENERATION	Gen2
DRIVERCHOICE	FordSyncGen2Binary
ECU	Sync Gen2
ACQUISITIONDATE	5/19/2015 7:43:44 PM
INTERFACE	JTAG
DEVICETYPE	ECU
MANUFACTURER	Ford
MODEL	MyFord Touch : Sync Gen2
UNIQUENUMBERTYPE	Serial Number
UNIQUENUMBER	XR5C8G0B
PARTNUMBER	DAST-14D212-KA
BUILDNUMBER	13171
SOFTWAREVERSIONNUMBER	3.6.2
VEHICLEVIN	1FM5K8GT7EGA03499
ACQUISITIONSTATUS	SucceseWithErrors
ACQUISITIONERRORCOUNT	1
ACQUISITIONWARNINGCOUNT	1
VEHICLEYEAR	2014
VEHICLEMANUFACTURER	Ford
VEHICLEMODEL	Explorer
VEHICLETRIMLEVEL	Sport

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IoT Data as Evidence

- Hands-free Smart Speakers
- Wearable Fitness Trackers
- Pacemakers
- Internet-enabled Appliances
- Smart Phones
- Cars
- Video Games

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How Are We Utilizing The Evidence

- We have to find it first.
- Is it accessible?
- Can we analyze it?
- Remember proportionality.
- How difficult is it and what does it cost?
- Is it going to help us win the case?

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Wage And Labor: On The Clock / Off The Clock

- Fortune 50 Company
- Over 1,000 Class Members
- Over 4 Years of data
- Over a Dozen Systems with Billions of Data Points
- Seeking damages for Off the Clock Work
  - Missed Meal Breaks
  - Pre-shift work
  - Weekend / Off the Clock work

- GPS
- Invoicing
- PC / Network Logins
- Scheduling
- Timecard
- Webserver Logs
- Internet History
- Email Activity
- Phone Call Logs

Over 700 GBs of Data Preserved and Processed
Total of 14 Data Productions
Over 125 Million Records Produced
Over 65 GBs of Data Produced

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Common thread

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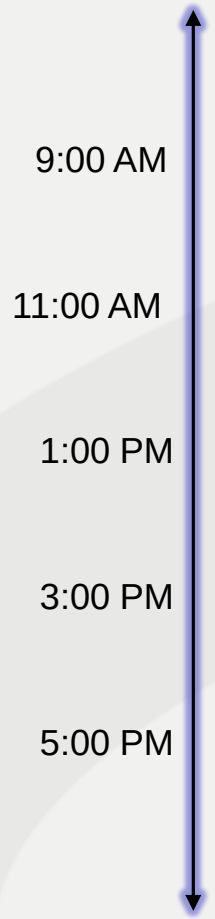
Common thread

Timecard Entry



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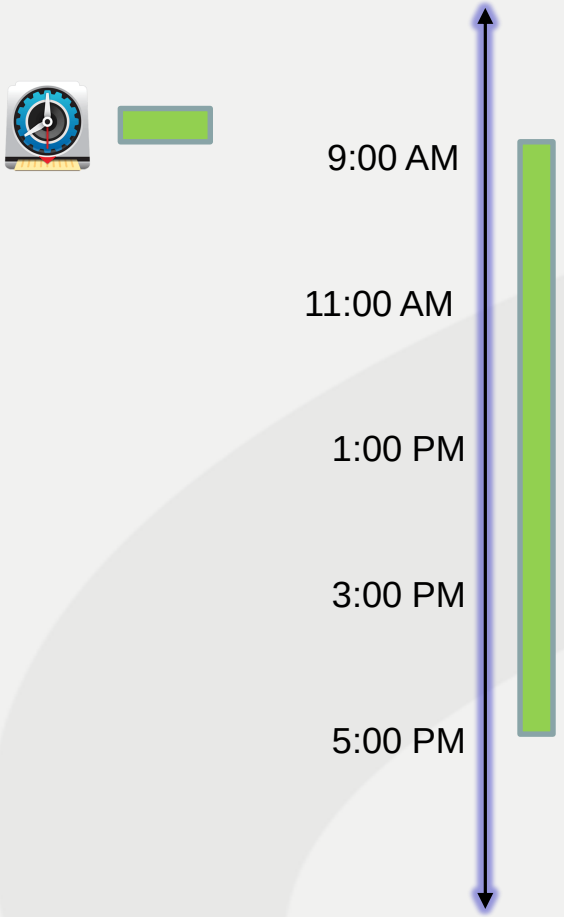
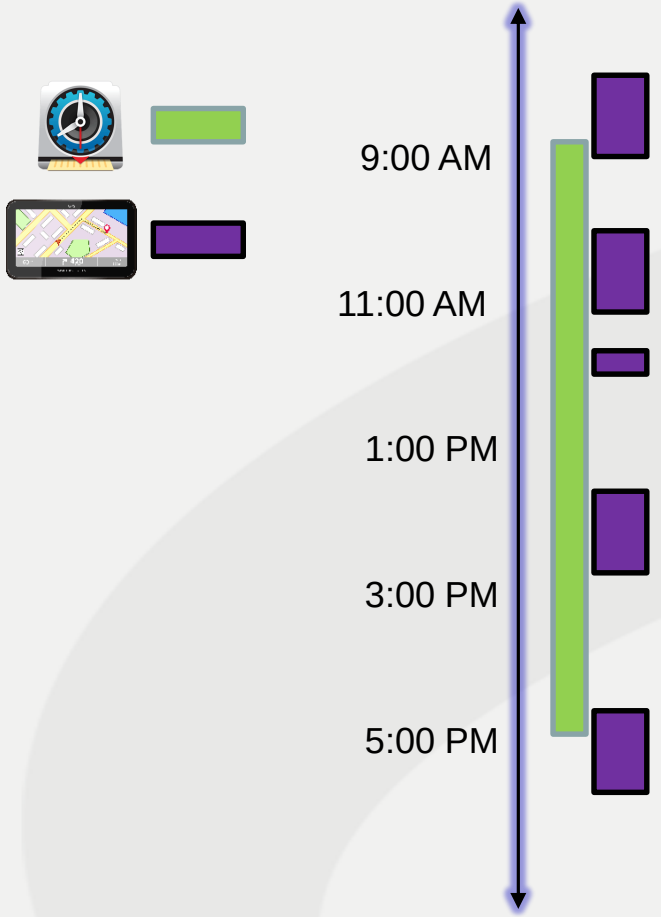
Common thread

GPS Movement



Common thread

Customer Visit



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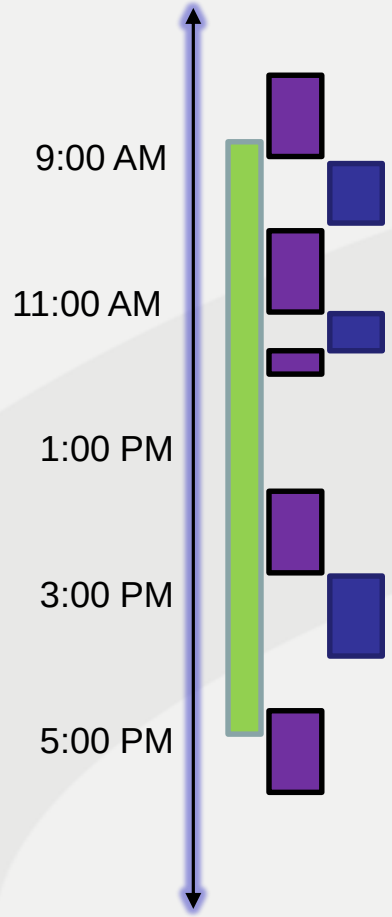

Personal Phone Calls

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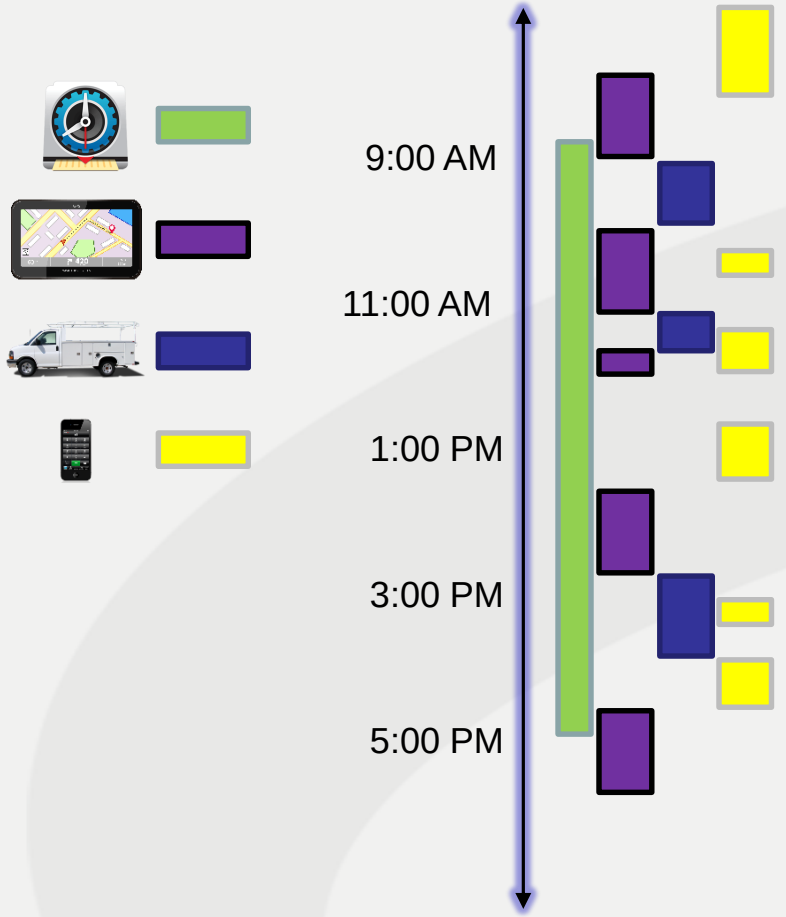
Common thread



Company System Activity

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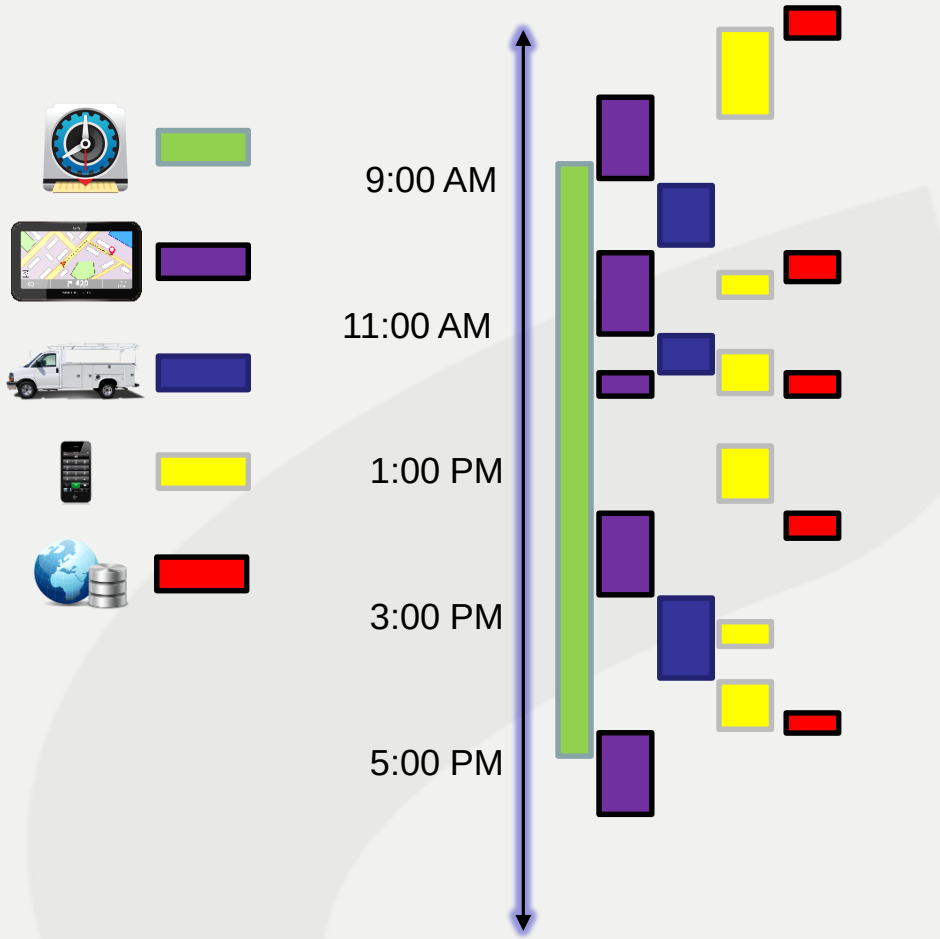
Common thread



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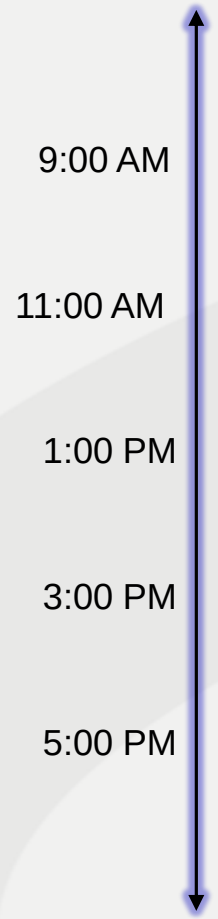
Command Thread



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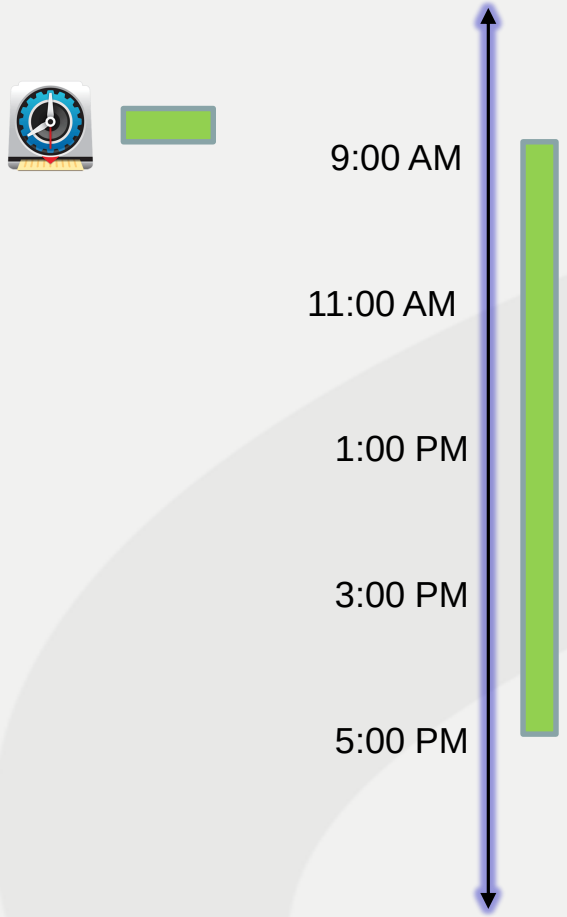

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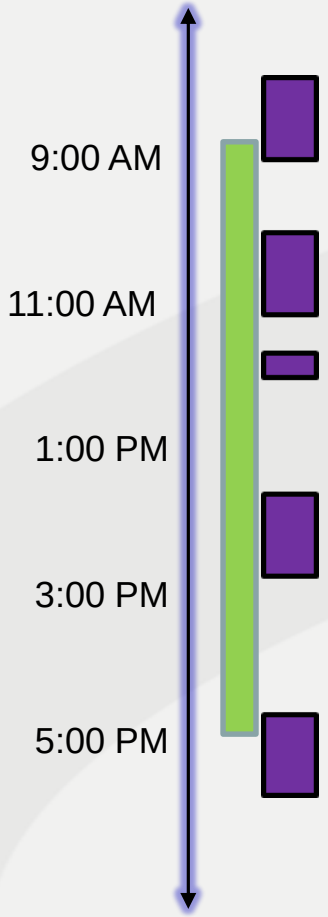
GPS Movement

Timecard Entry



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Customer Visit

GPS Movement

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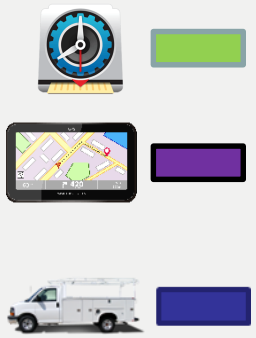

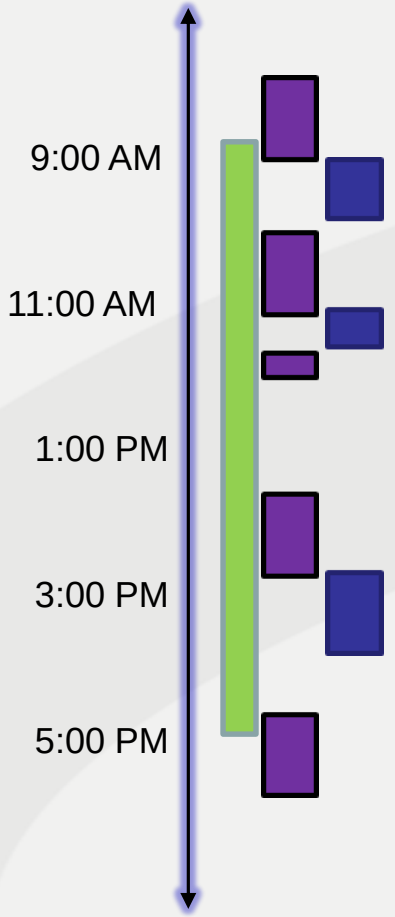

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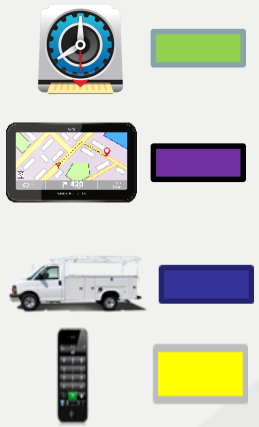
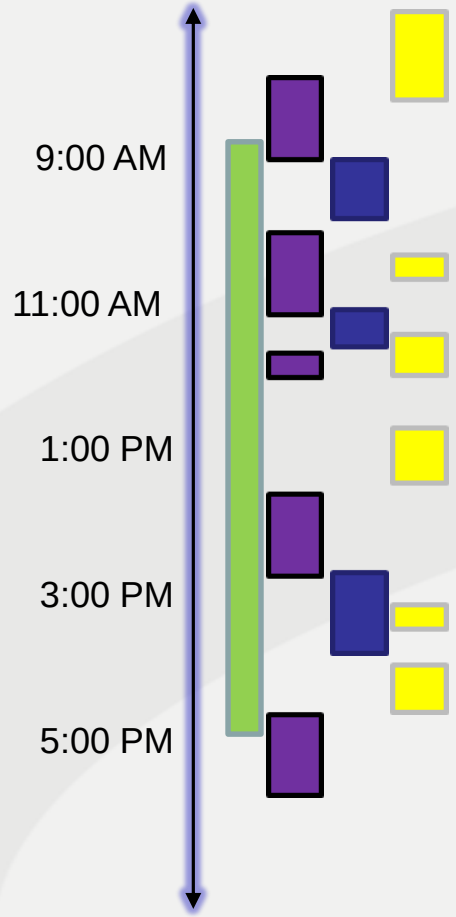
Customer Visit

GPS Movement

Timecard Entry

Personal Phone Calls





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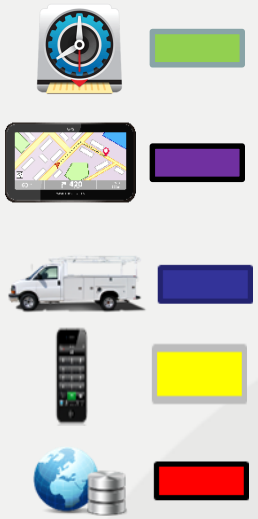

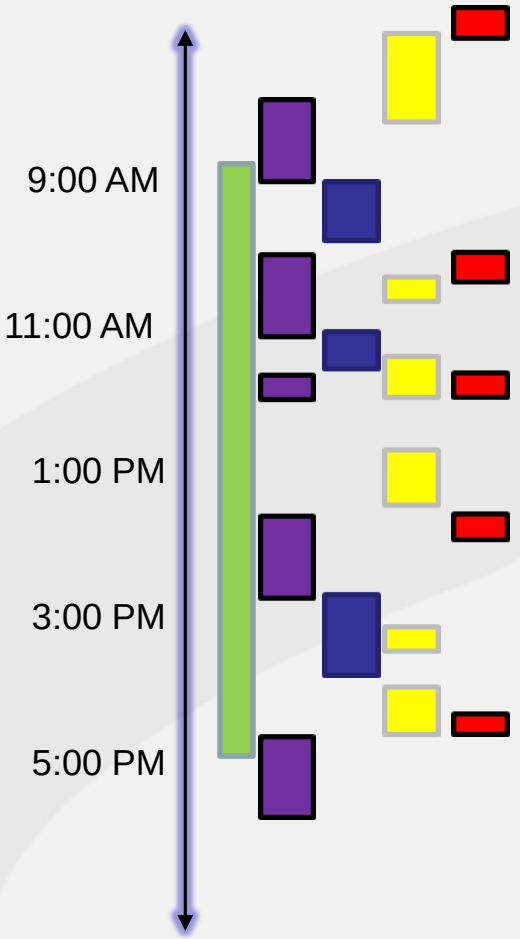

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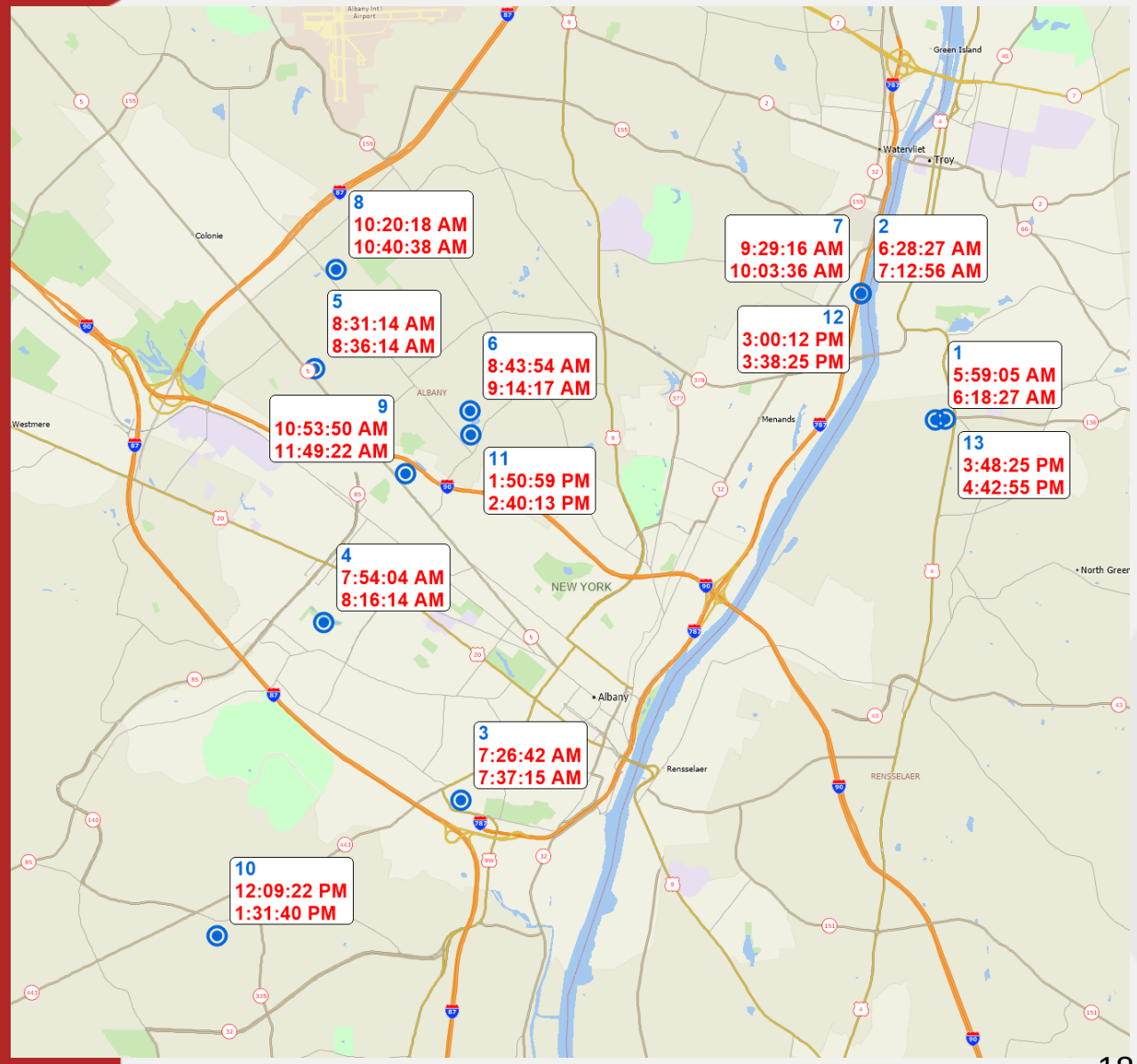
Where HE Was



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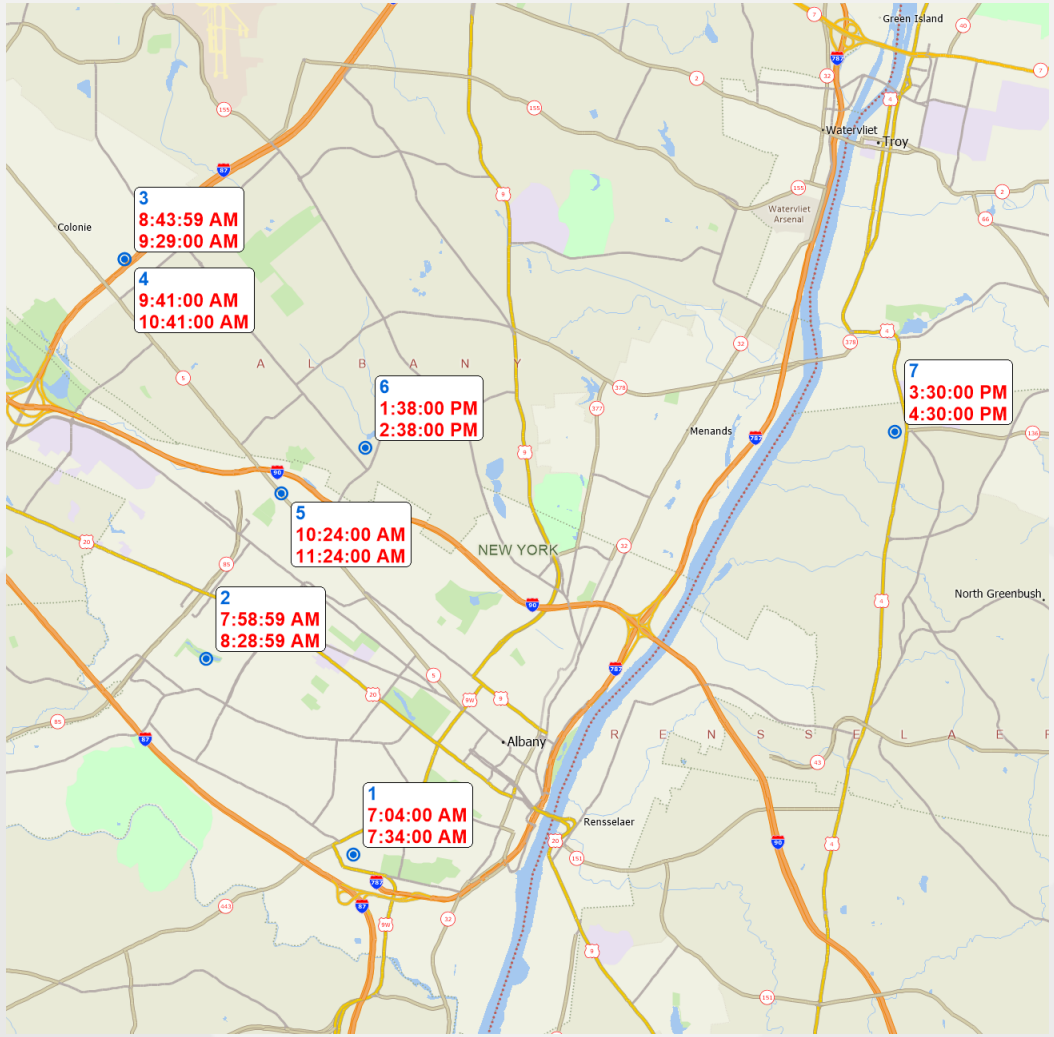

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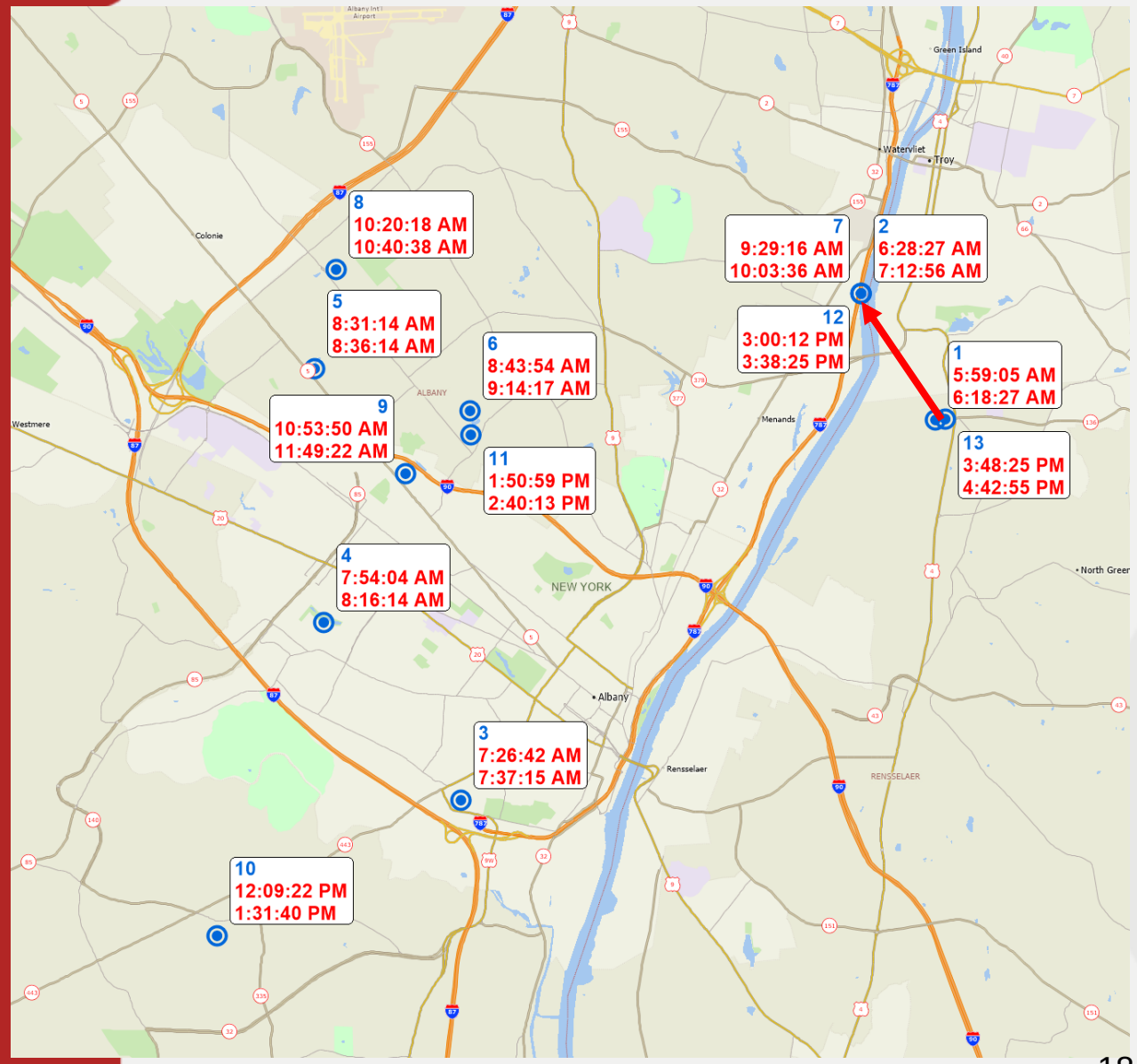

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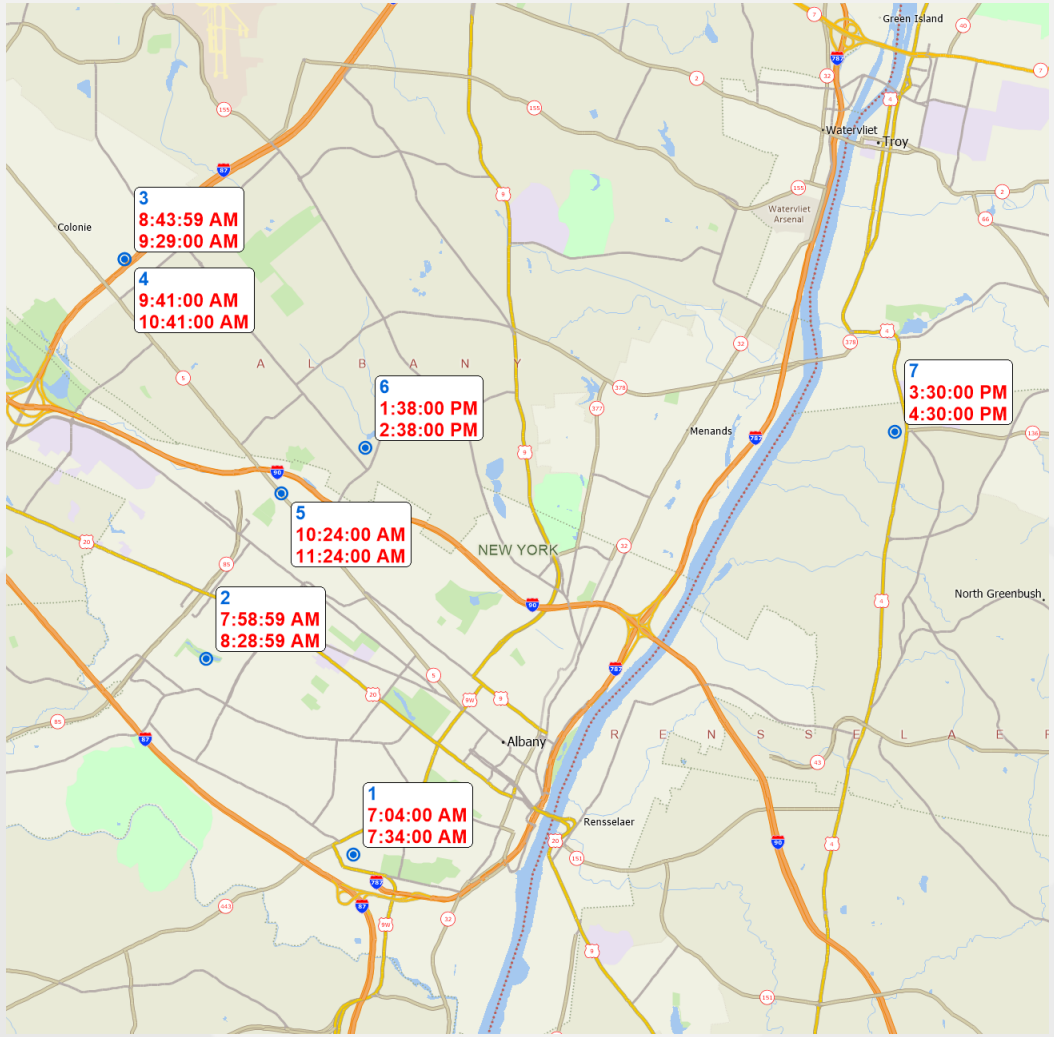

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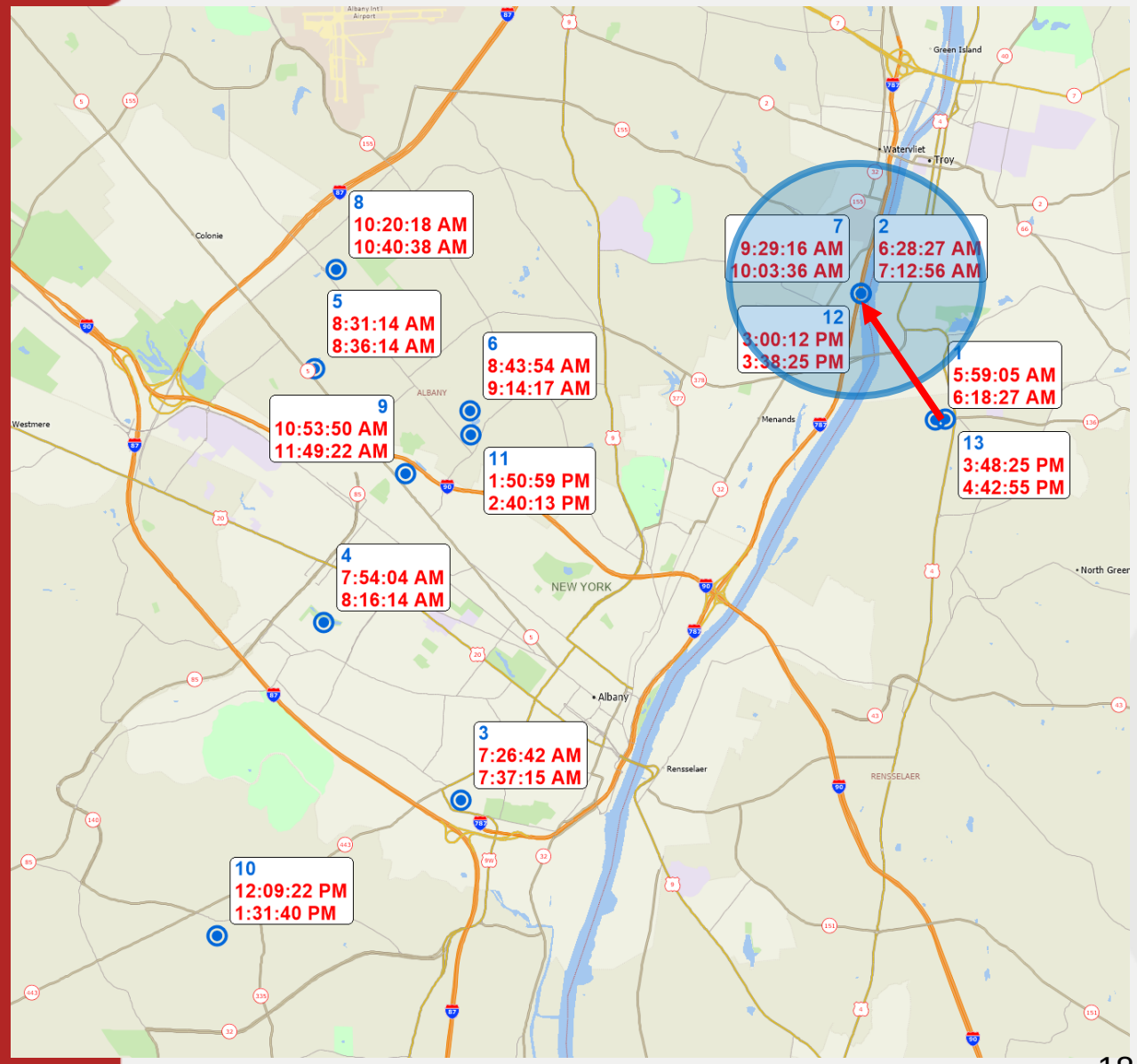

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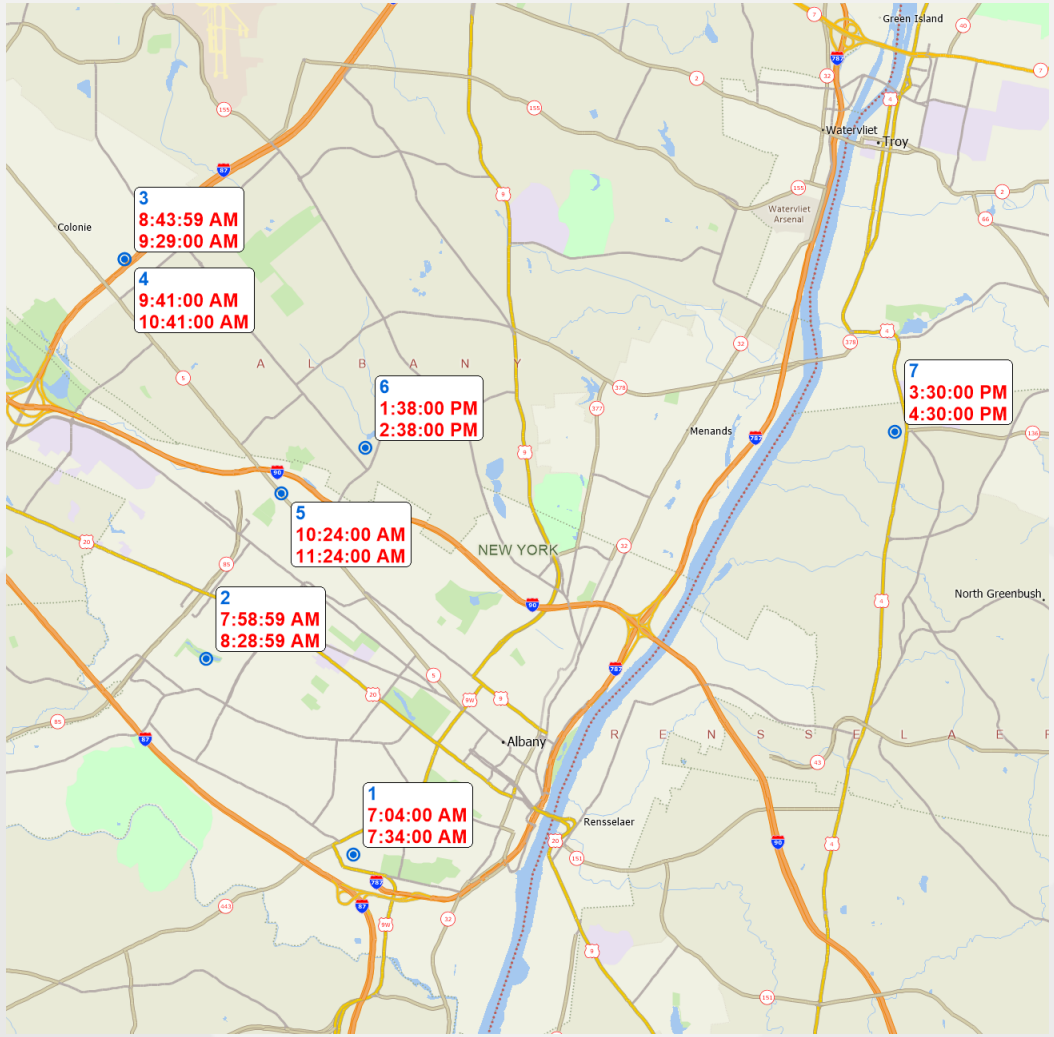

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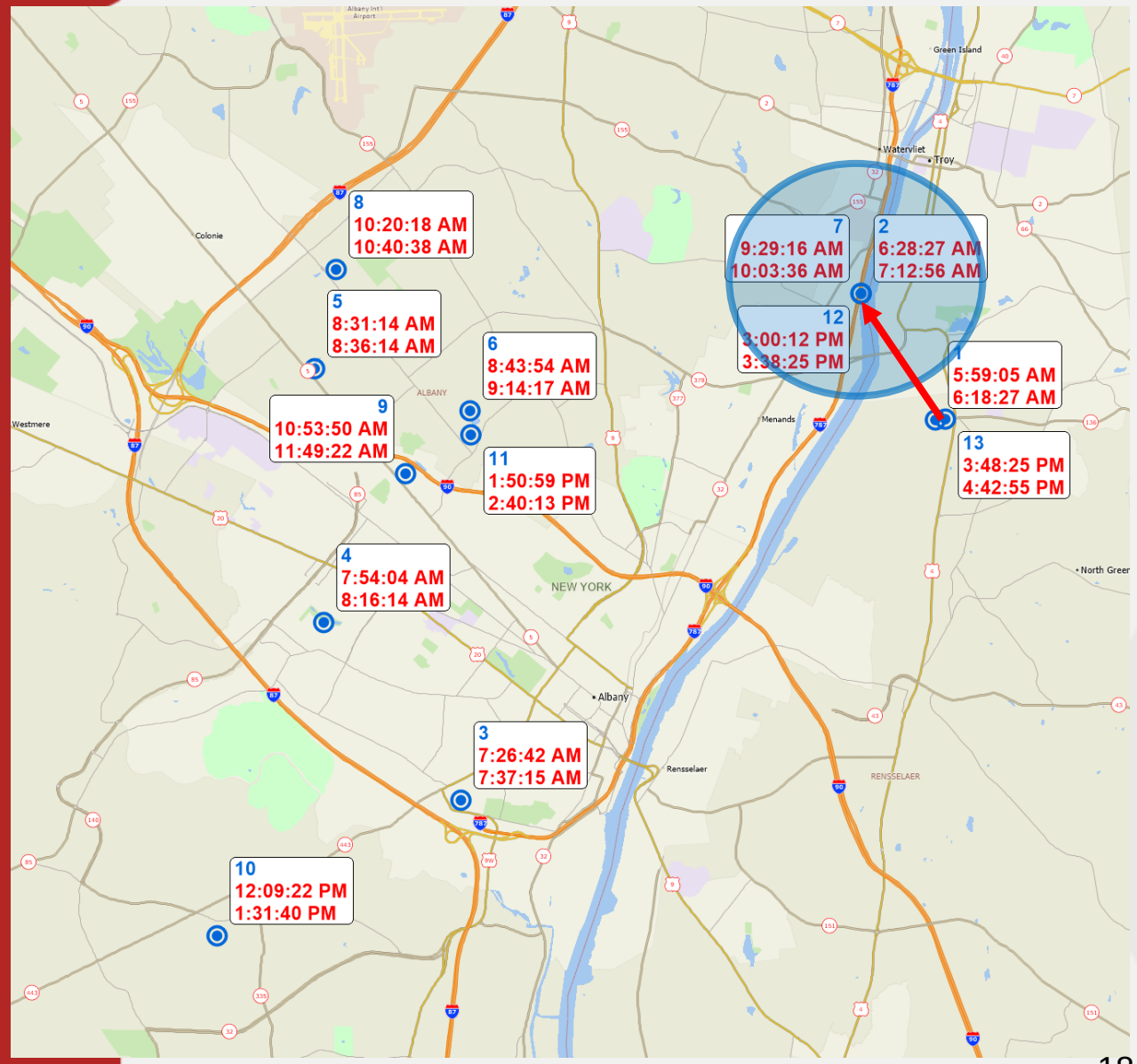

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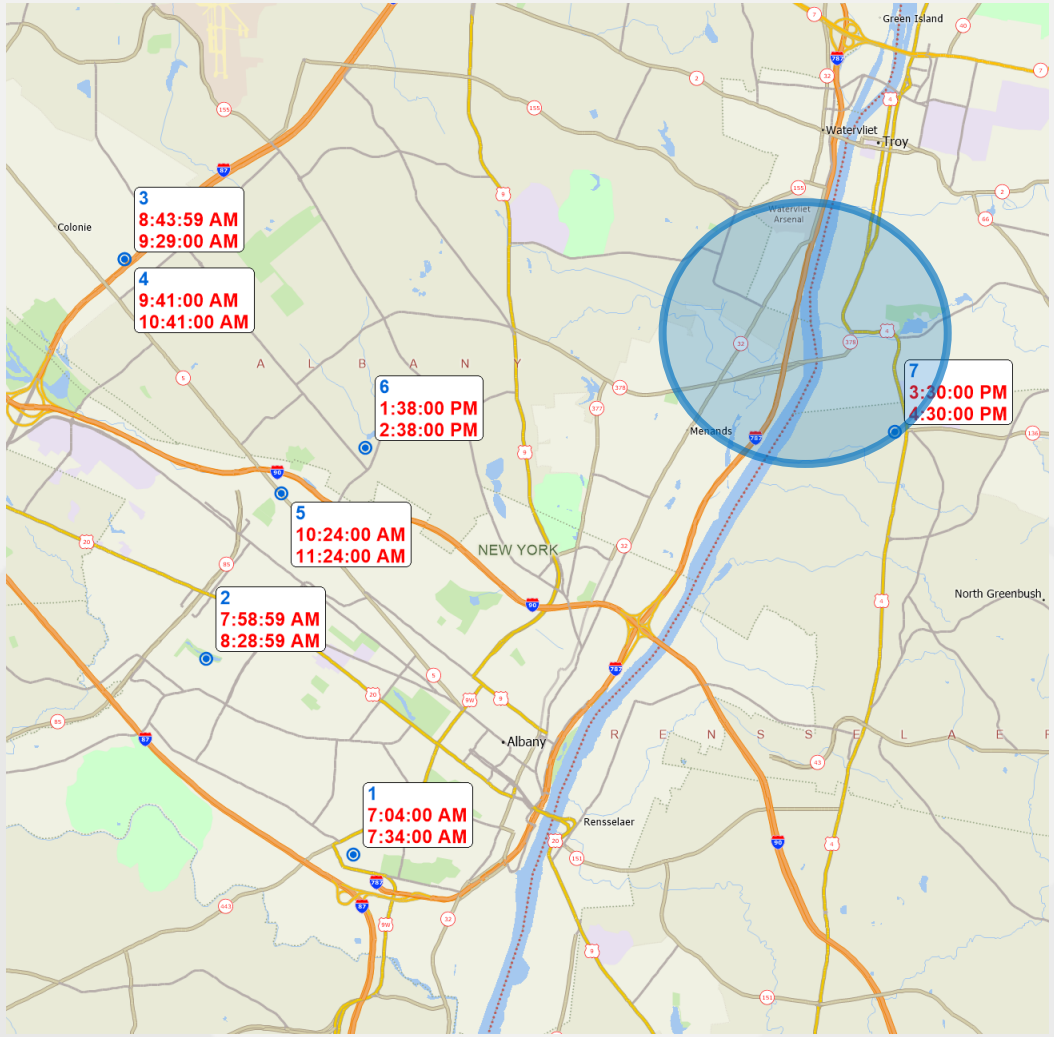

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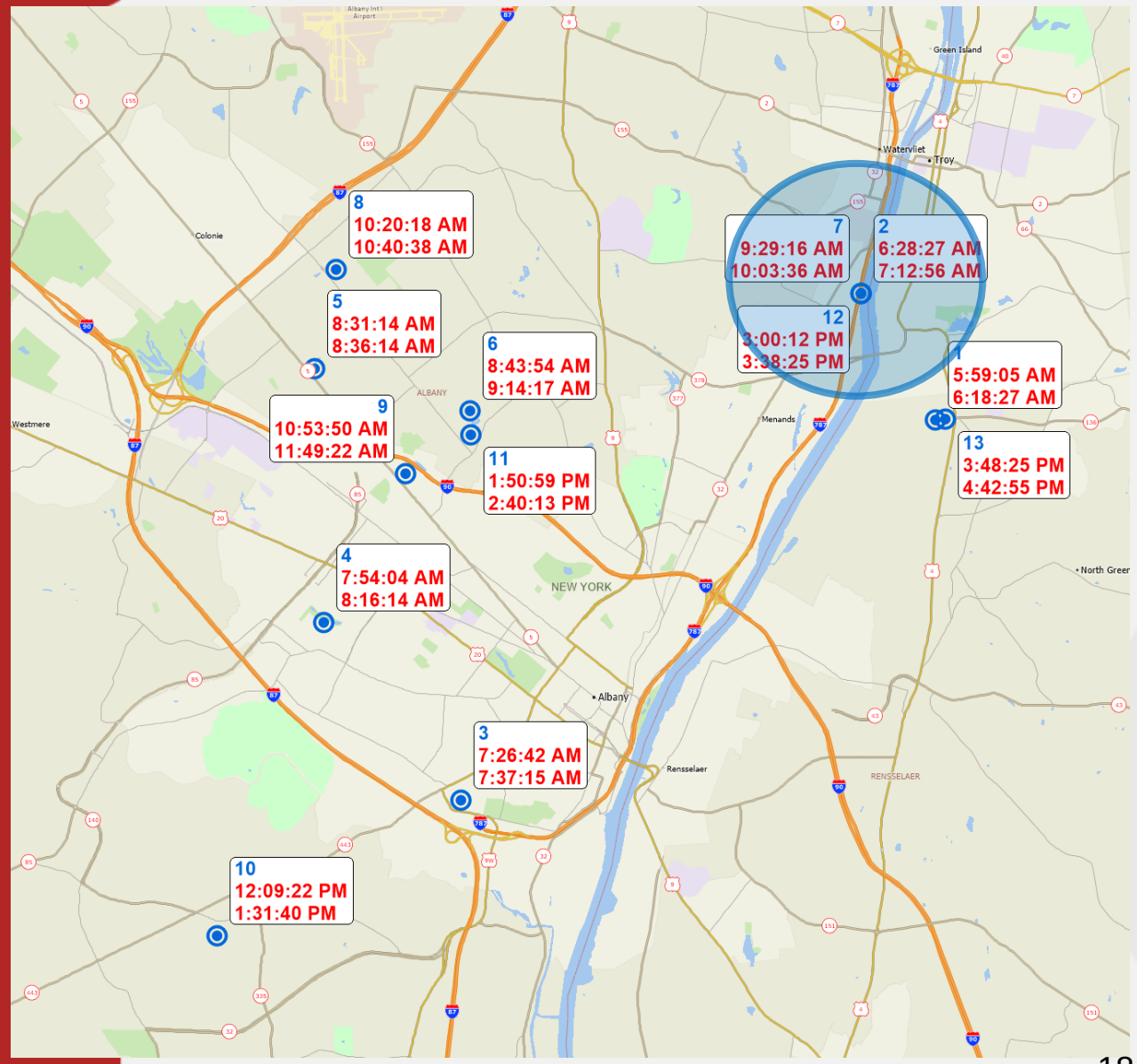

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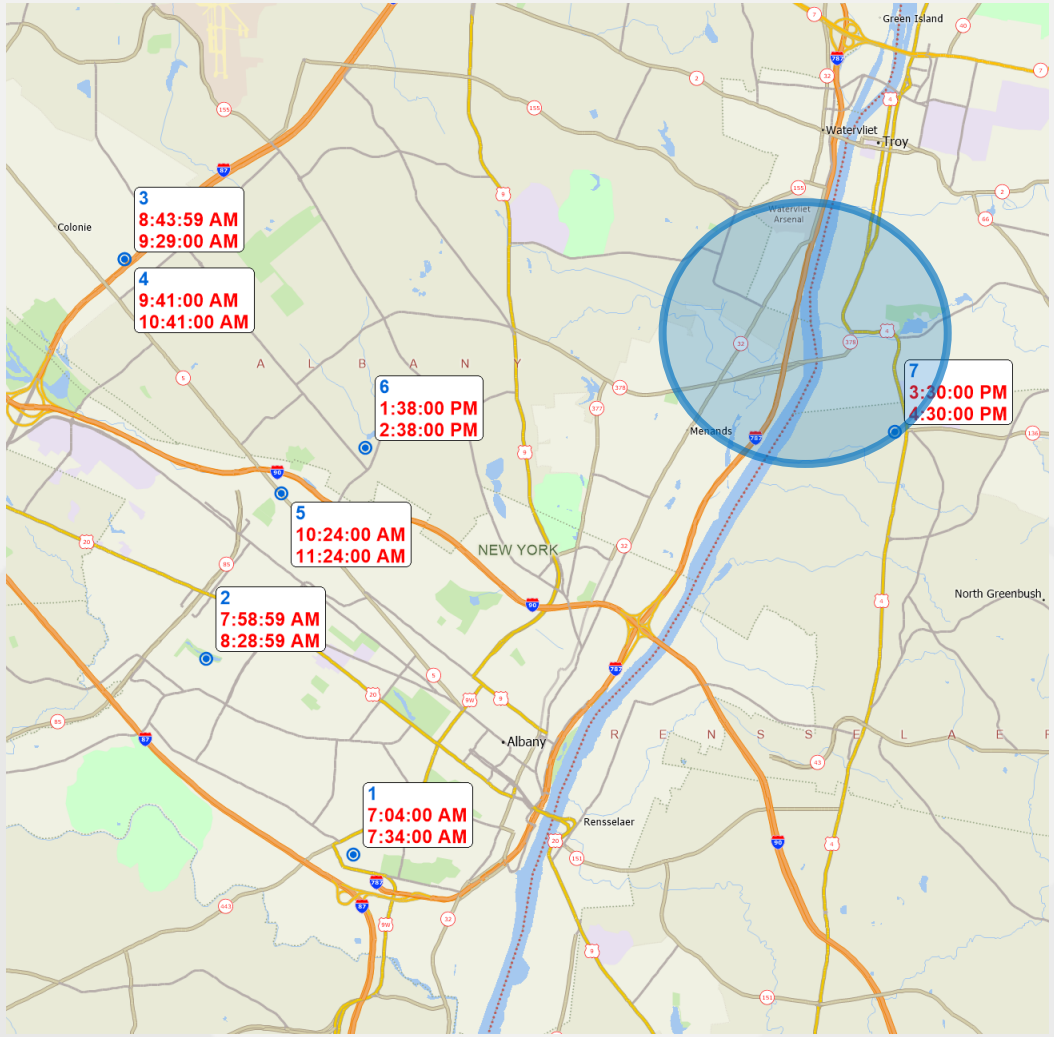

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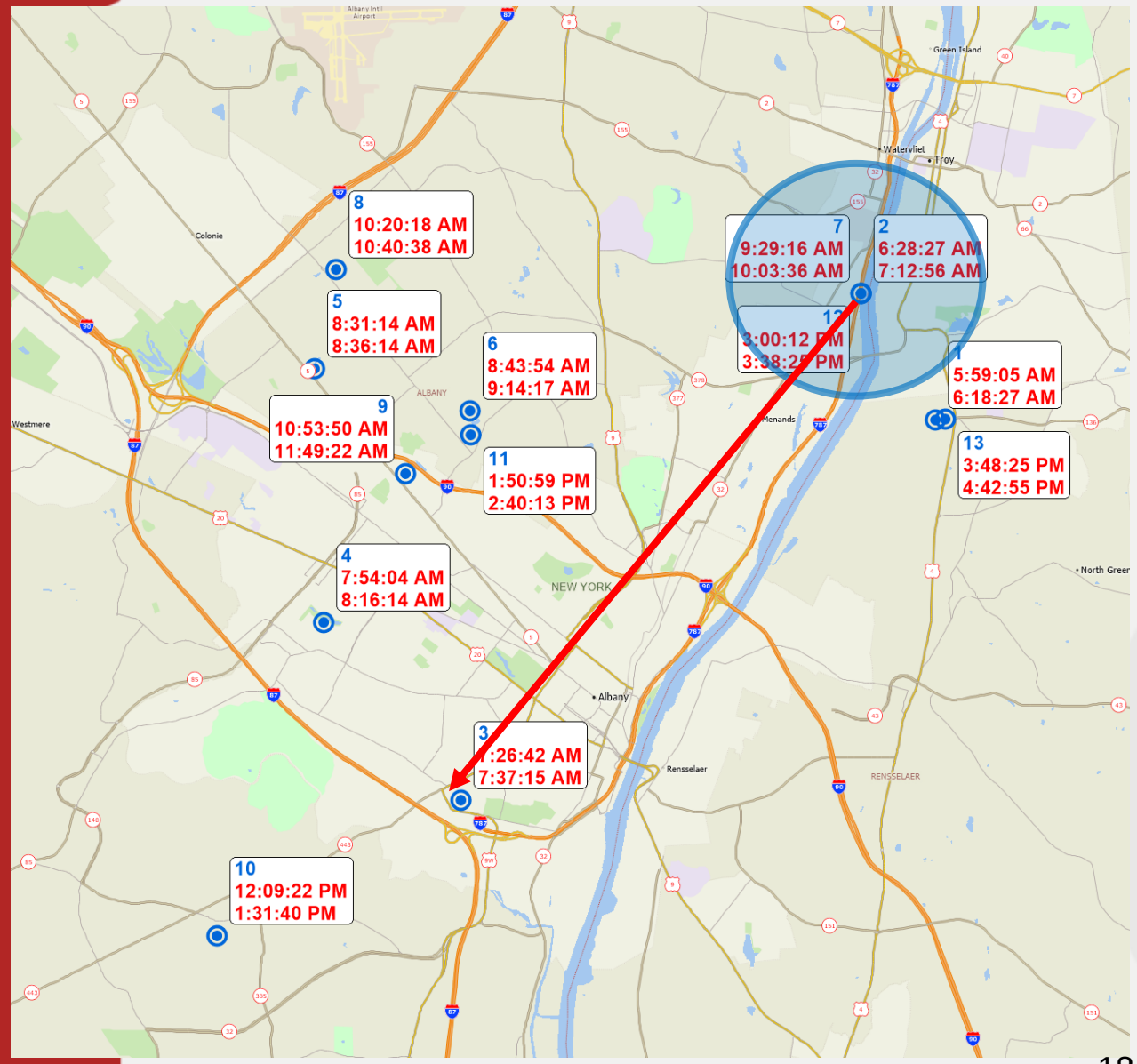

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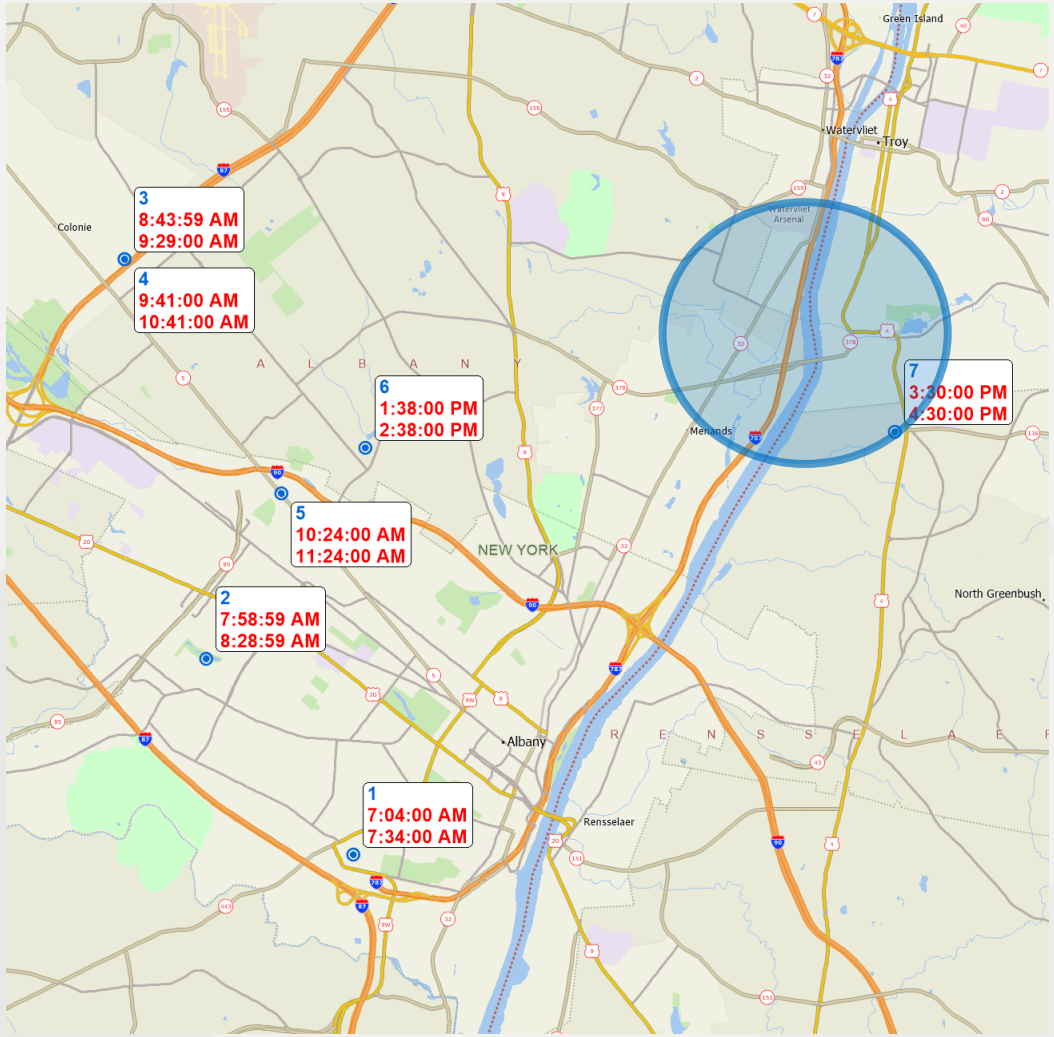

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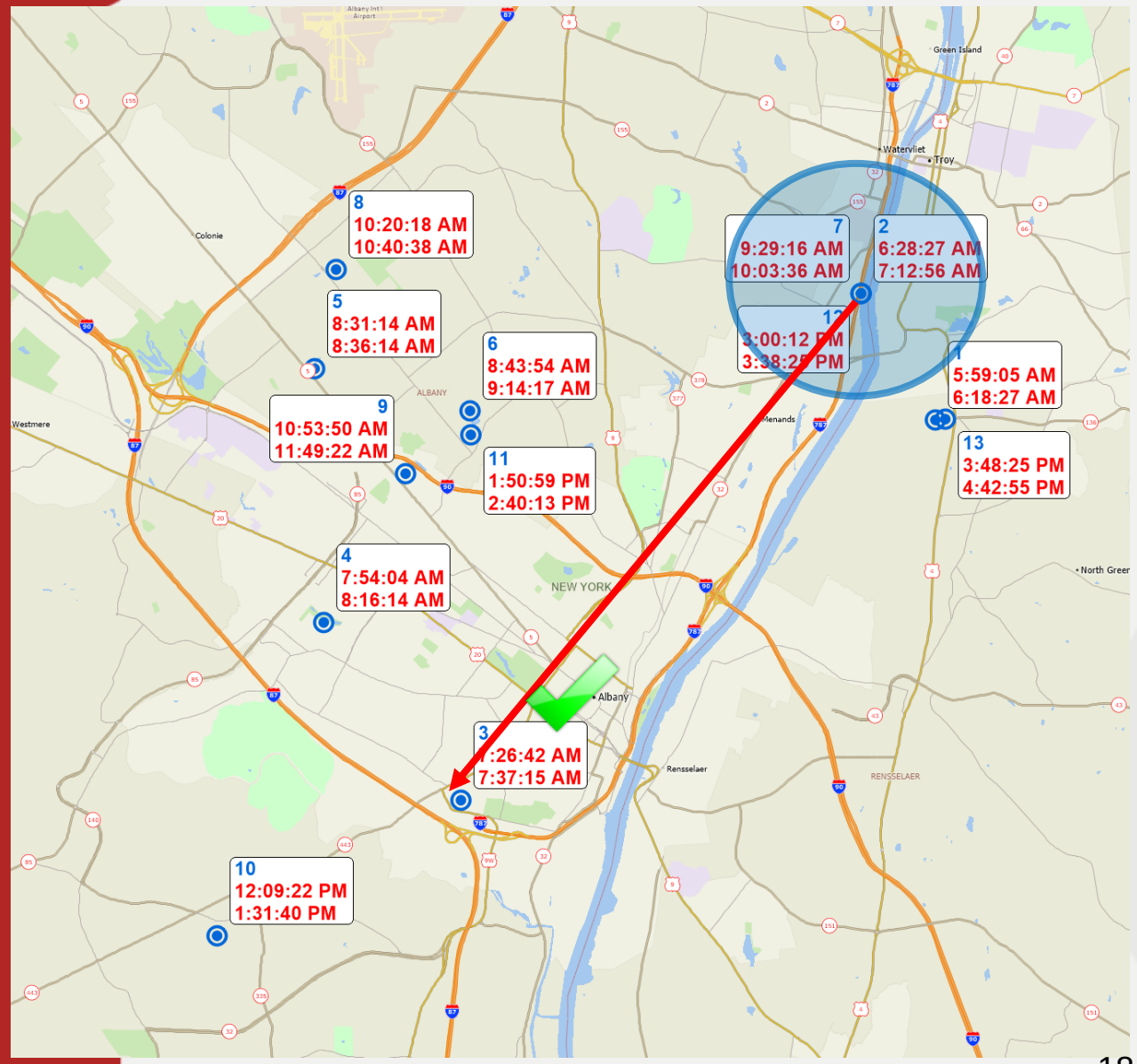

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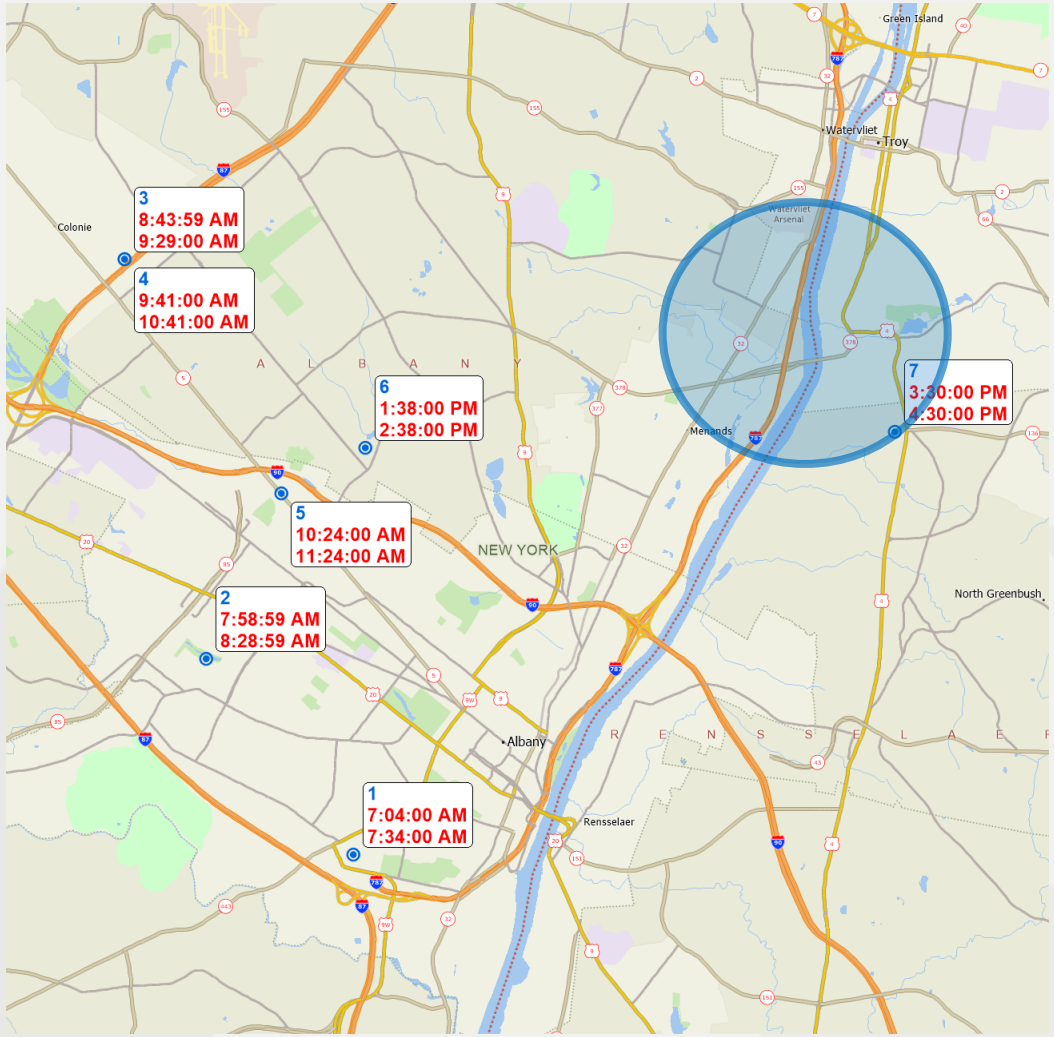

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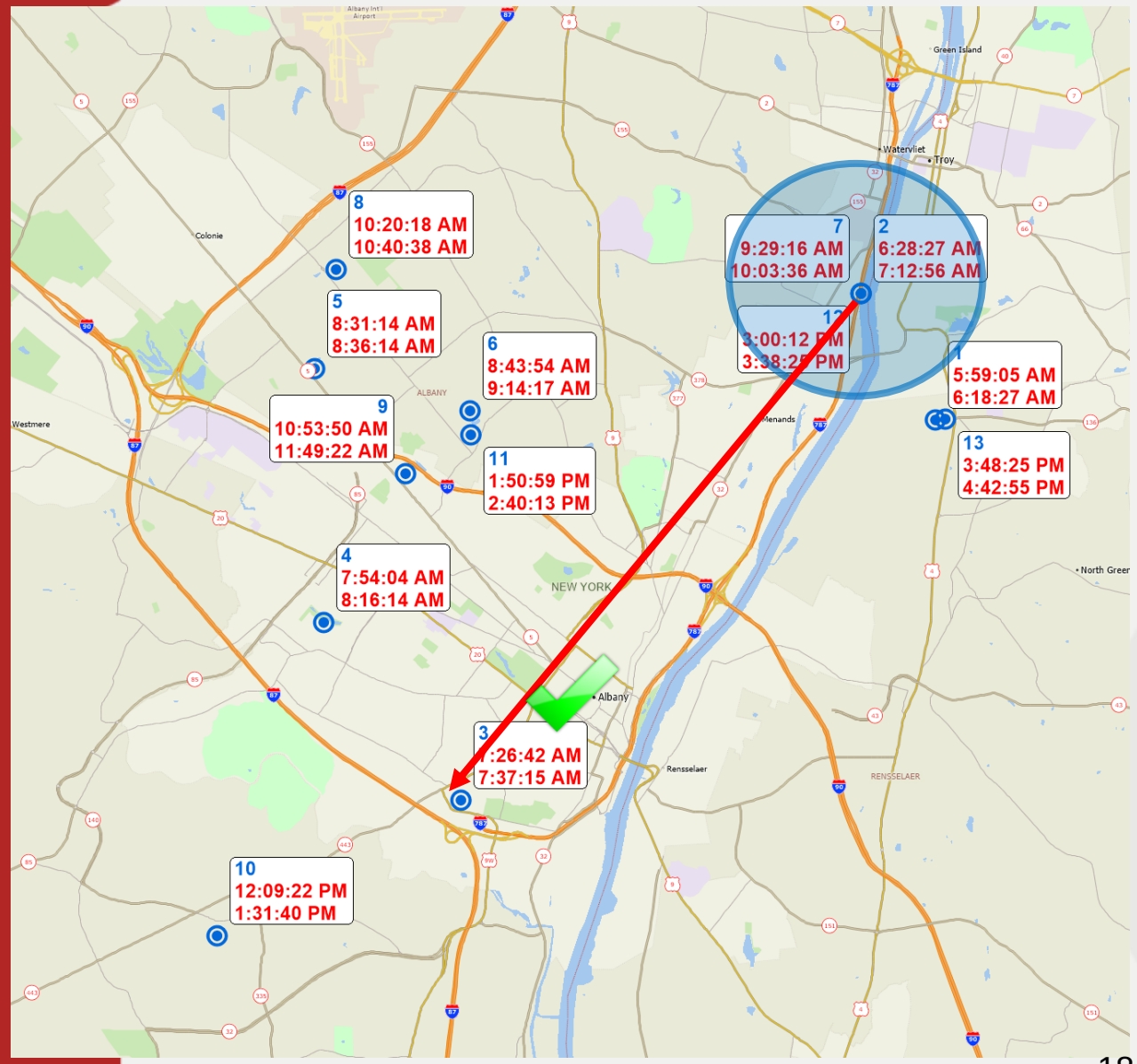

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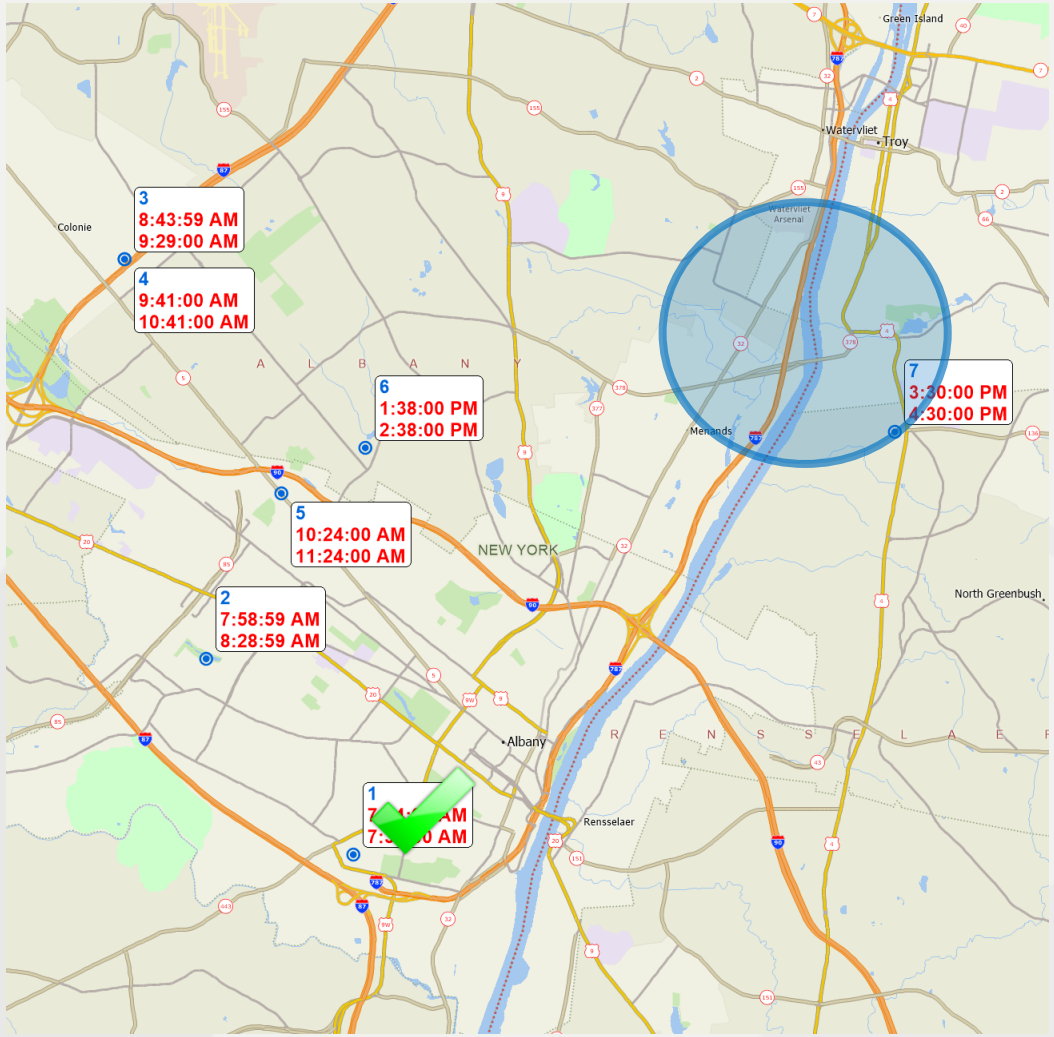

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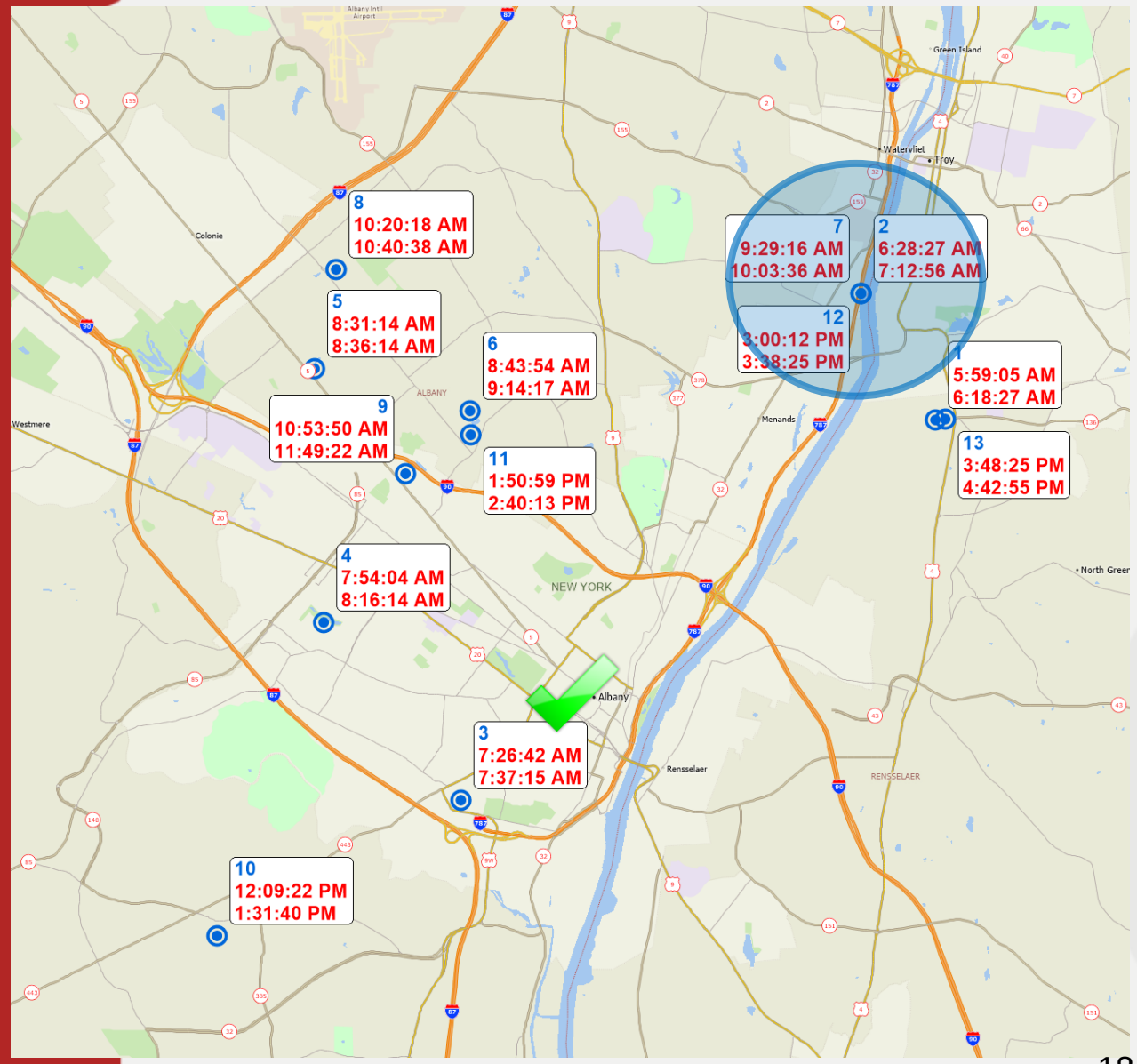

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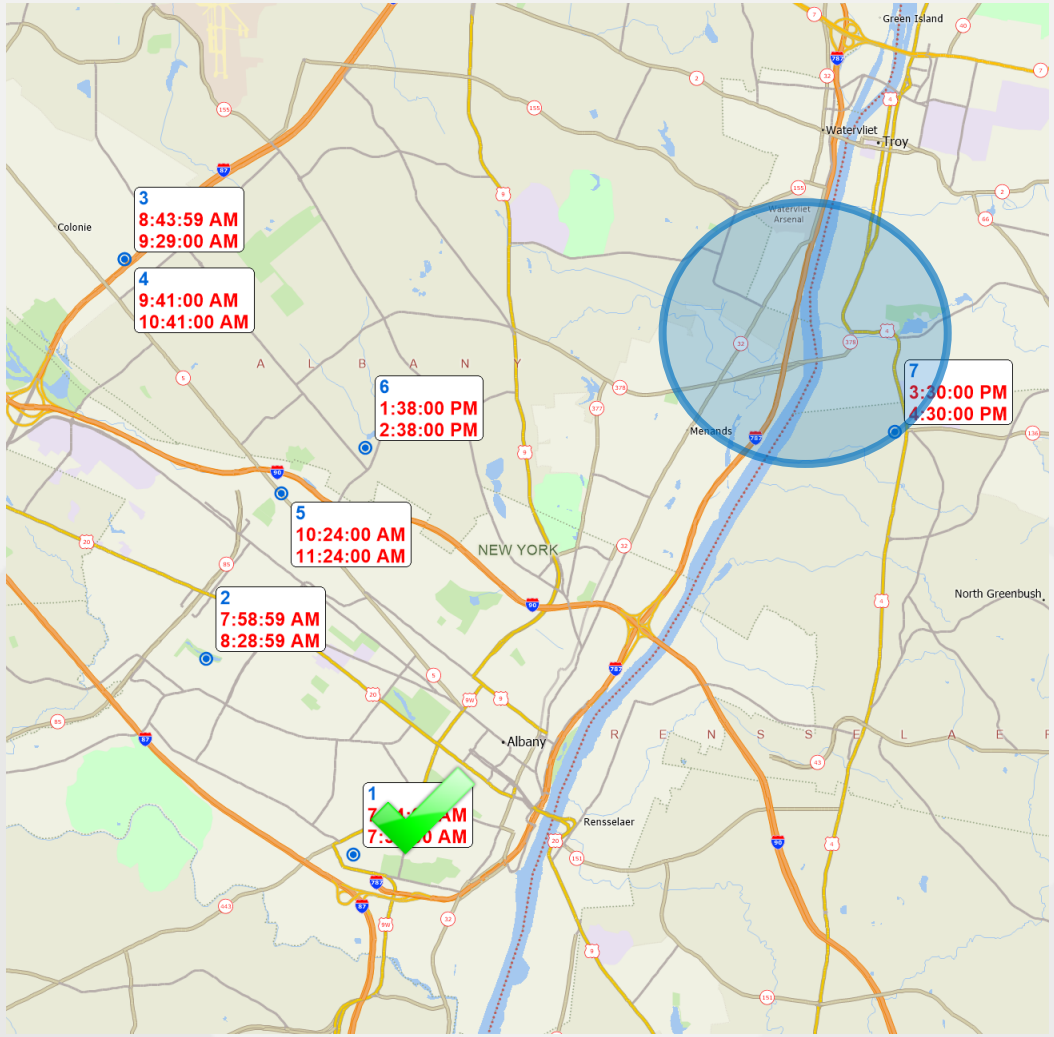

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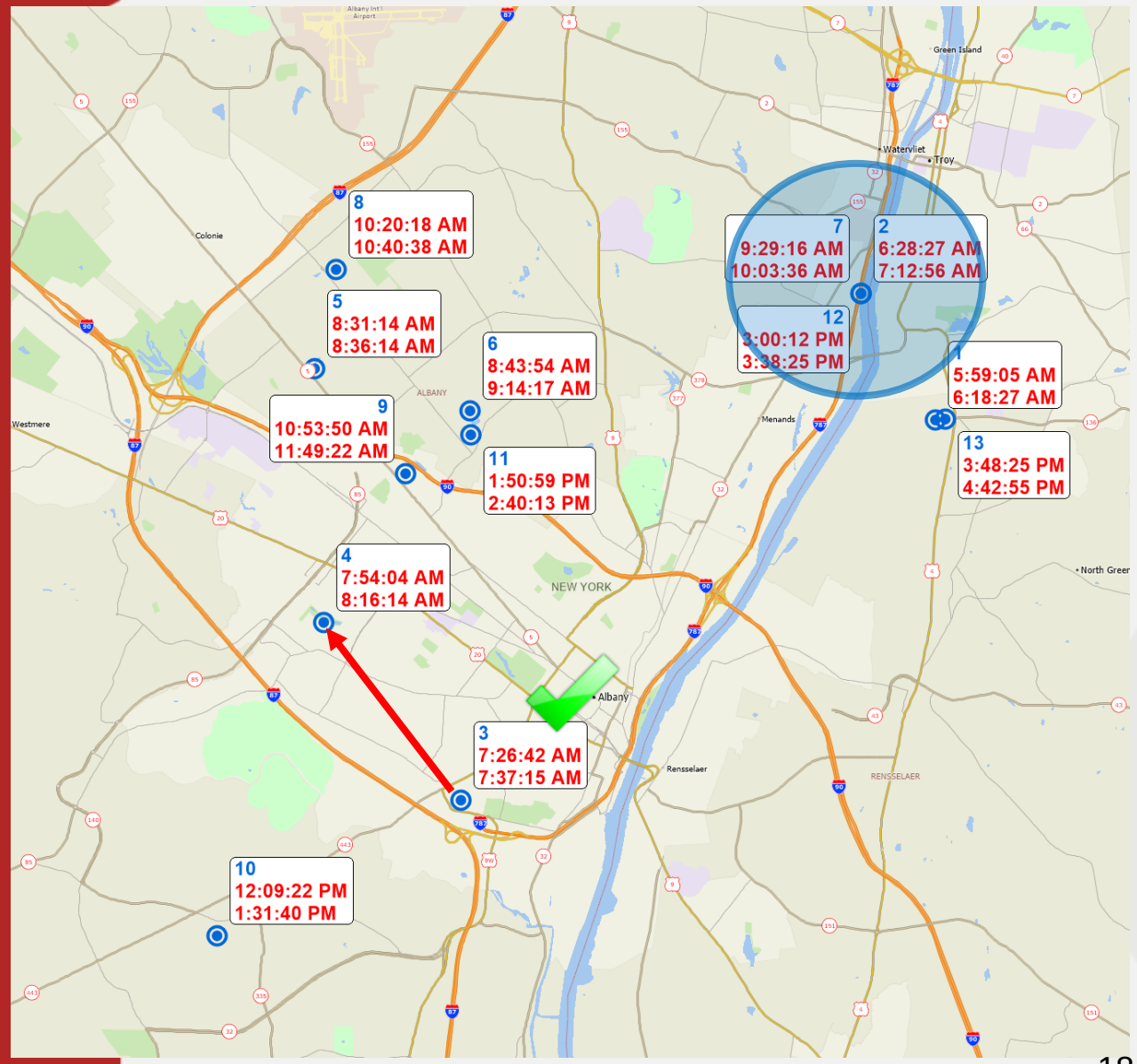

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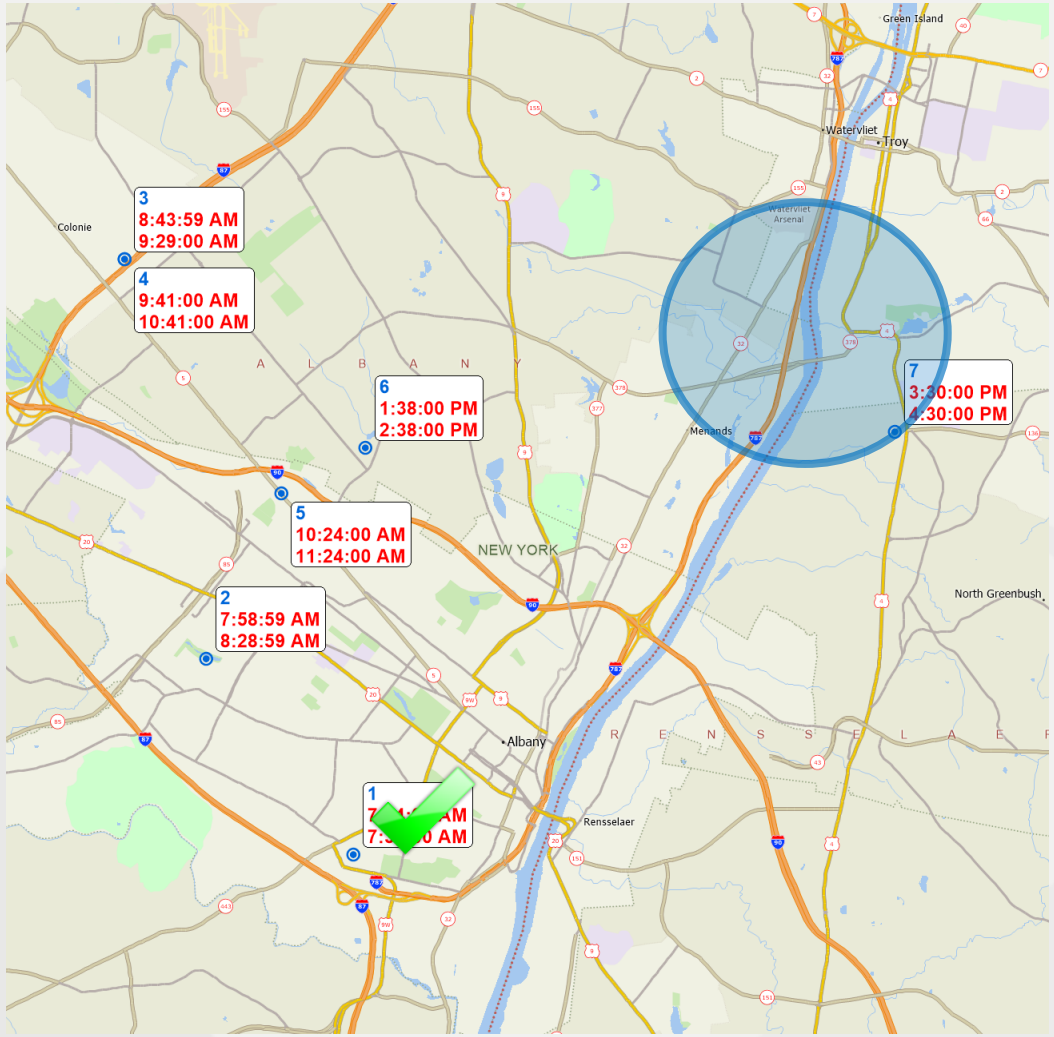

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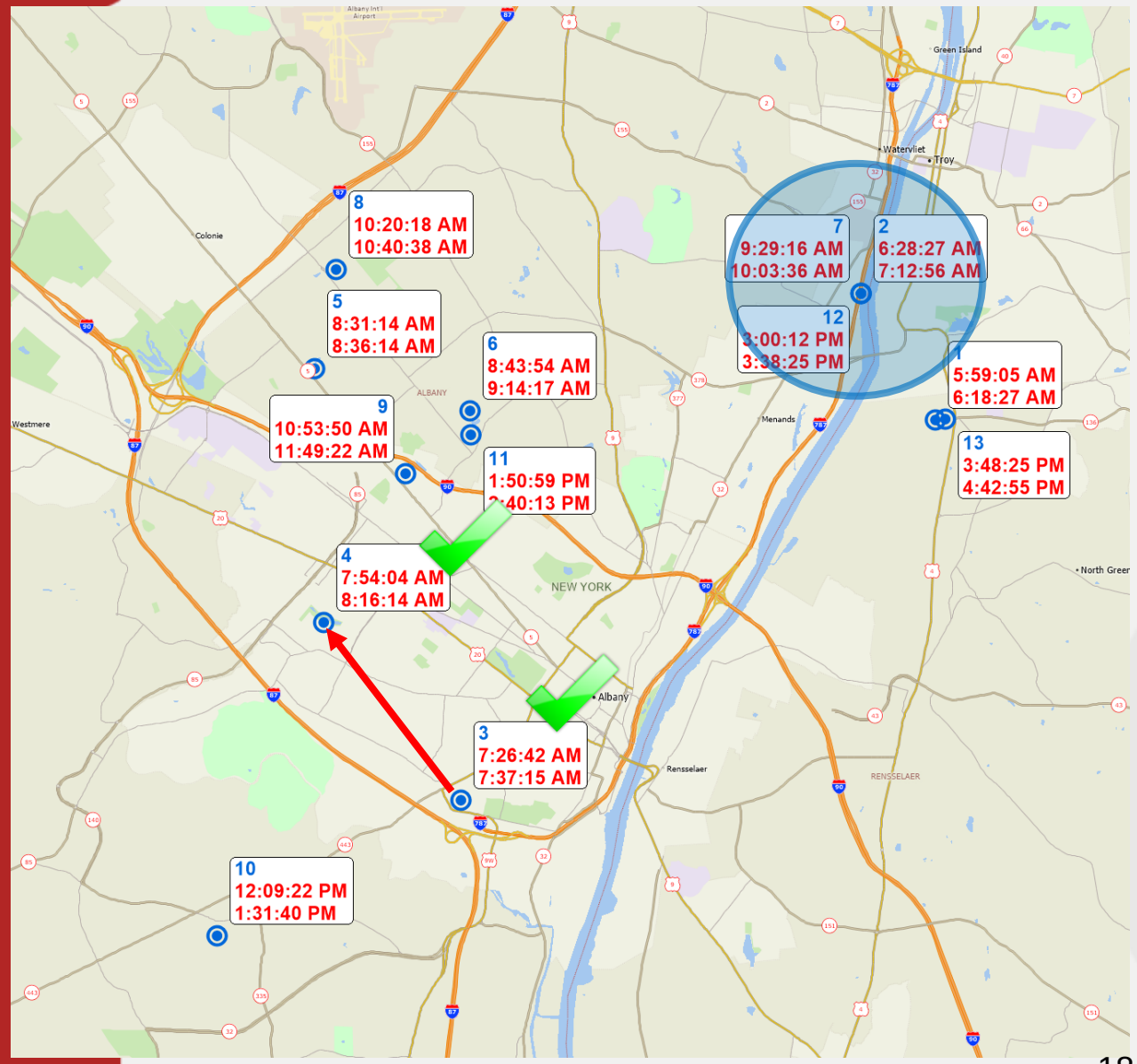

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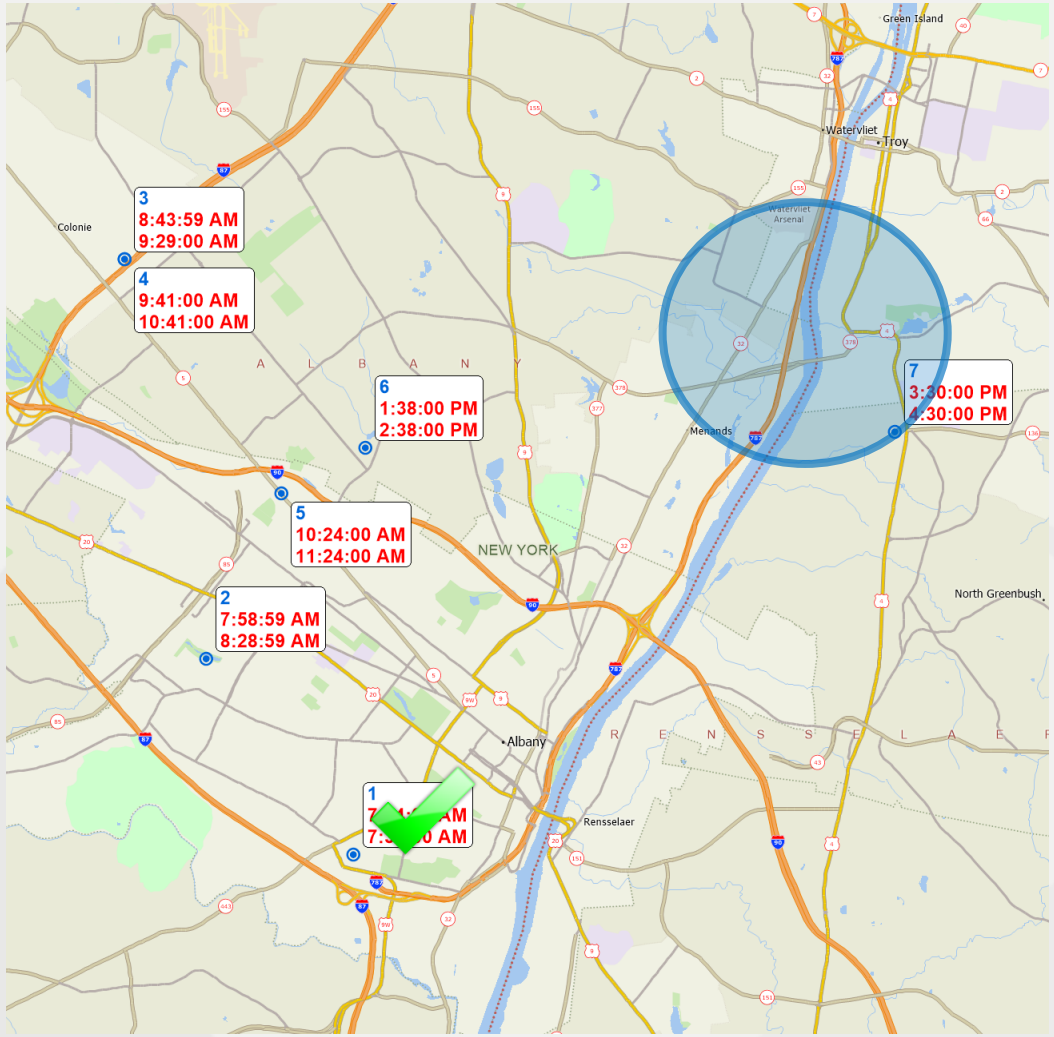

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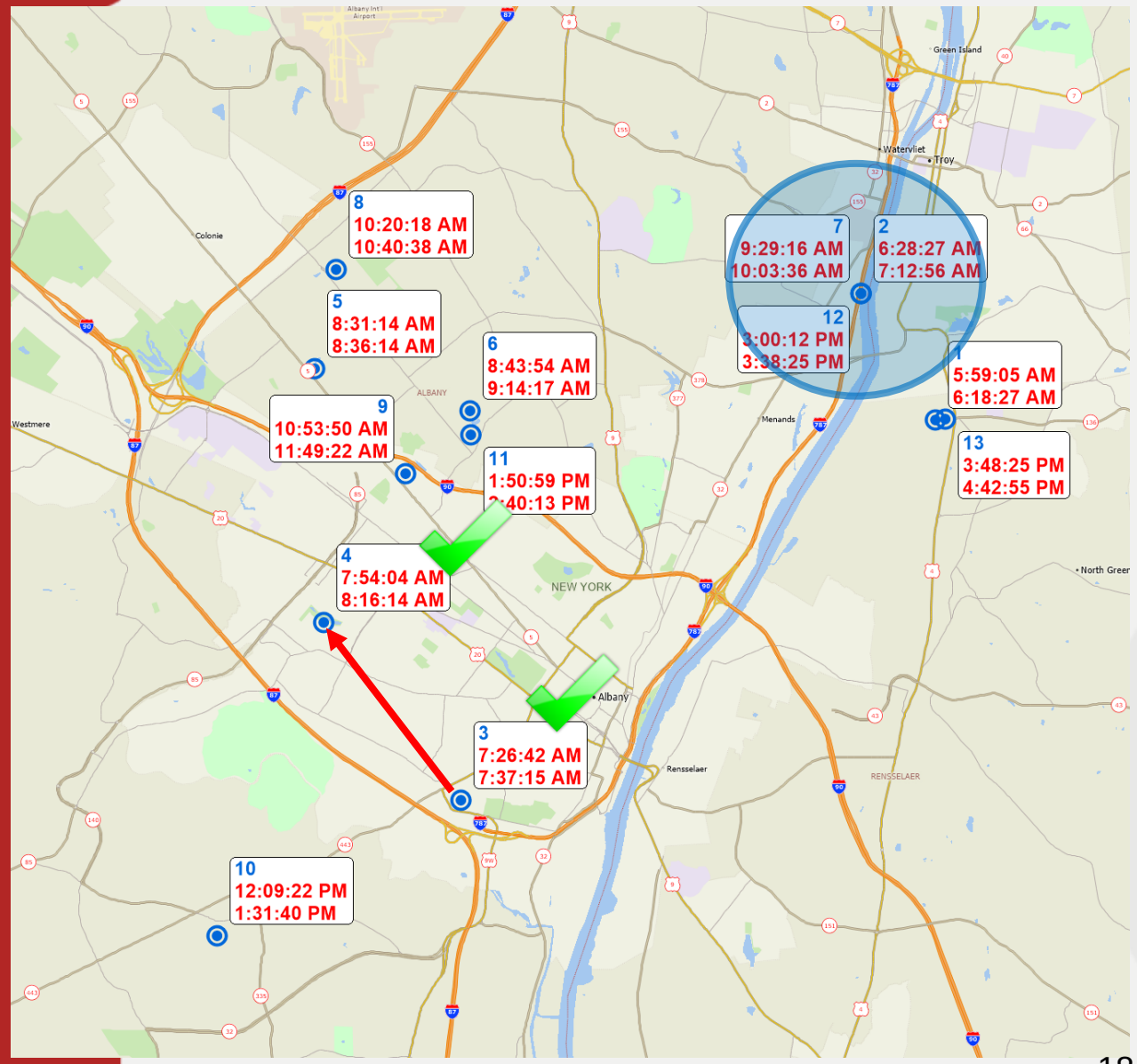

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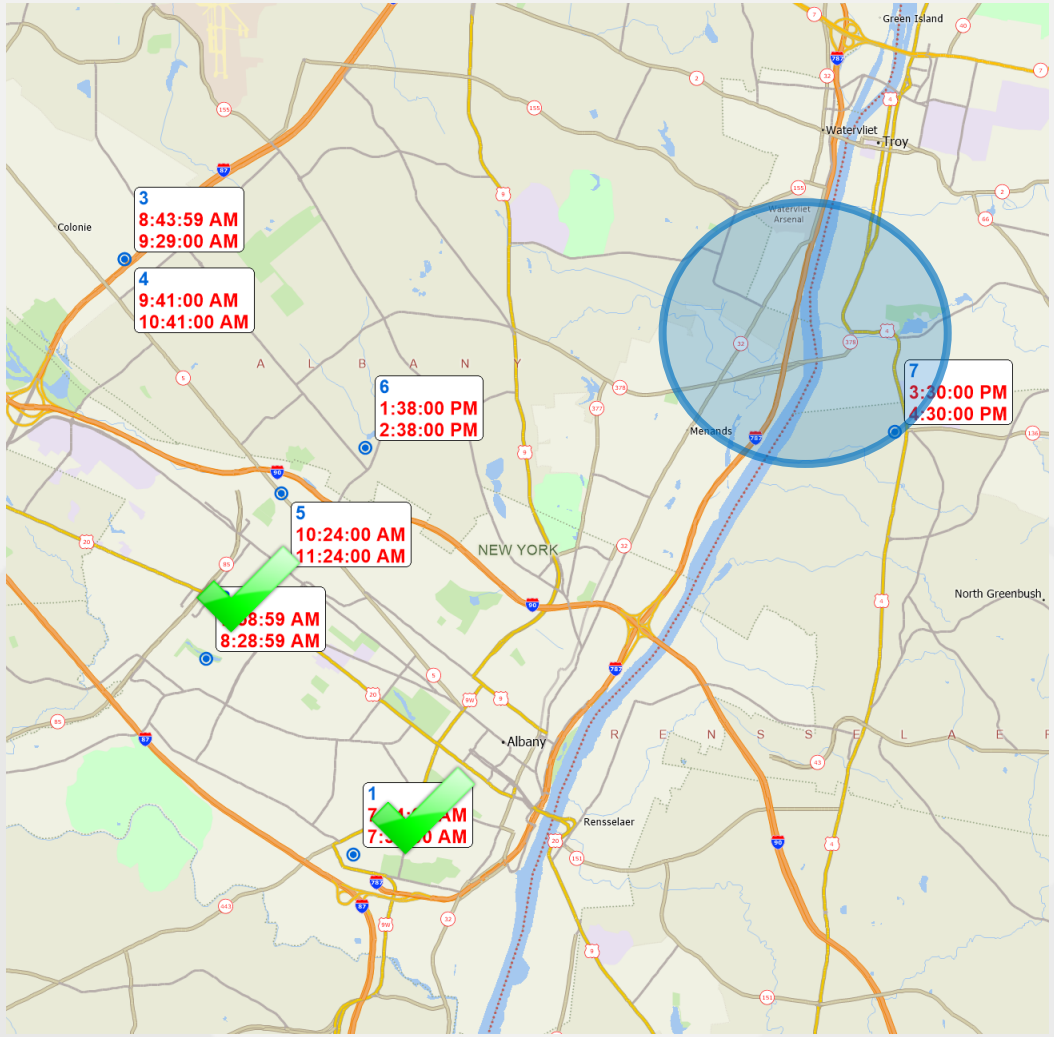

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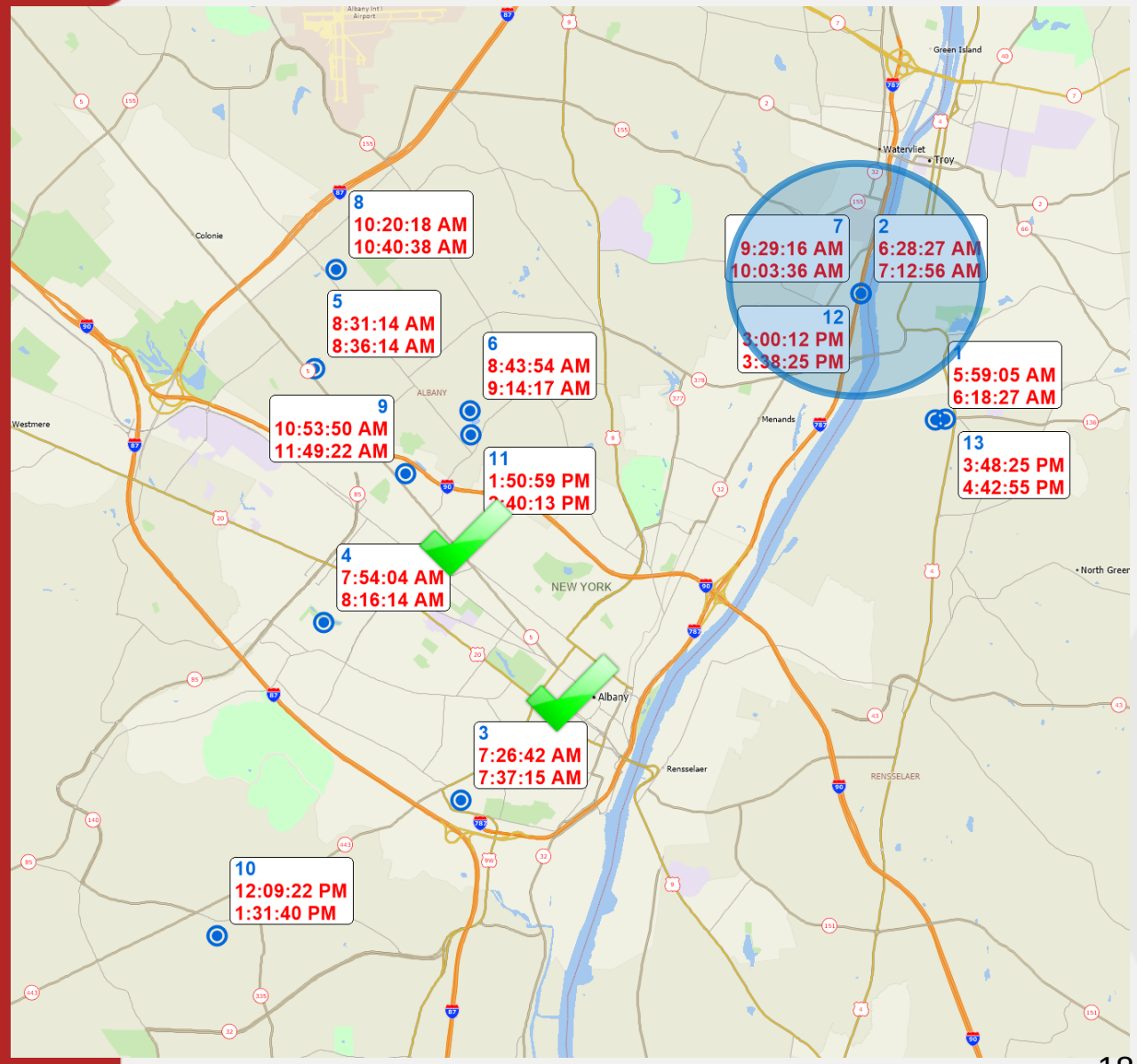

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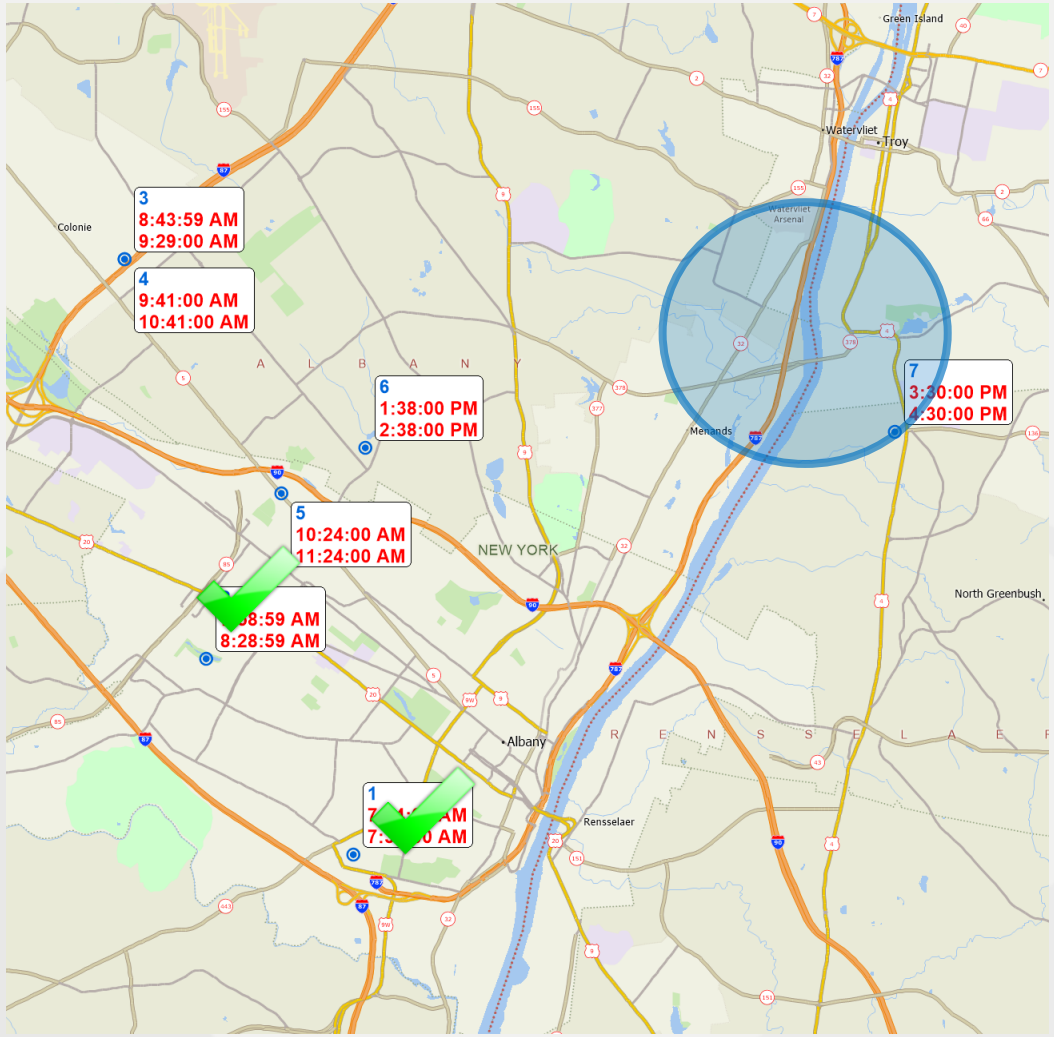

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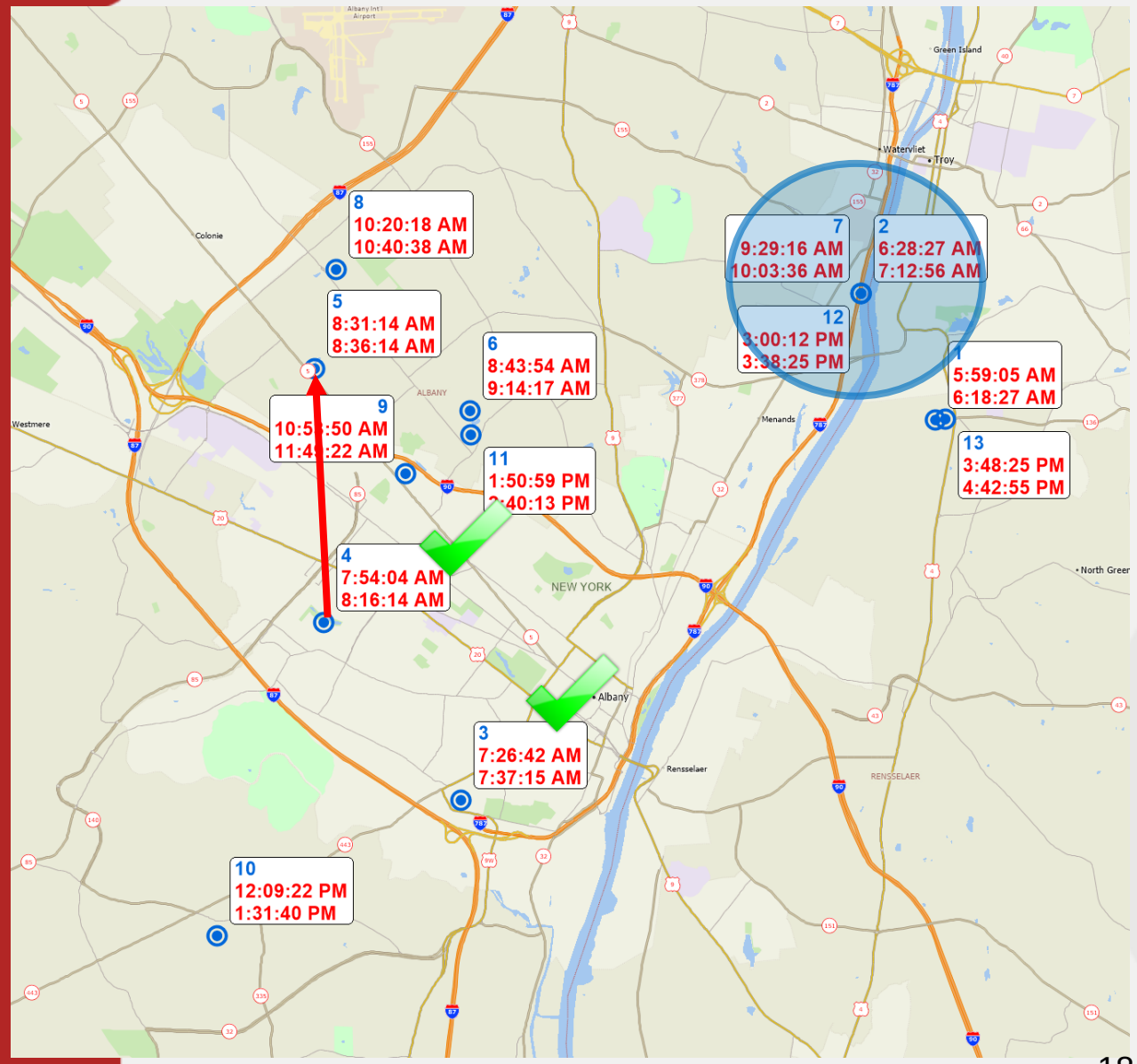

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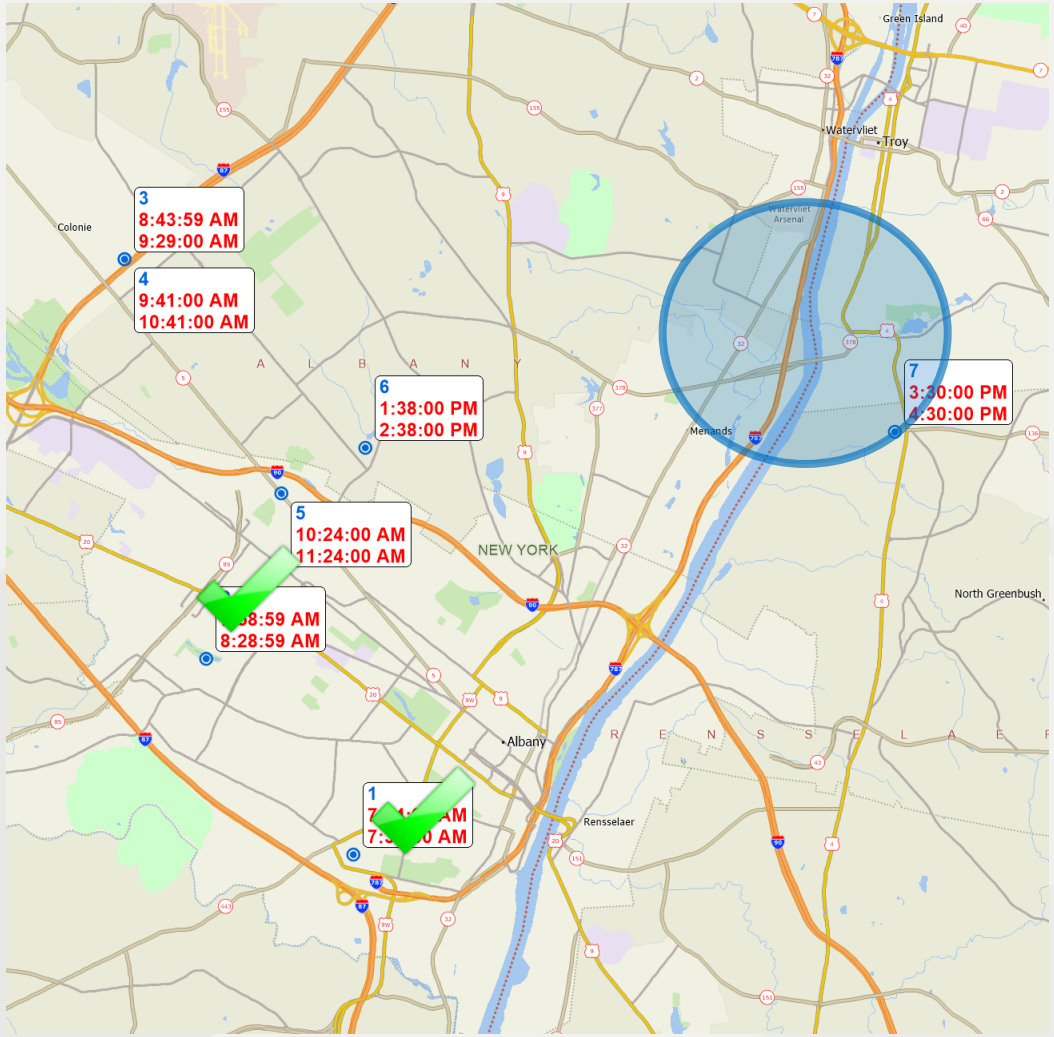

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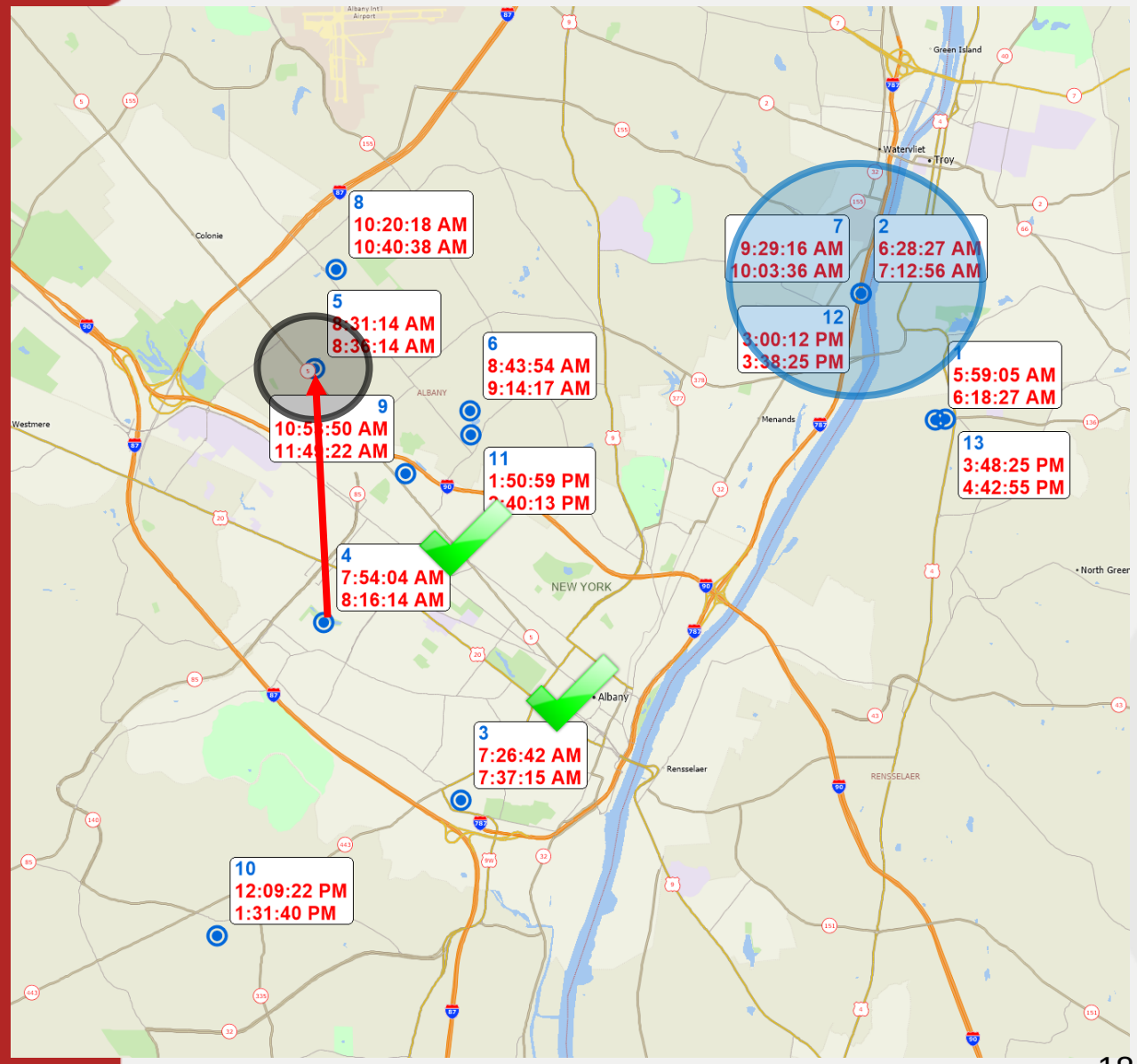

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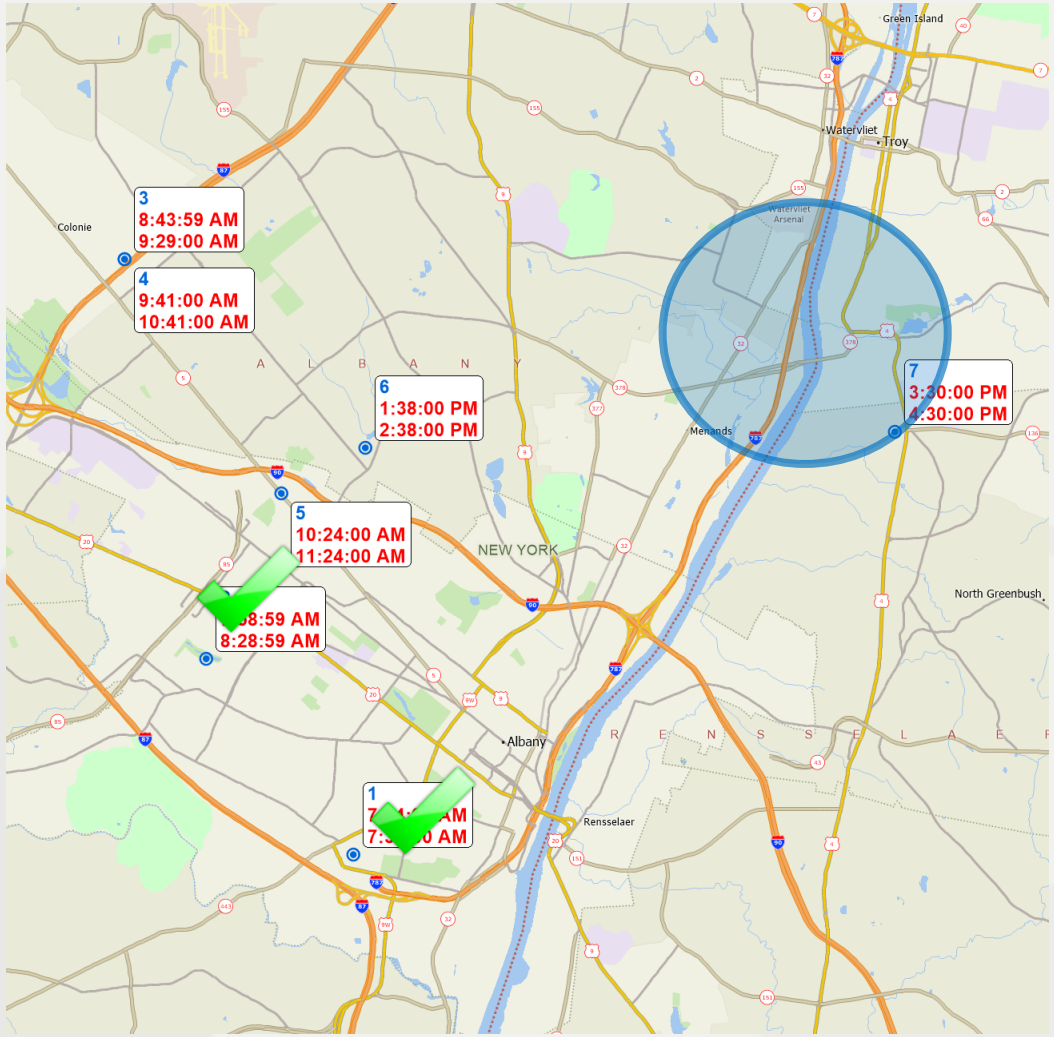

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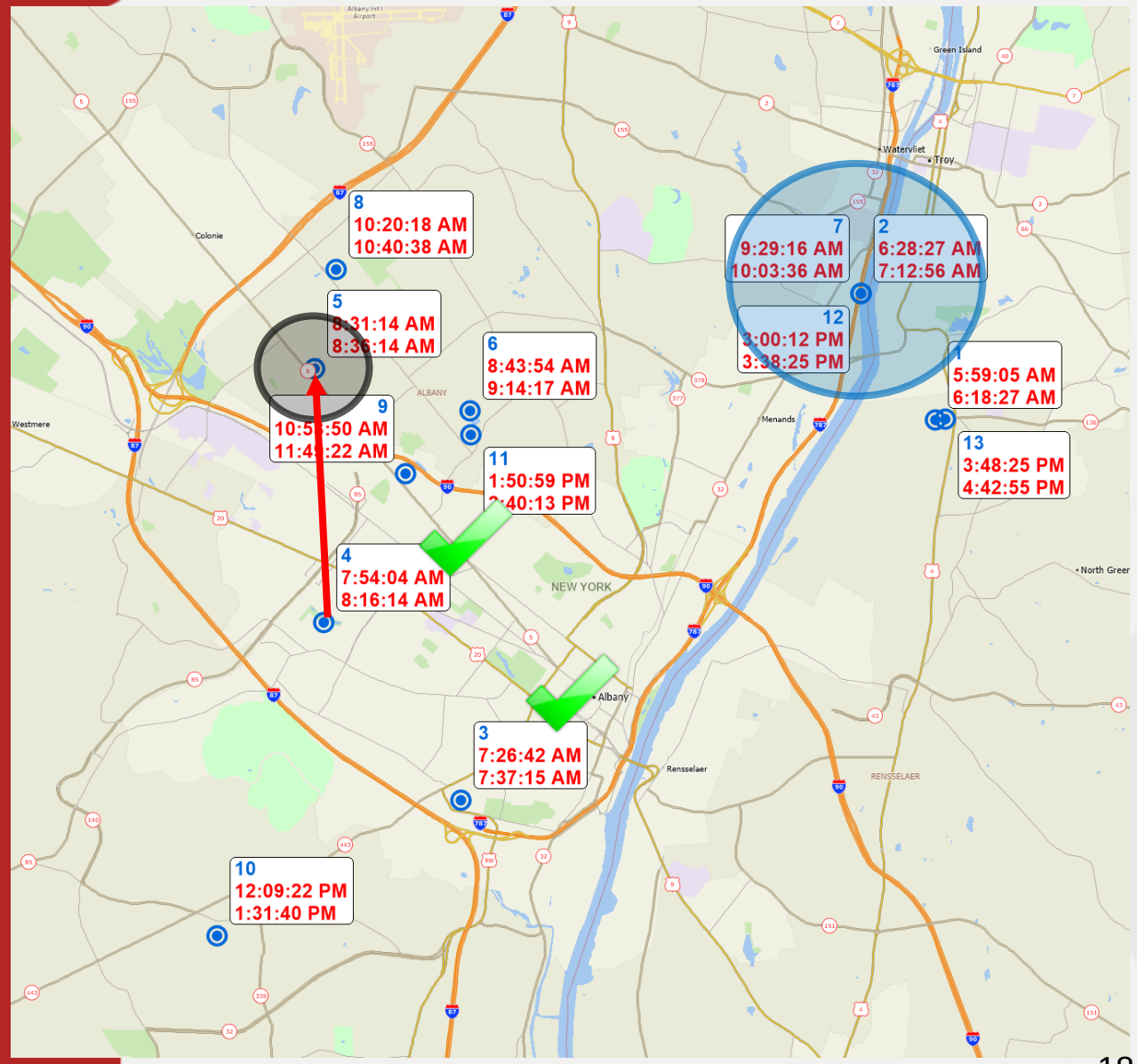

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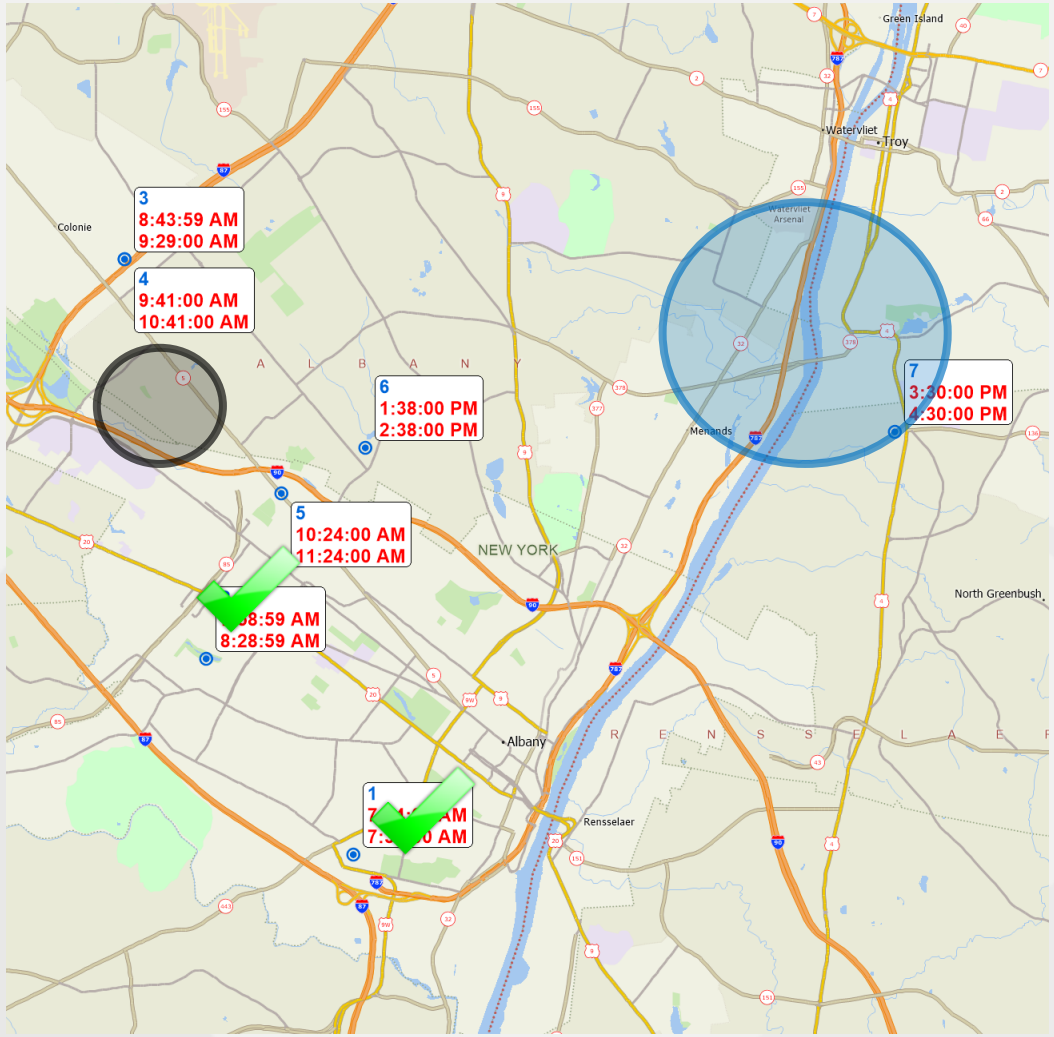

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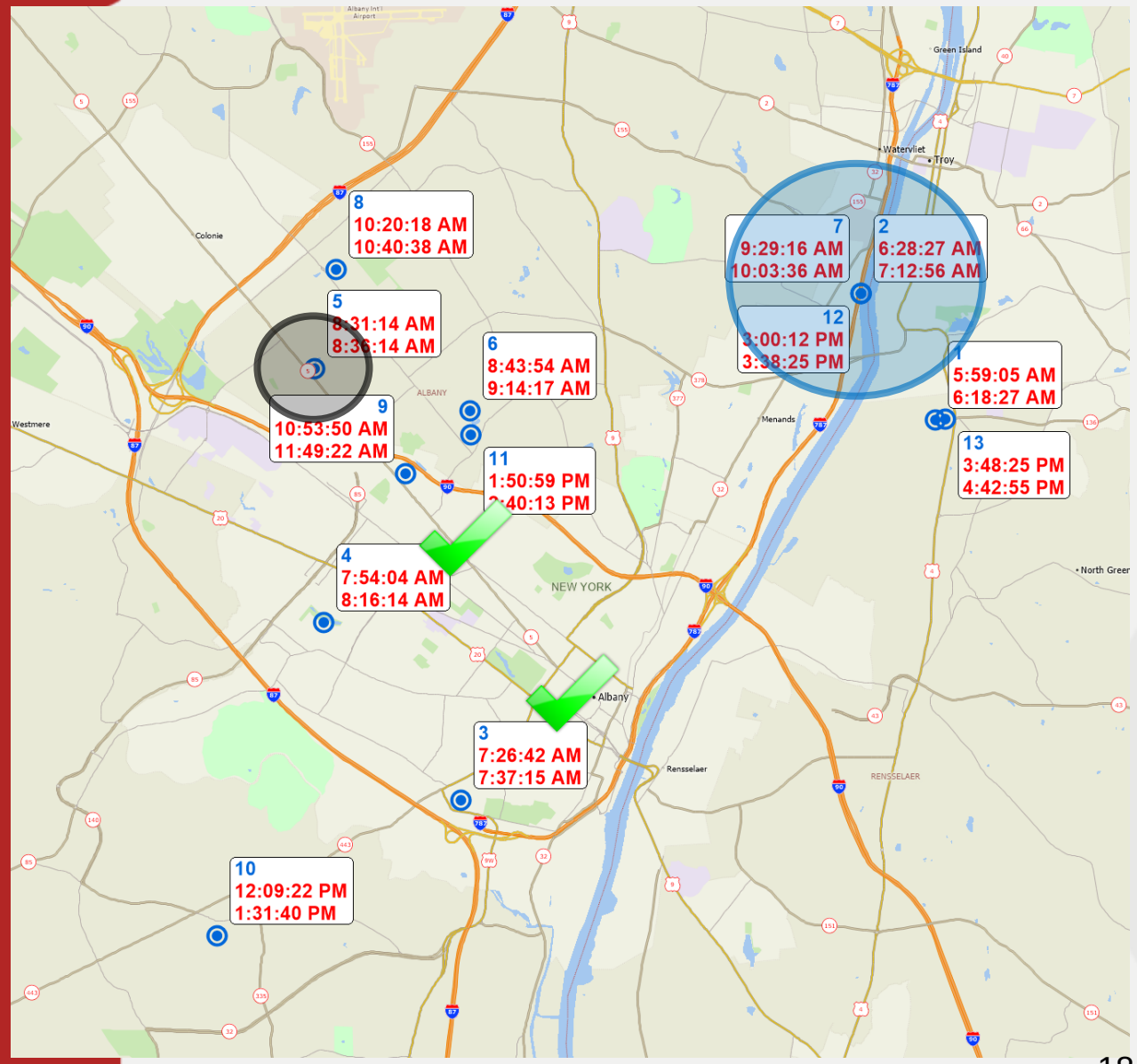

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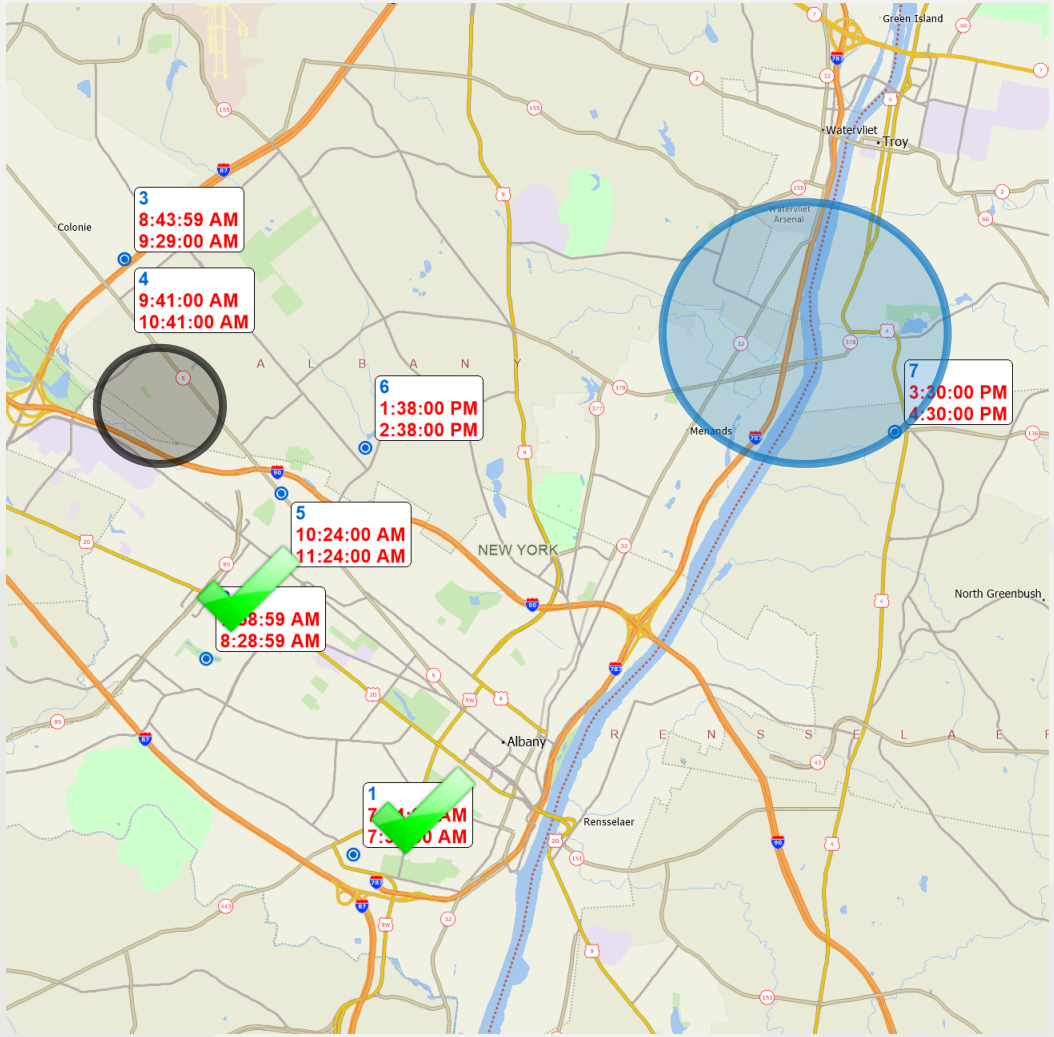

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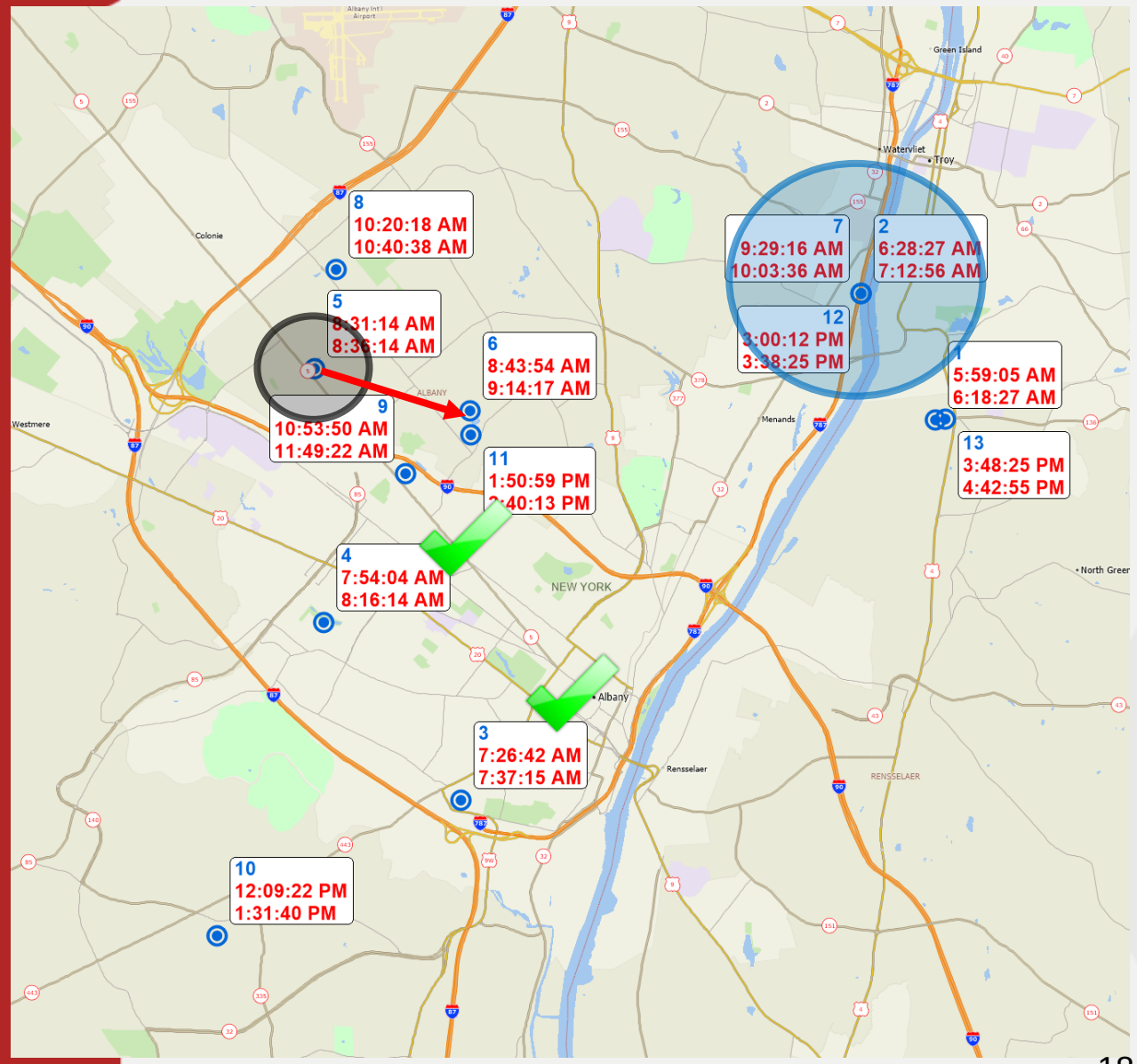

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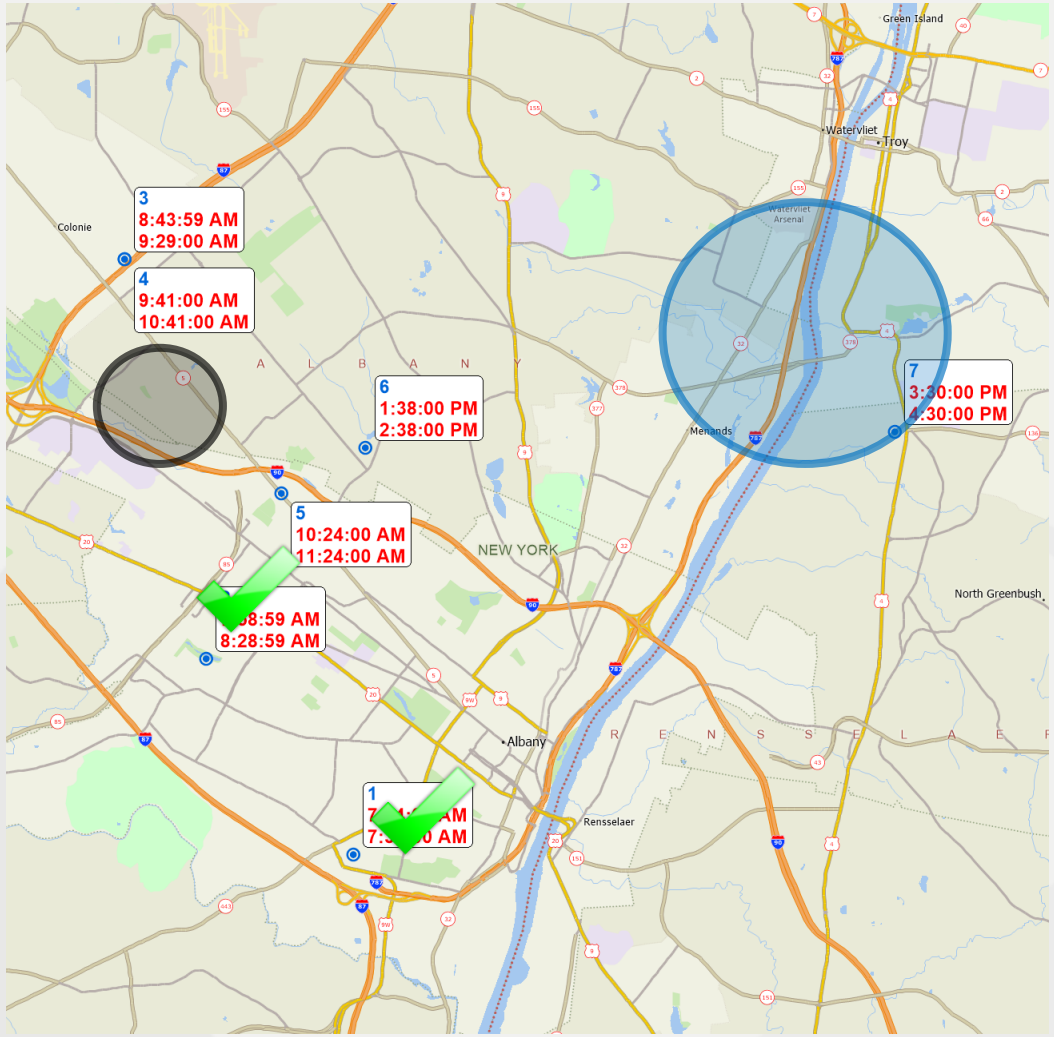

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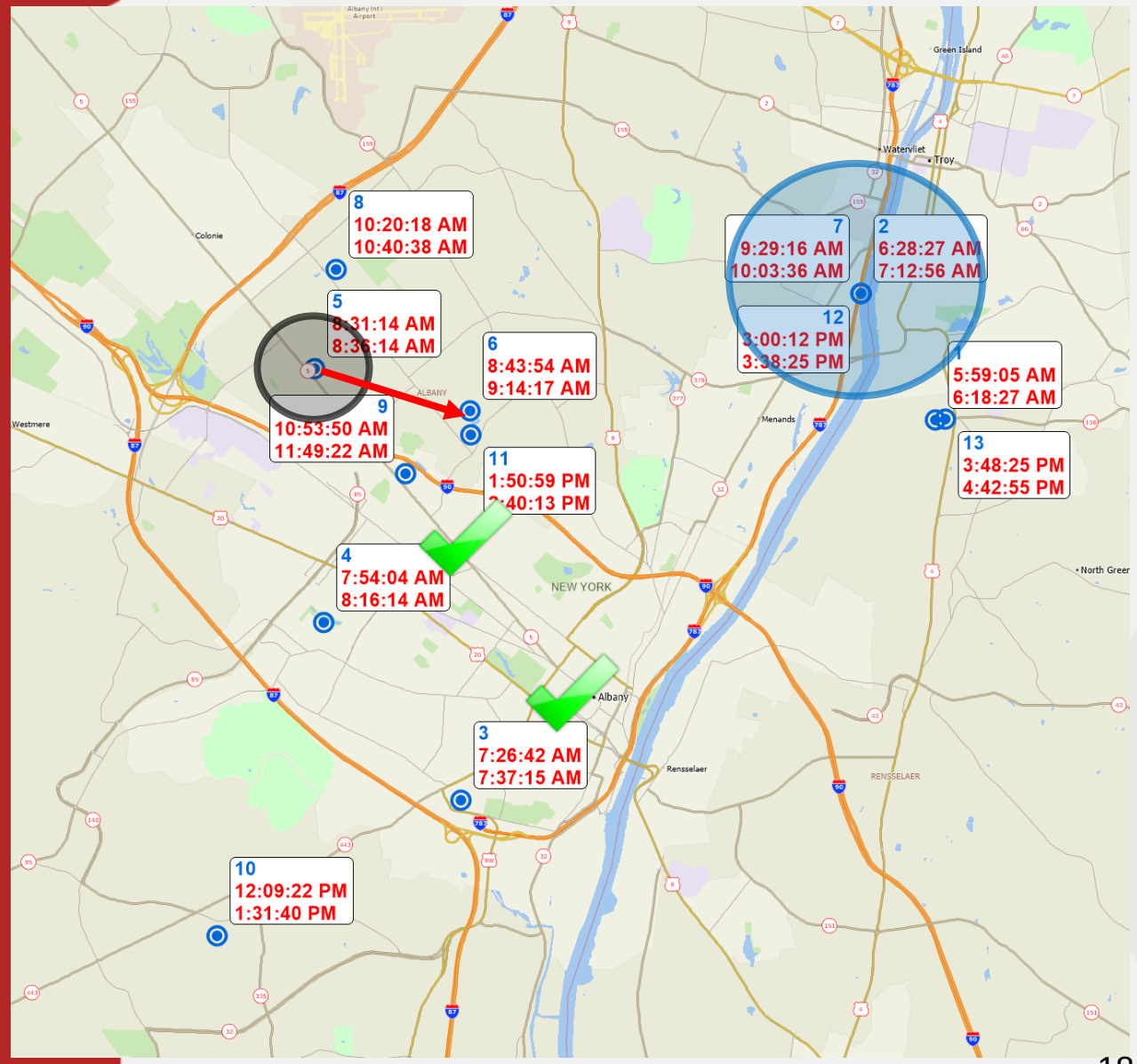

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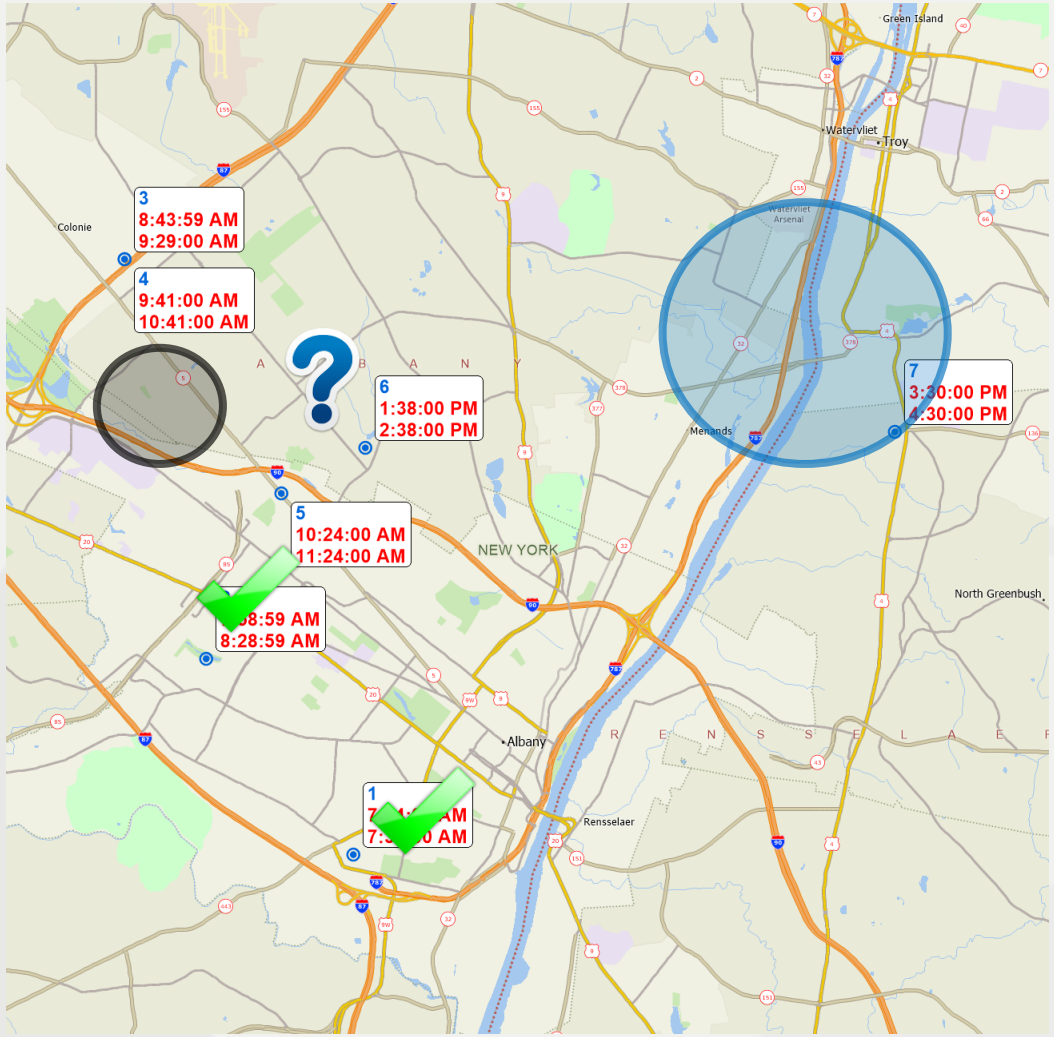

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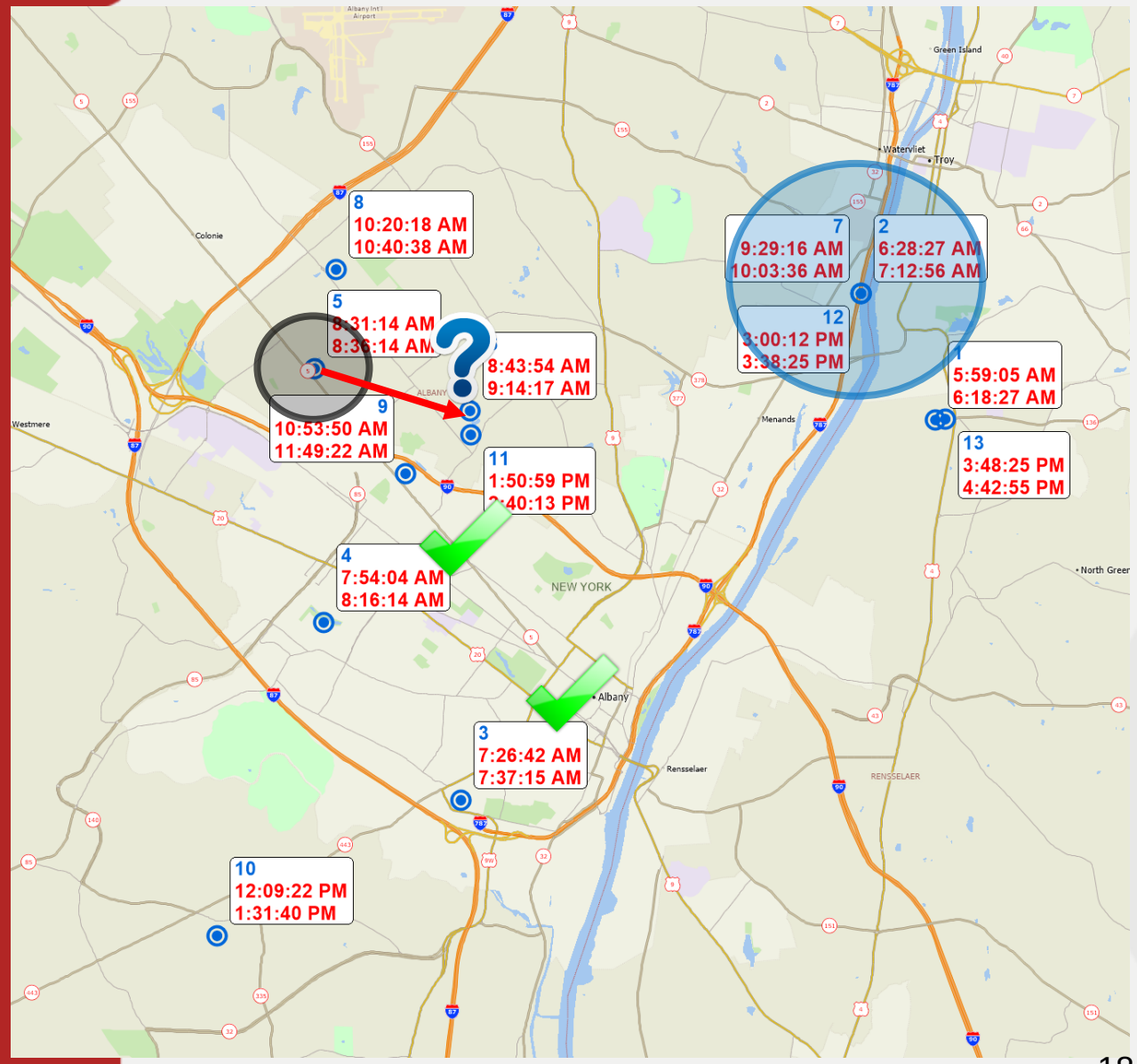

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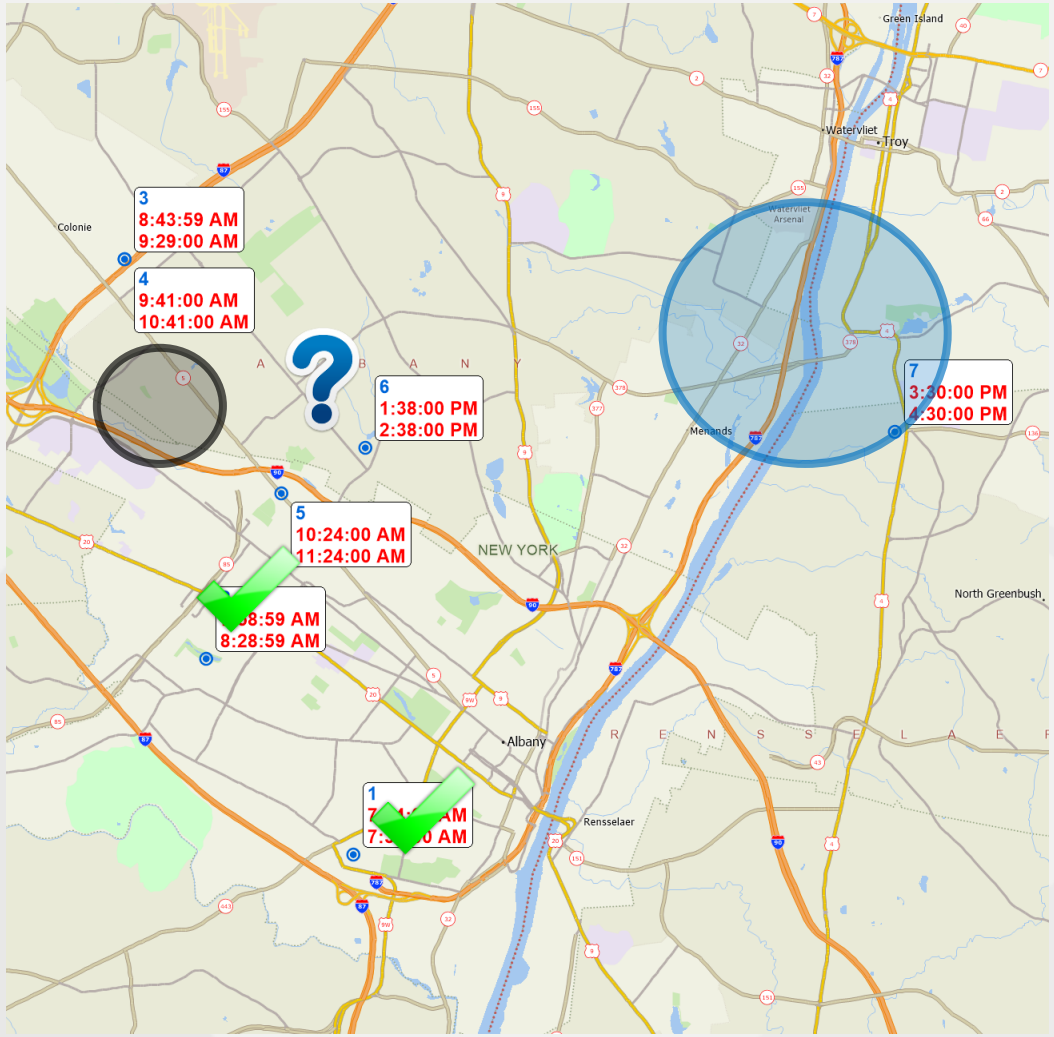

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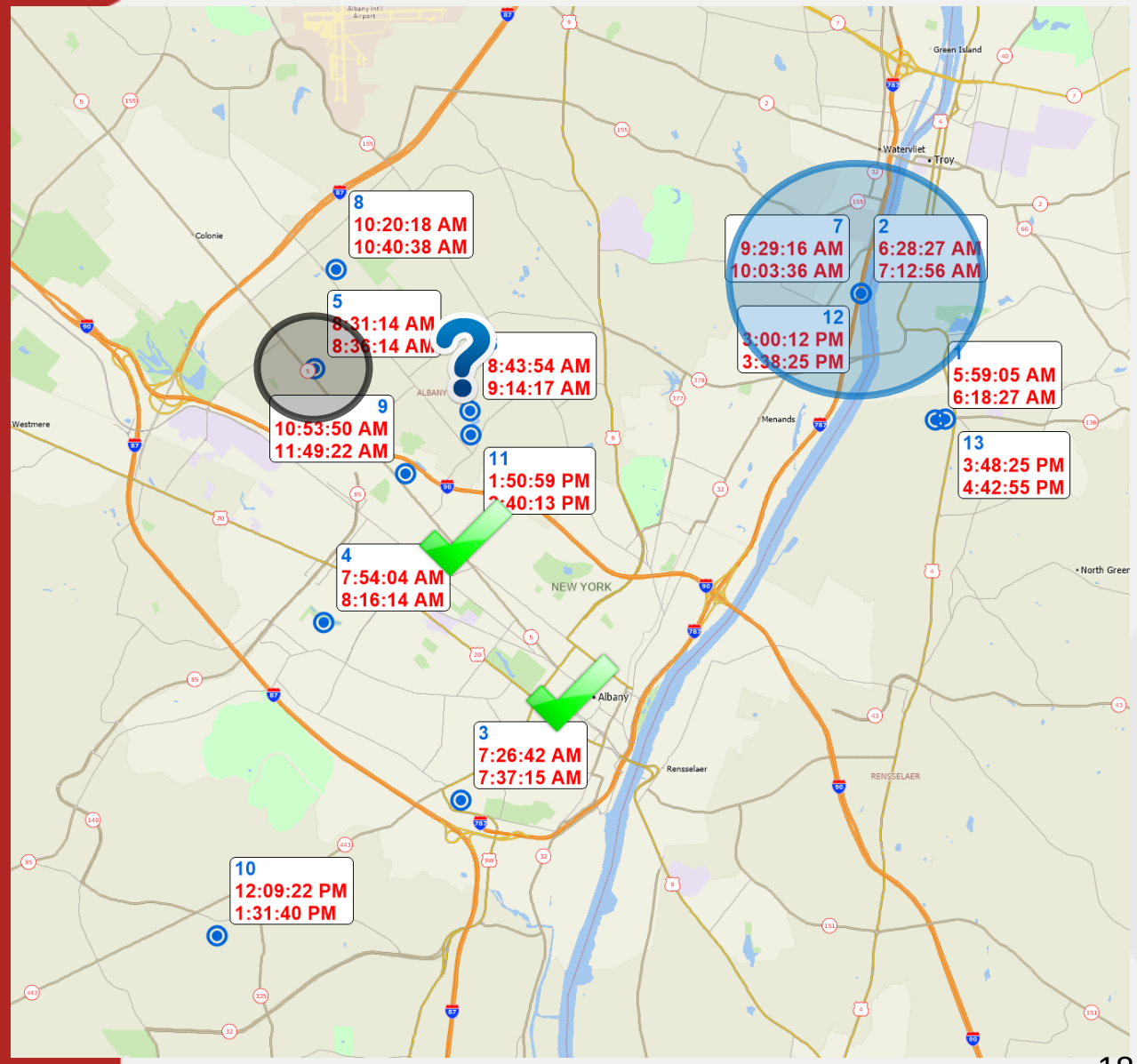

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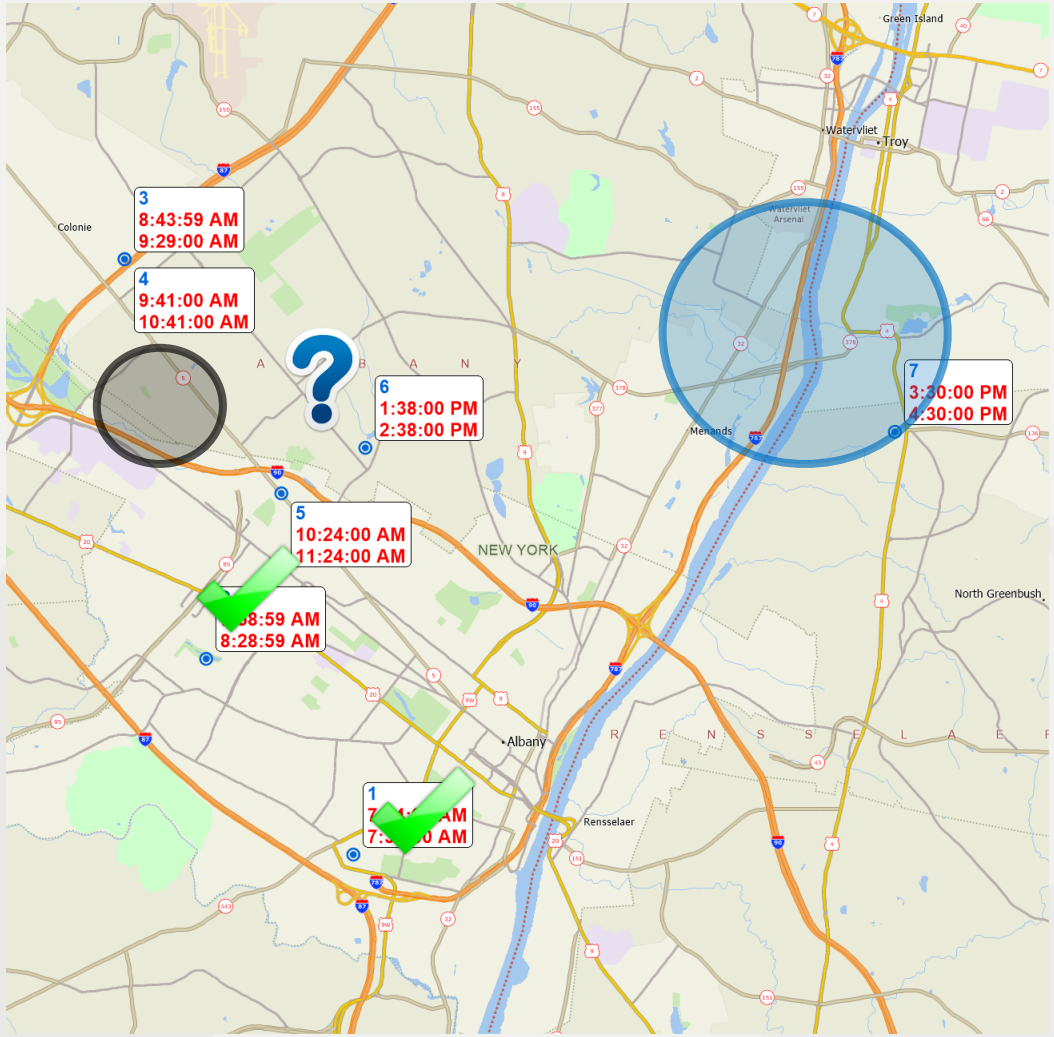

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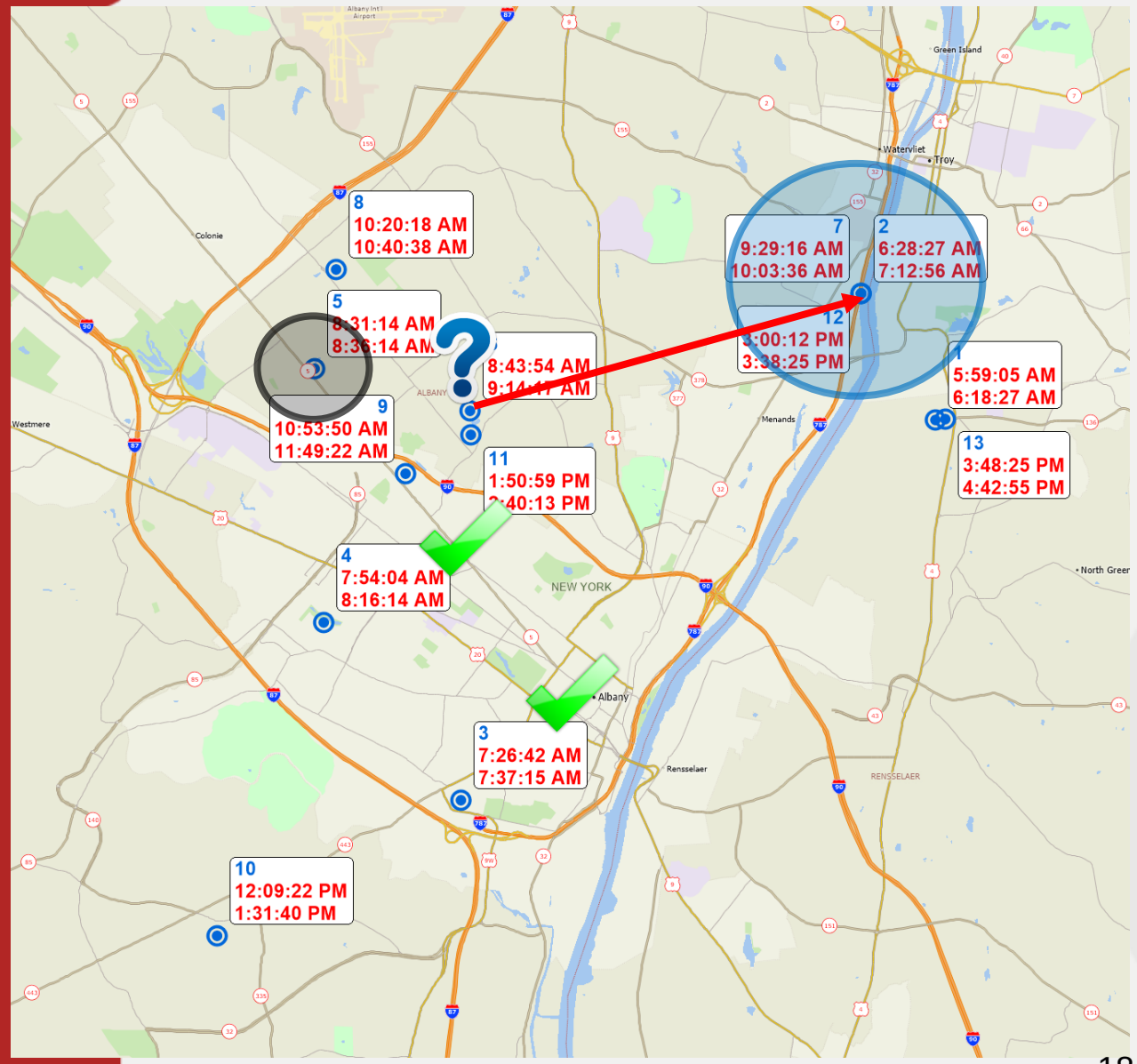

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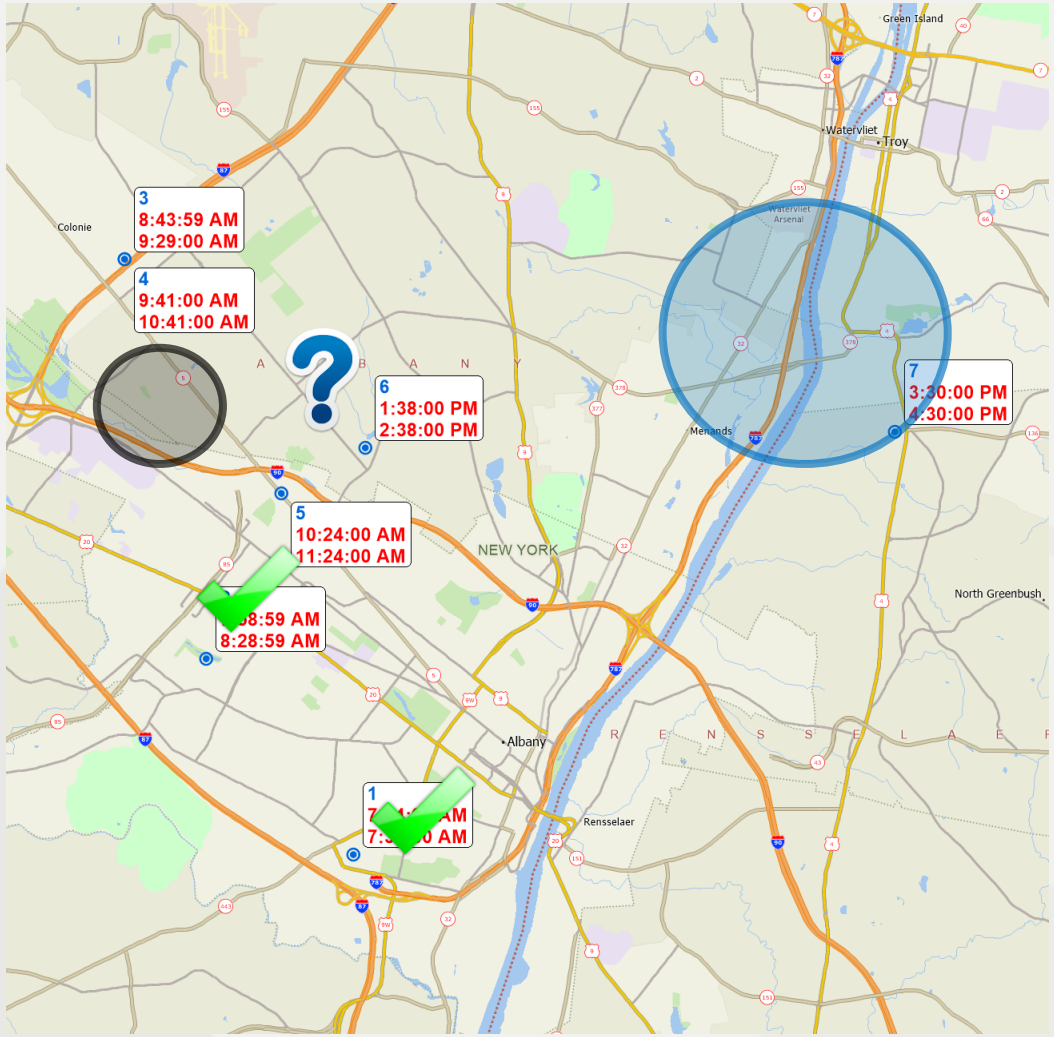

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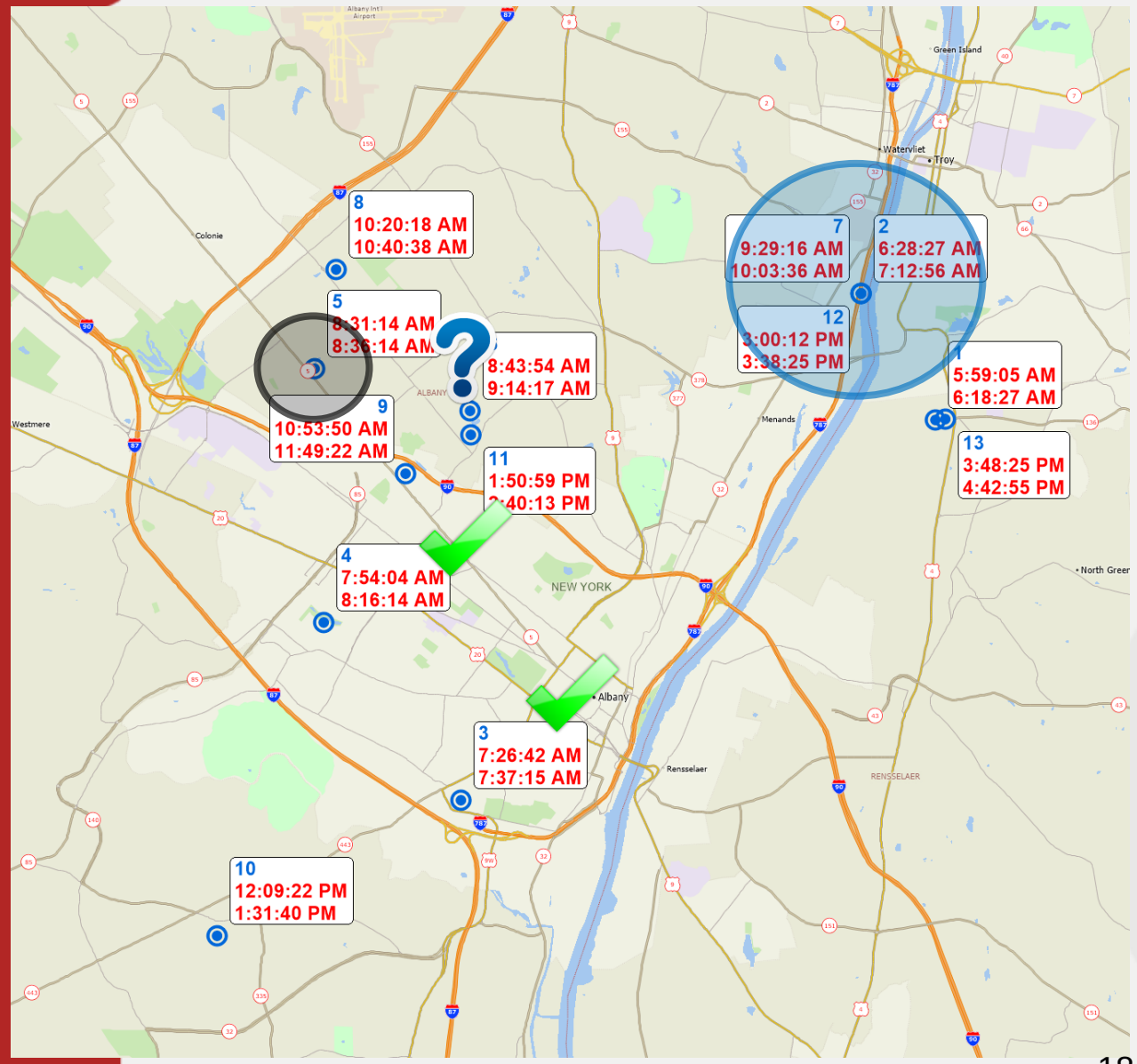

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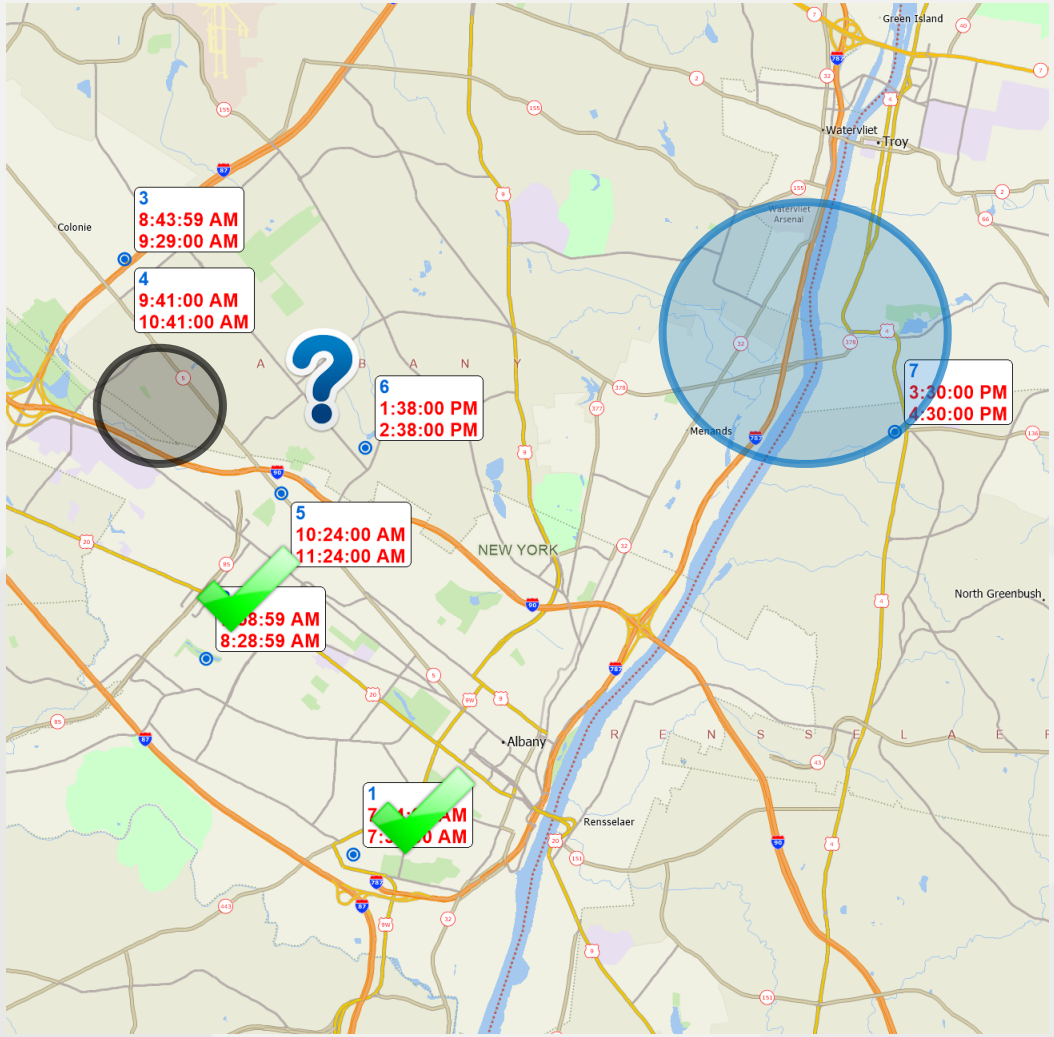

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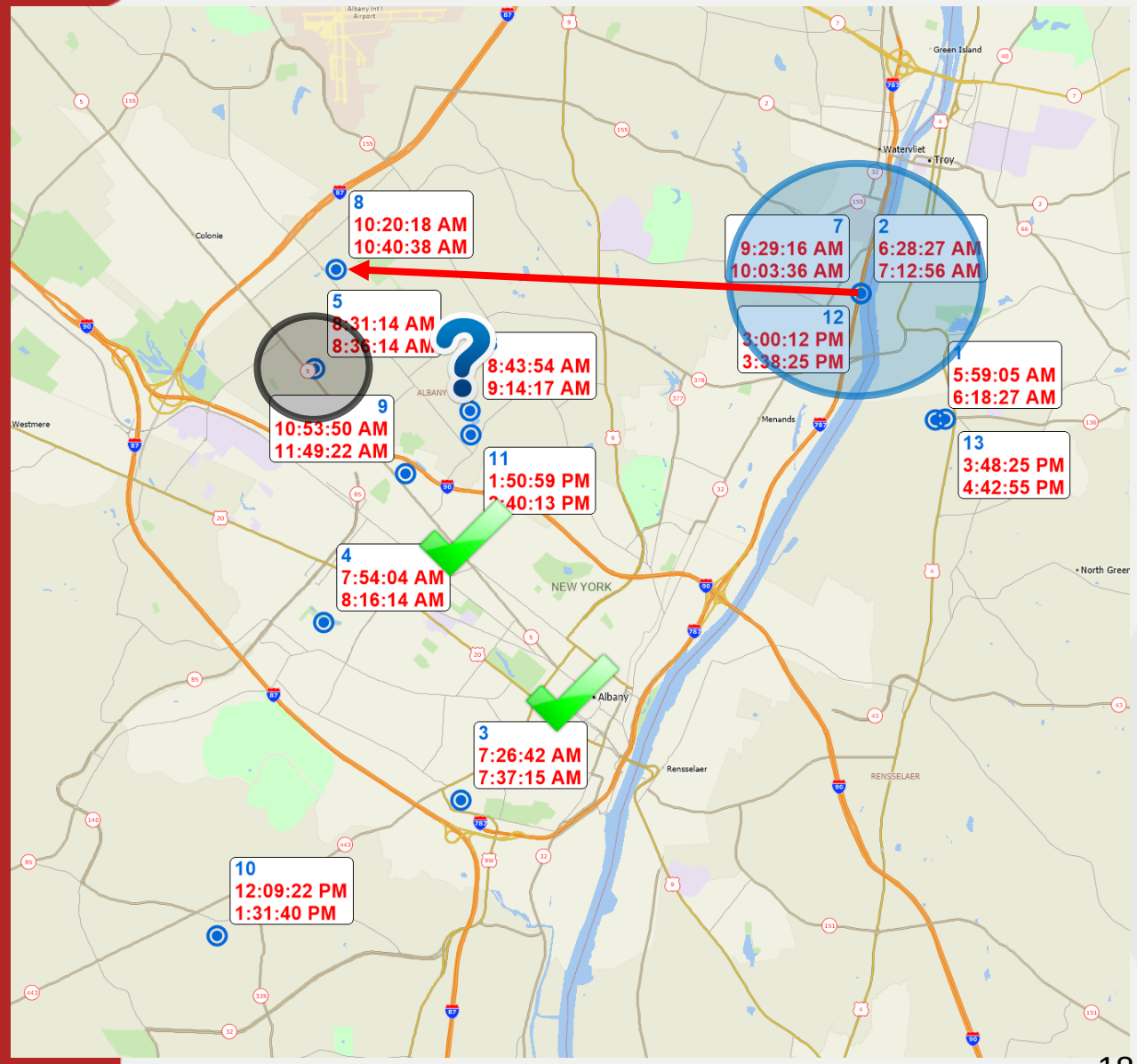

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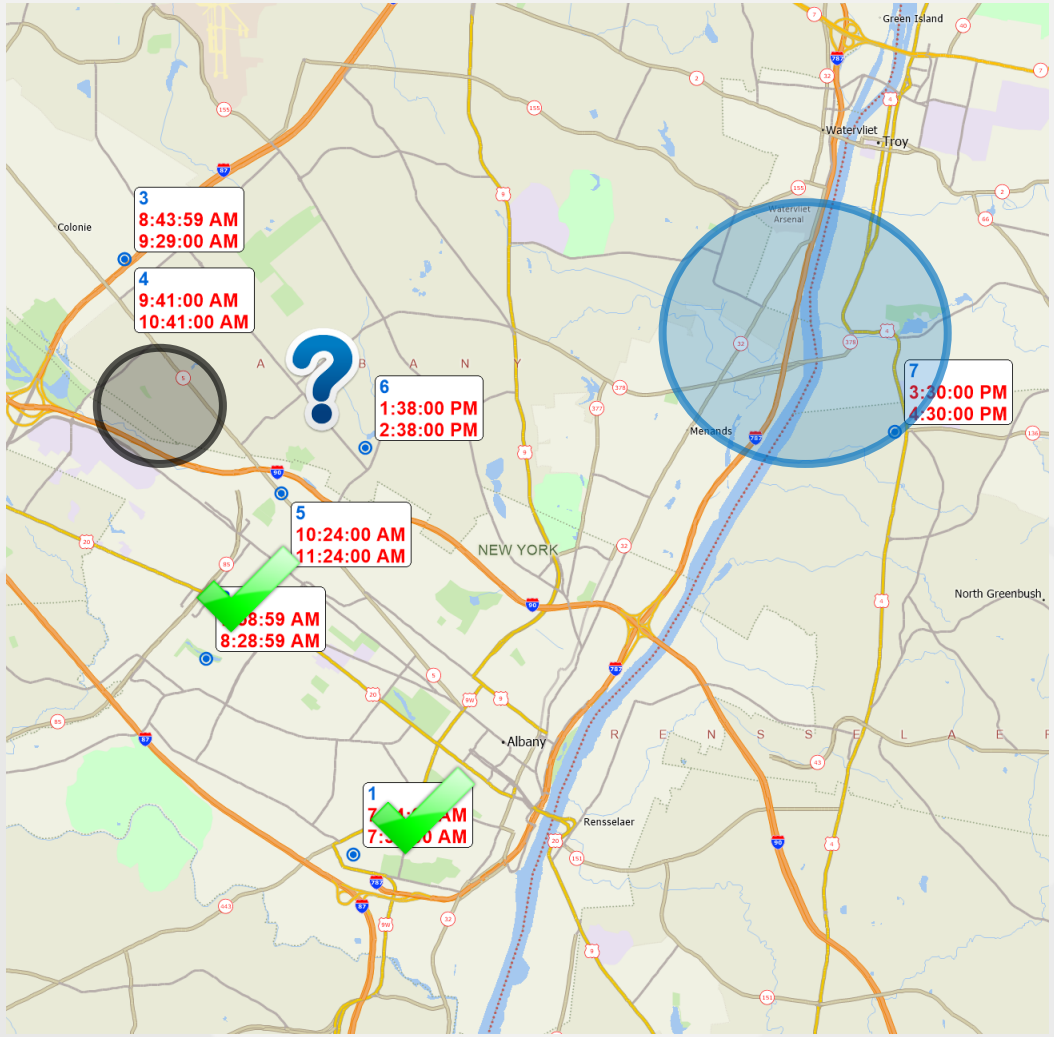

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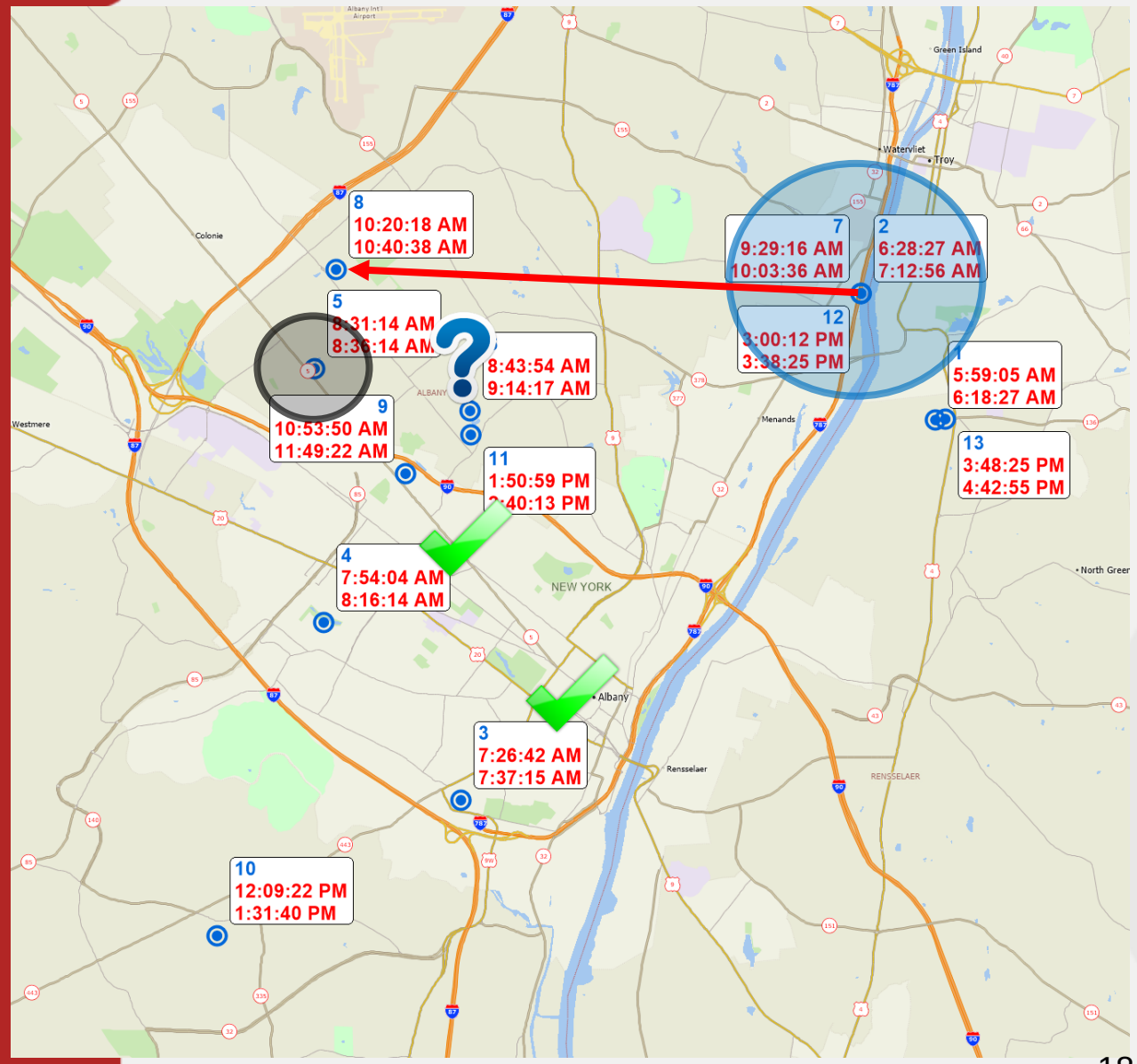

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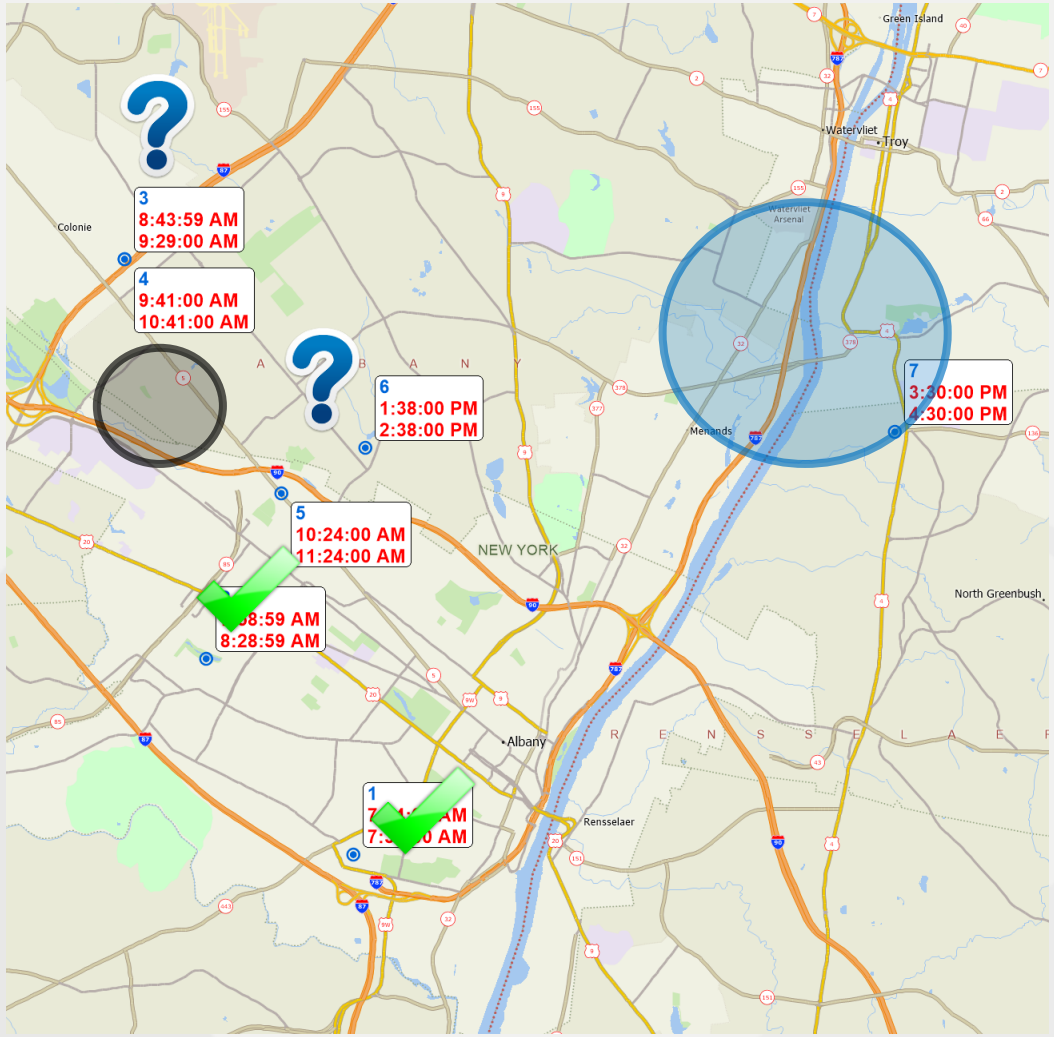

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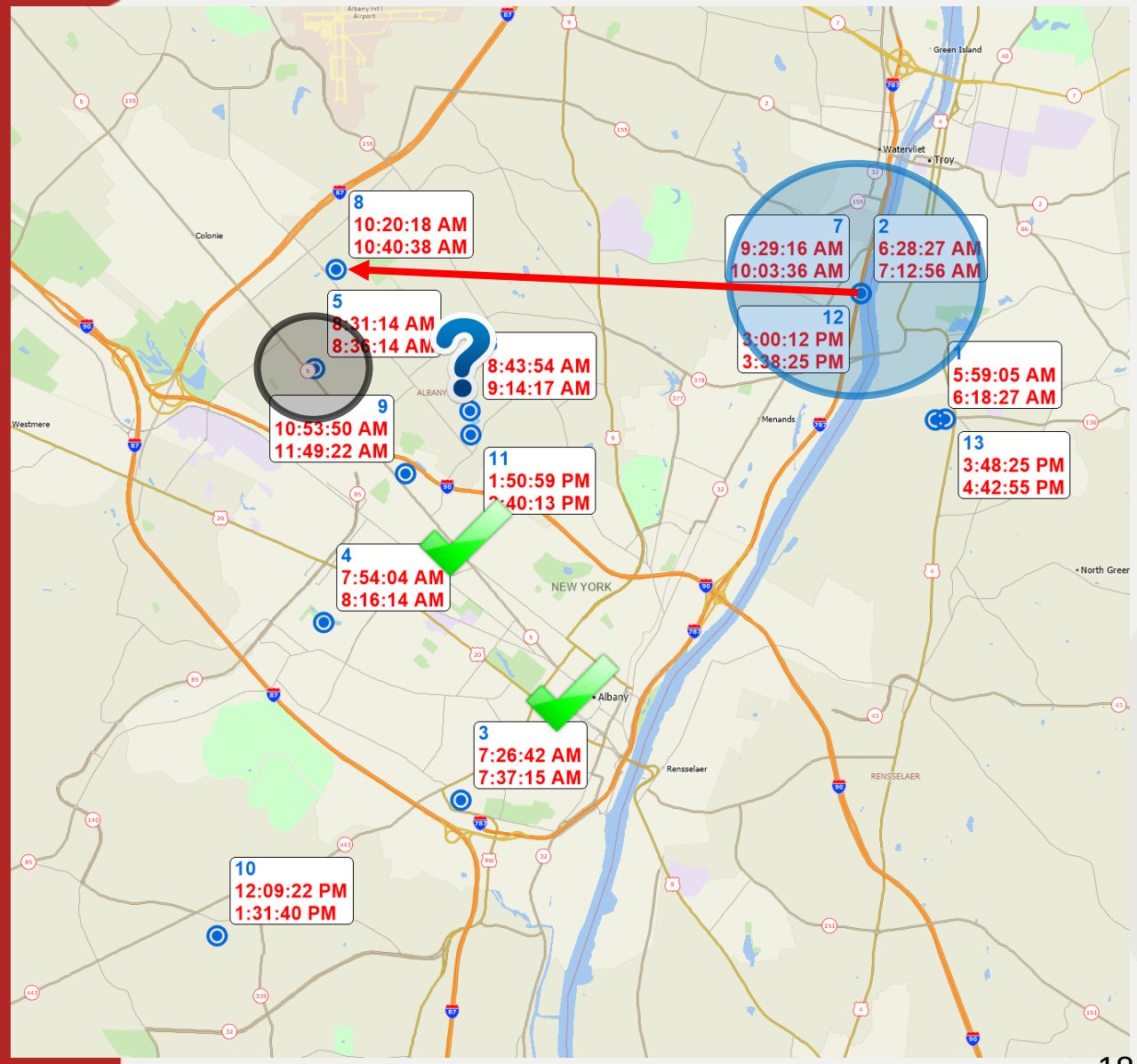

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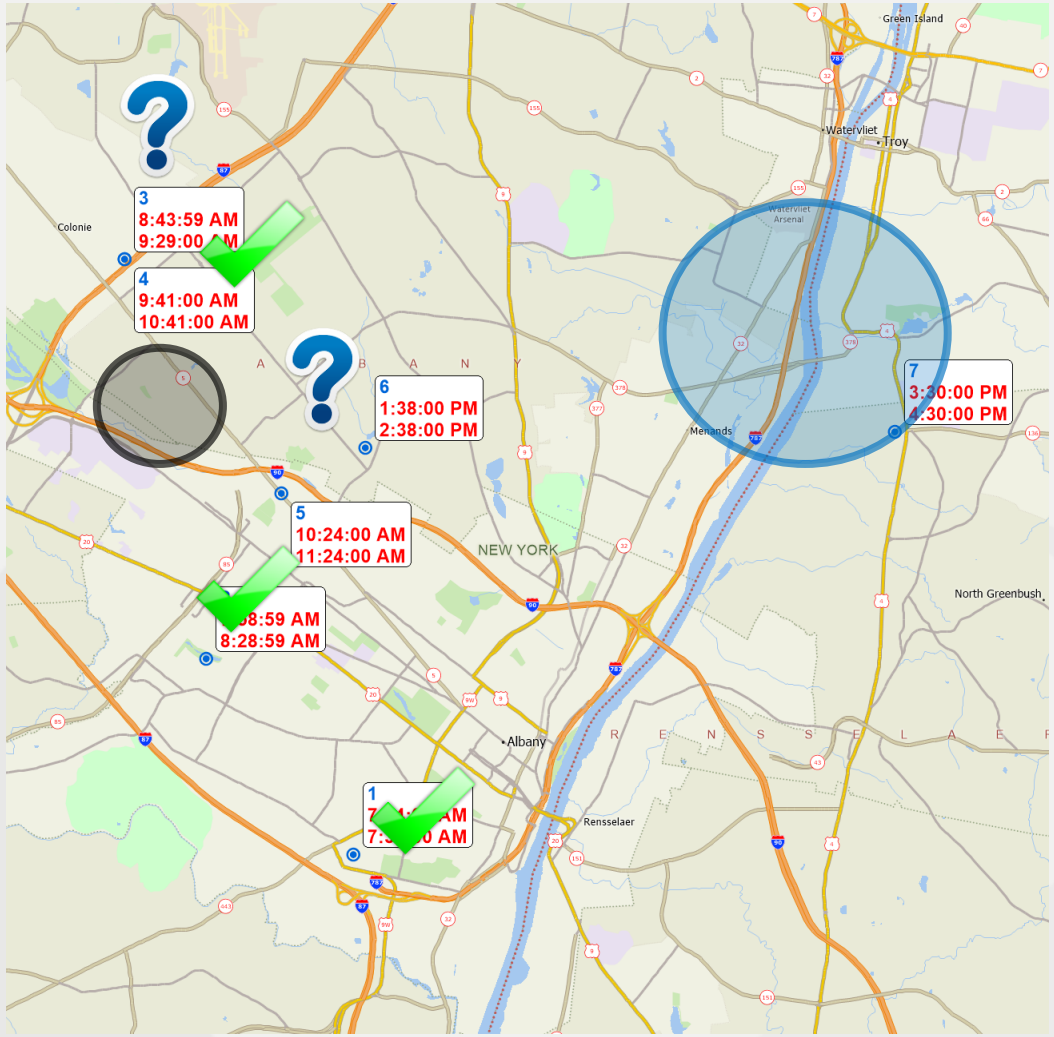

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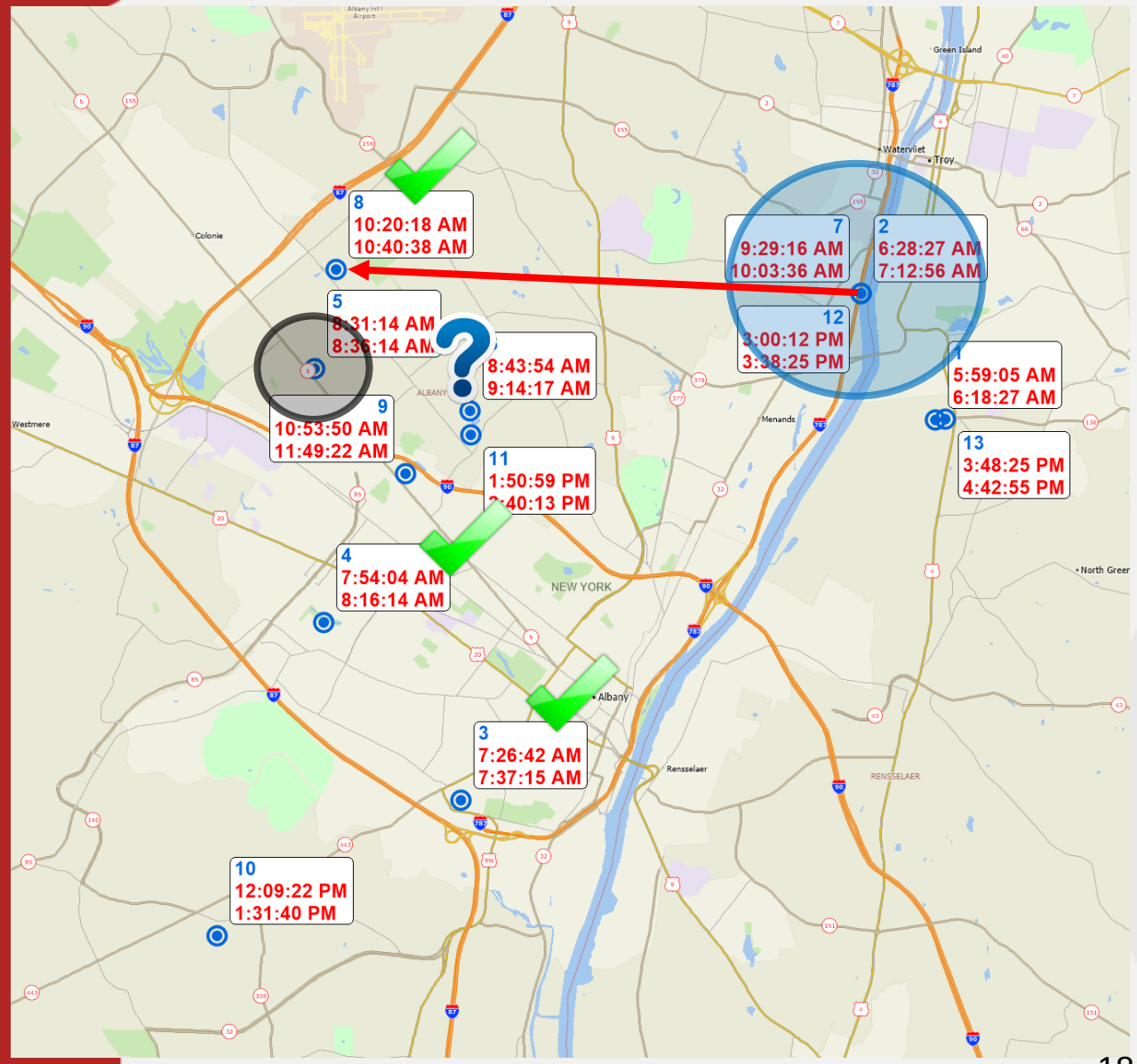

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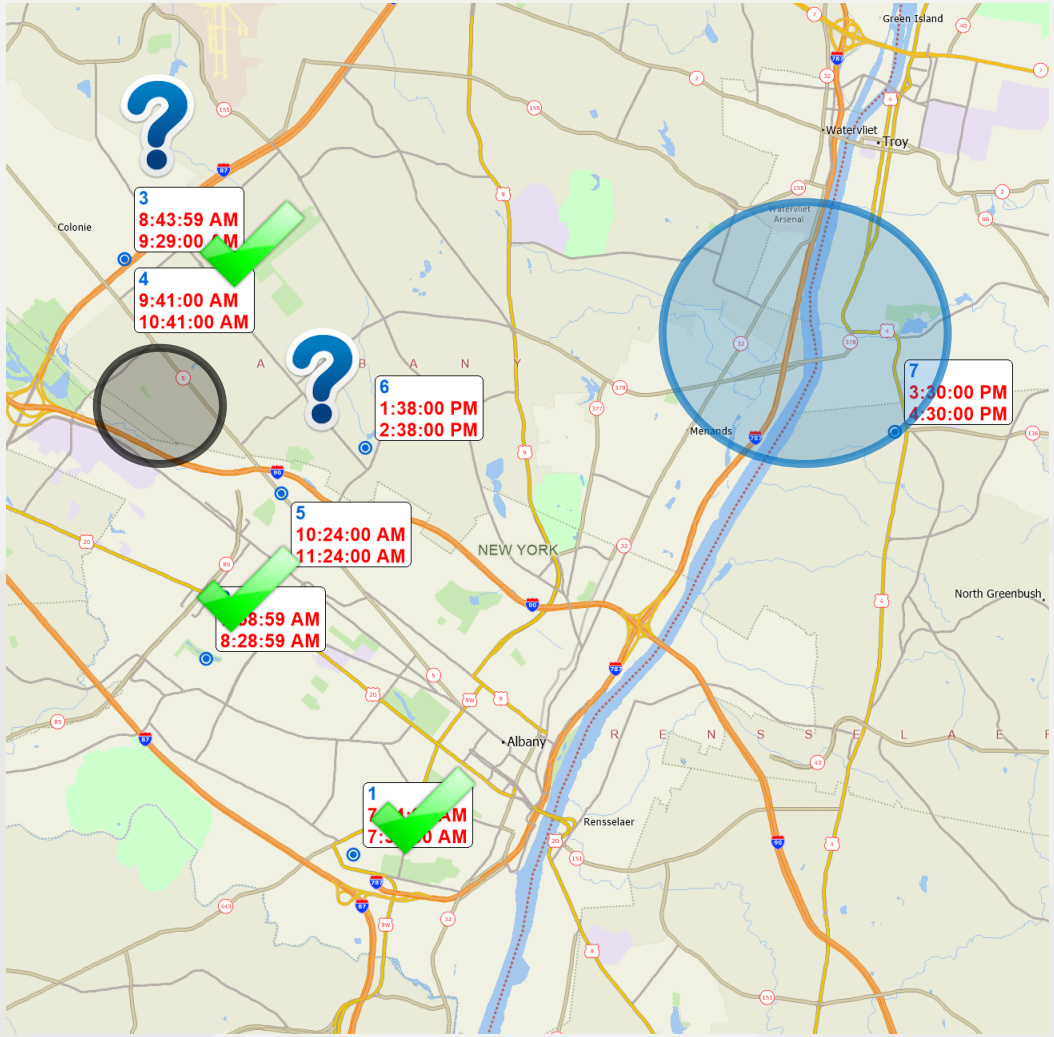

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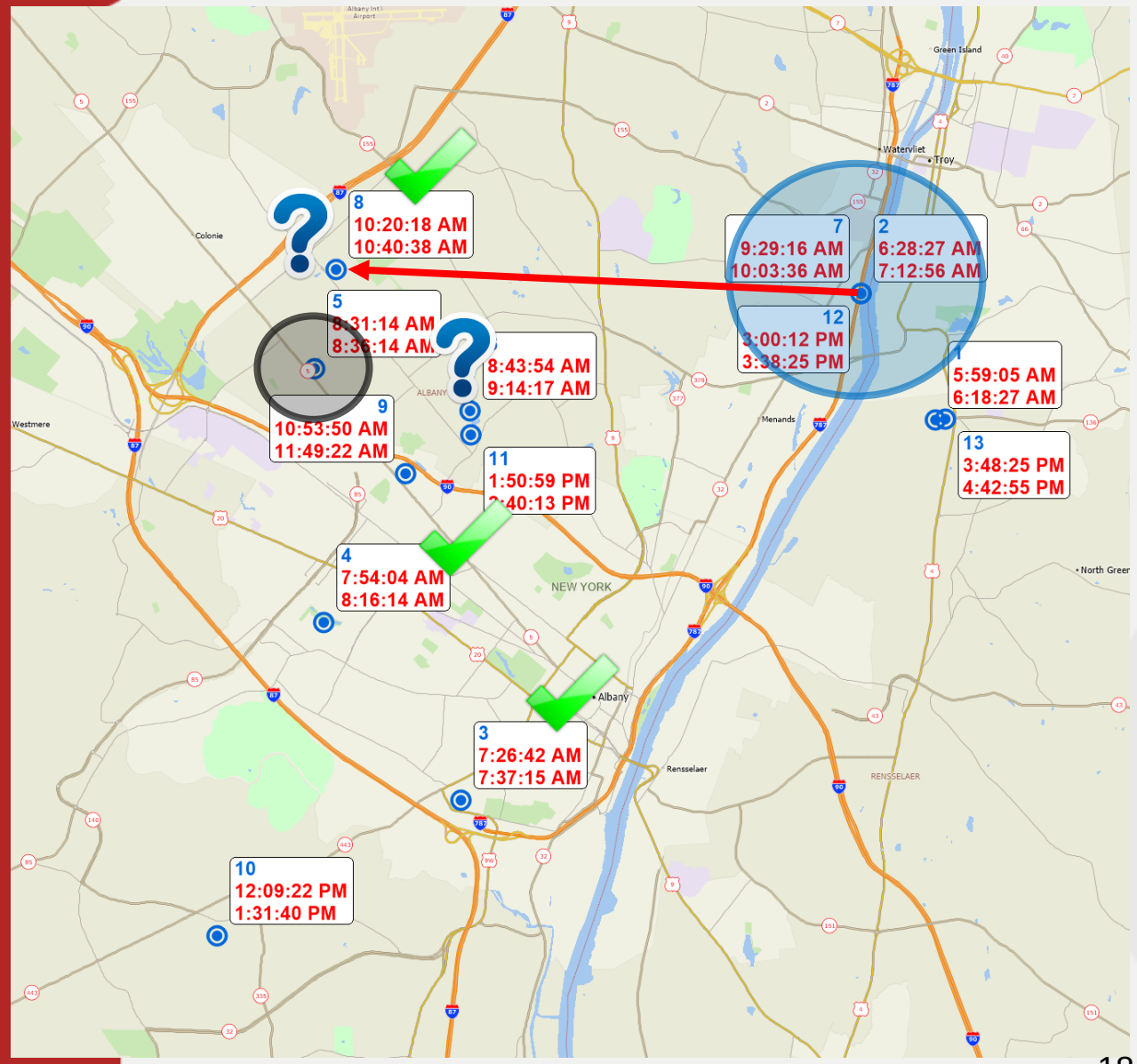

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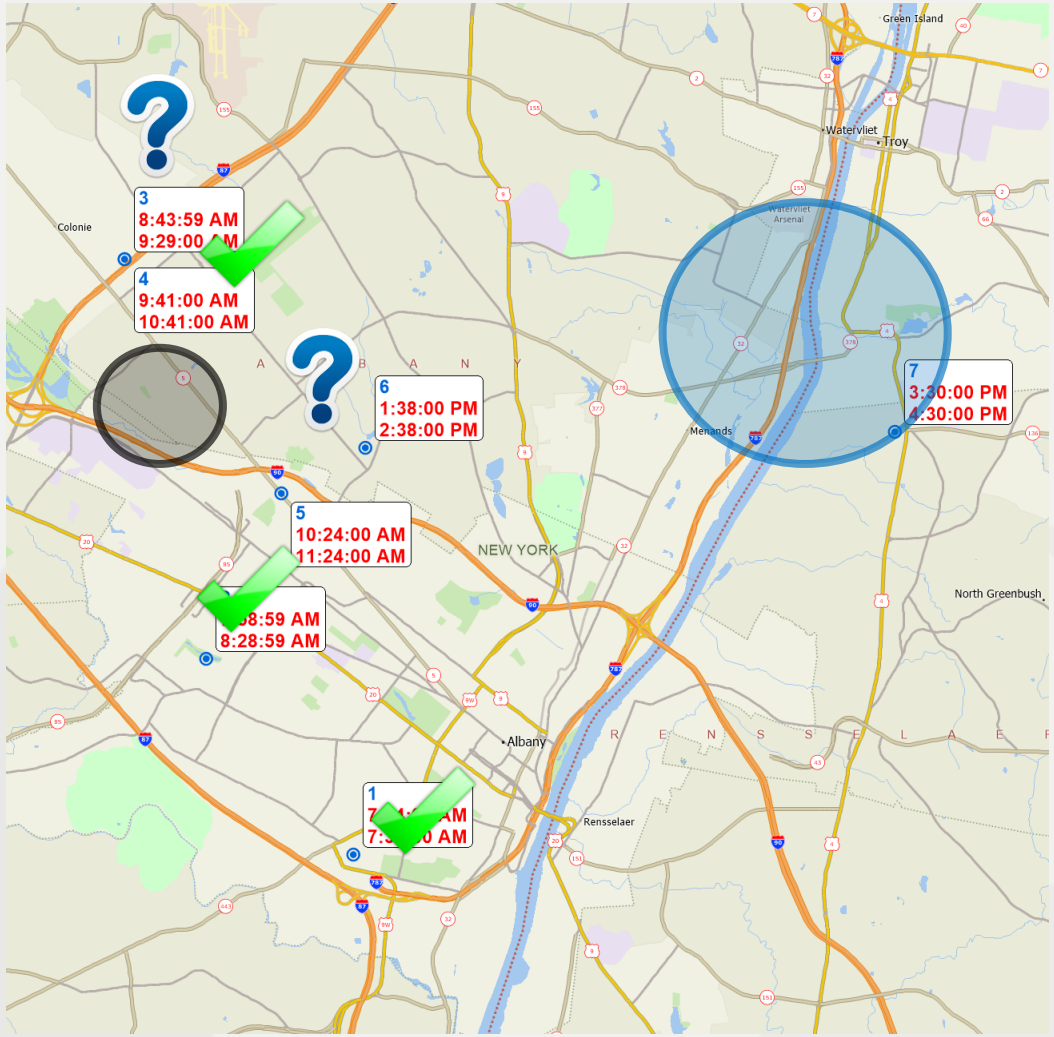

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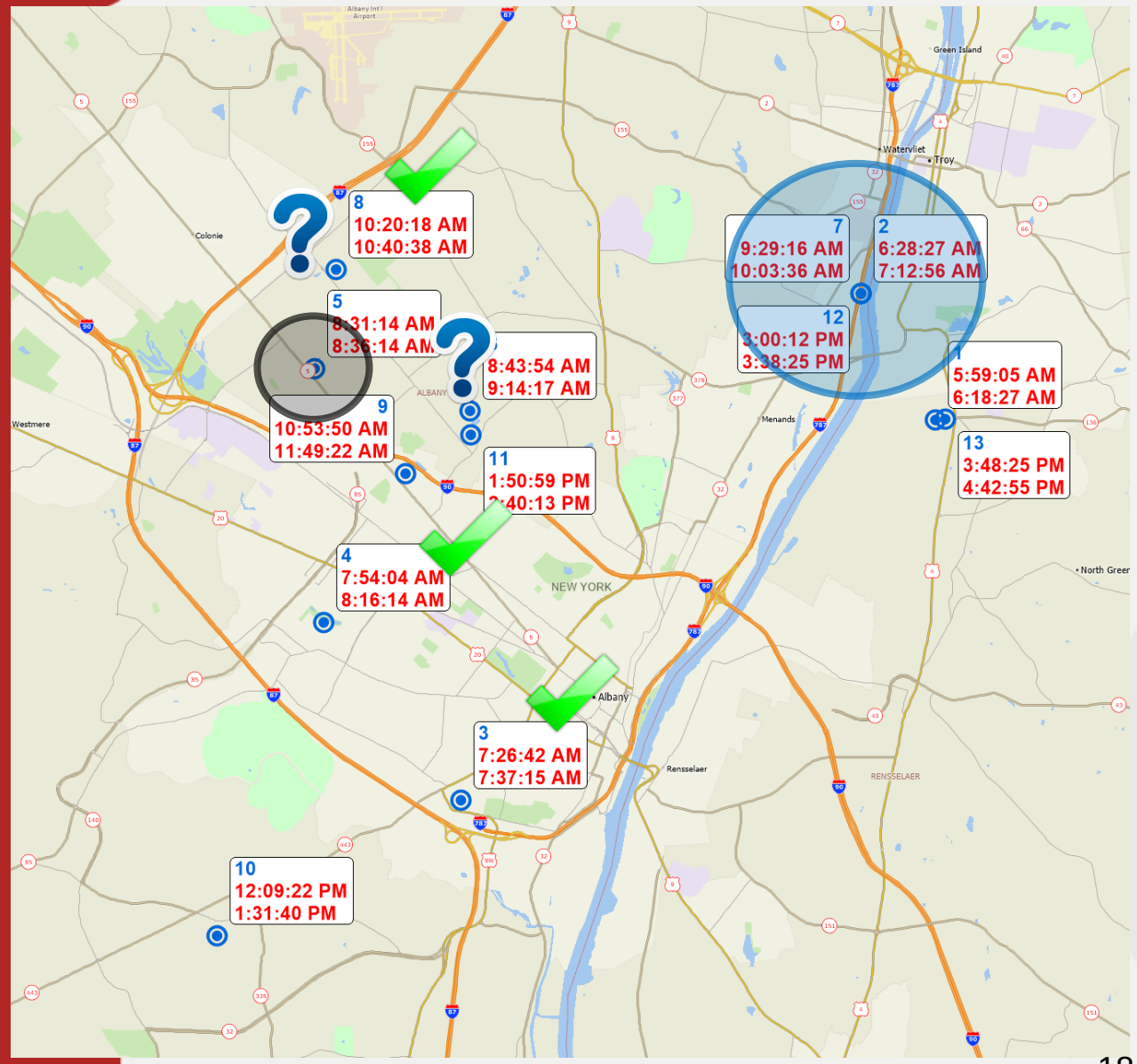

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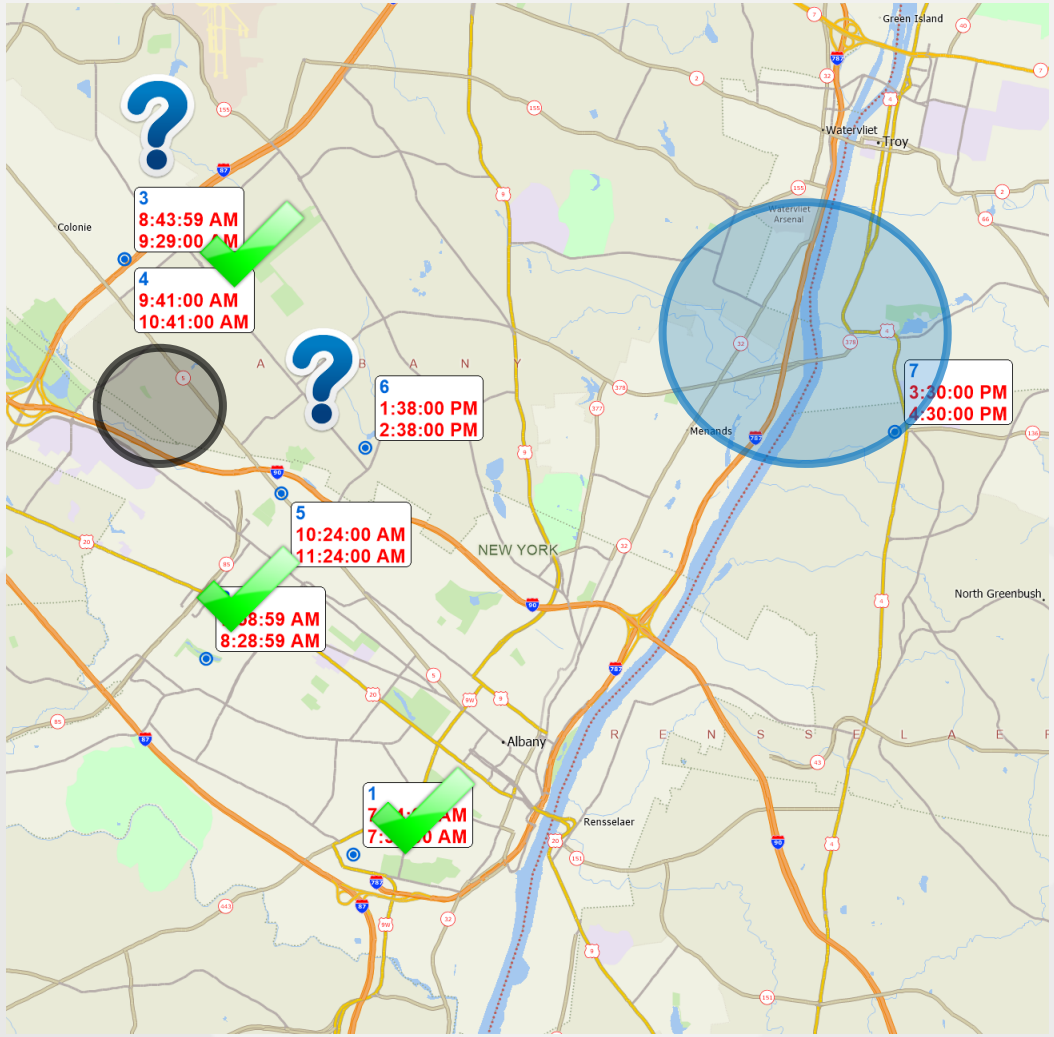

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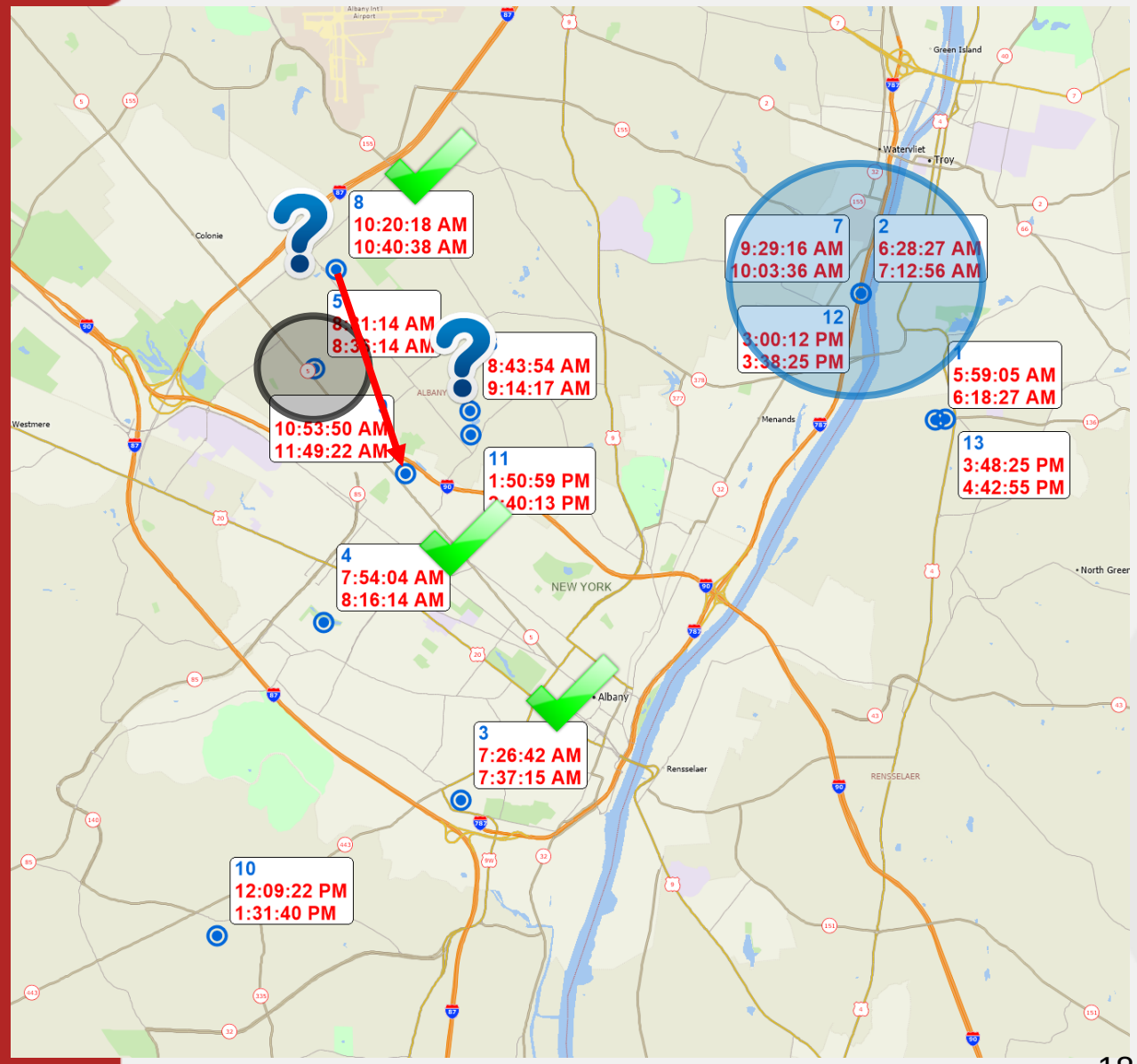

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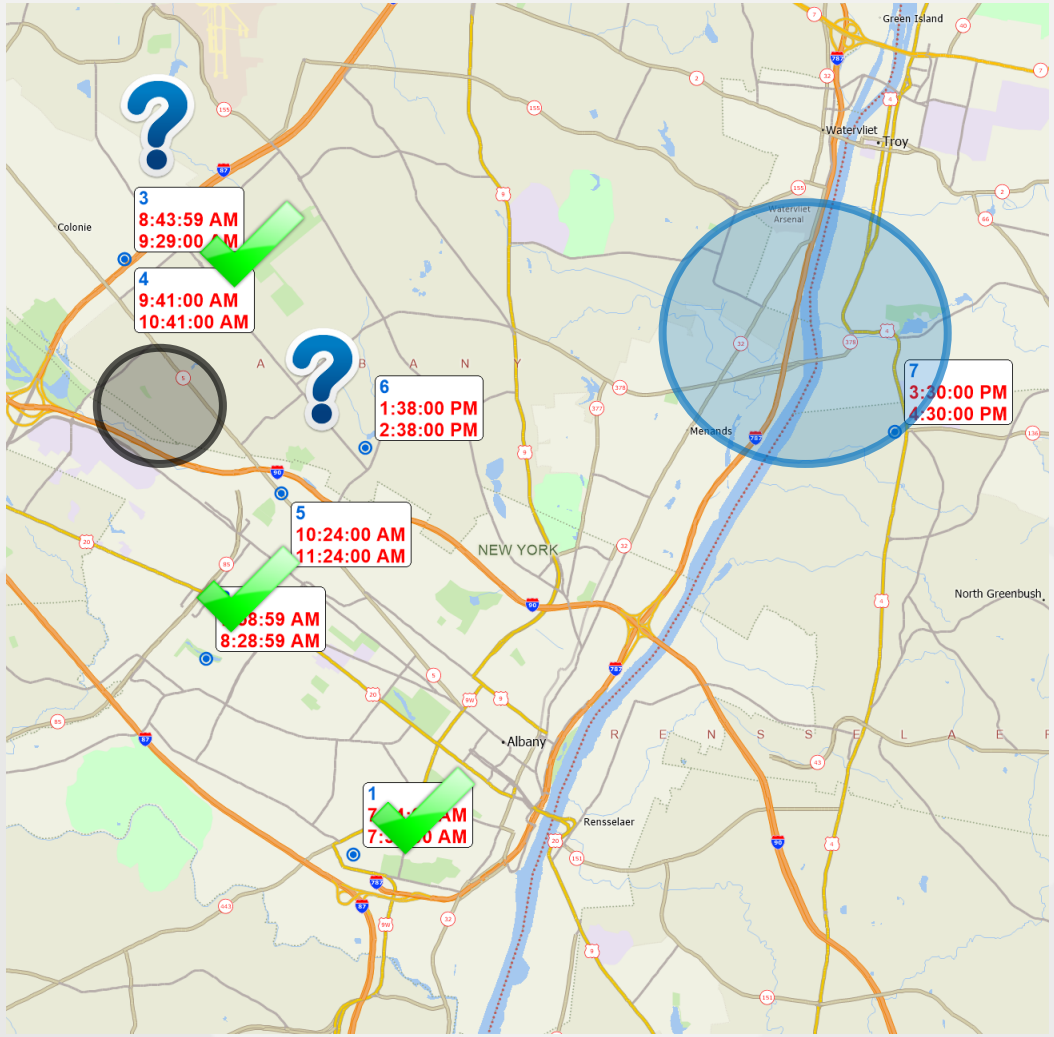

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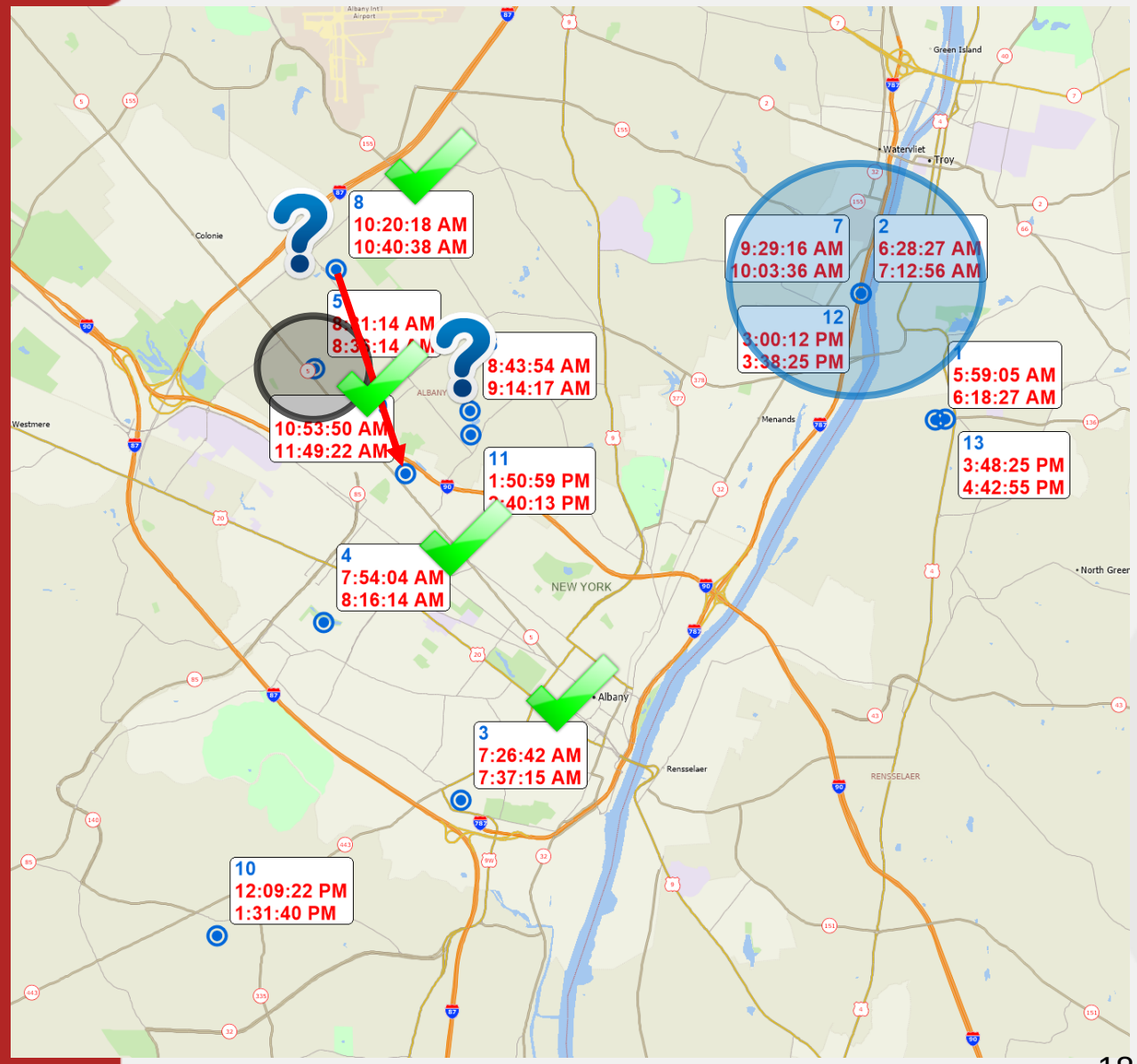

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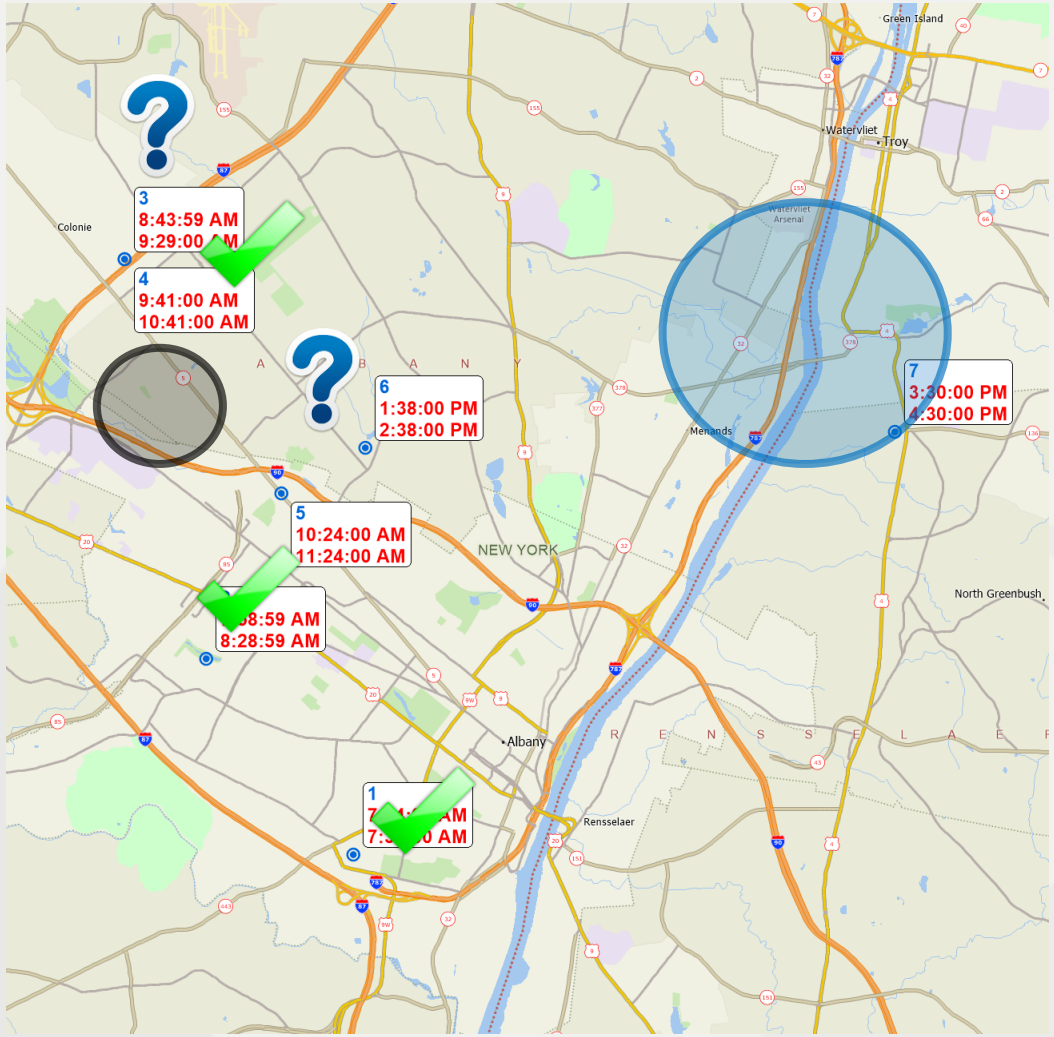

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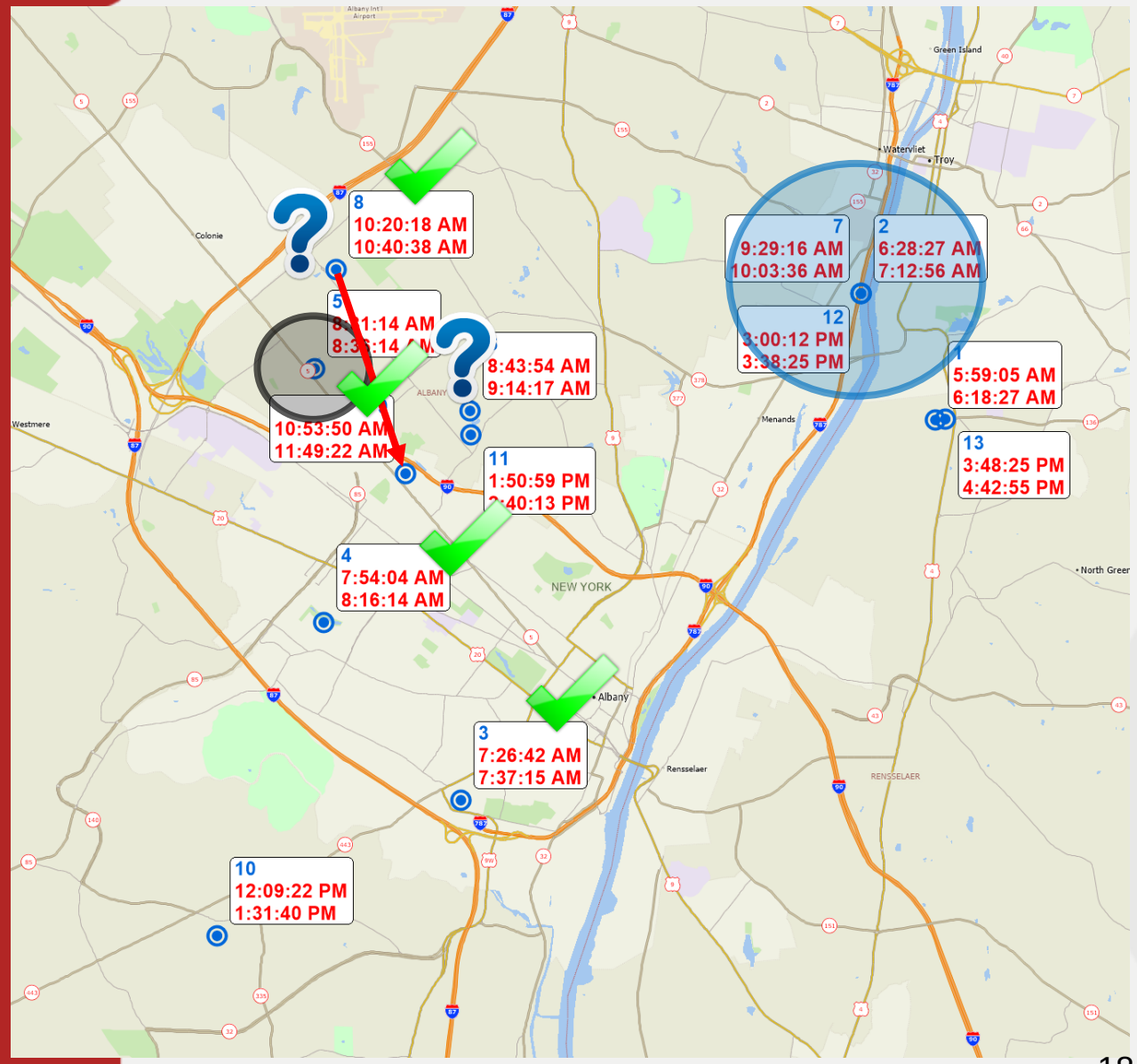

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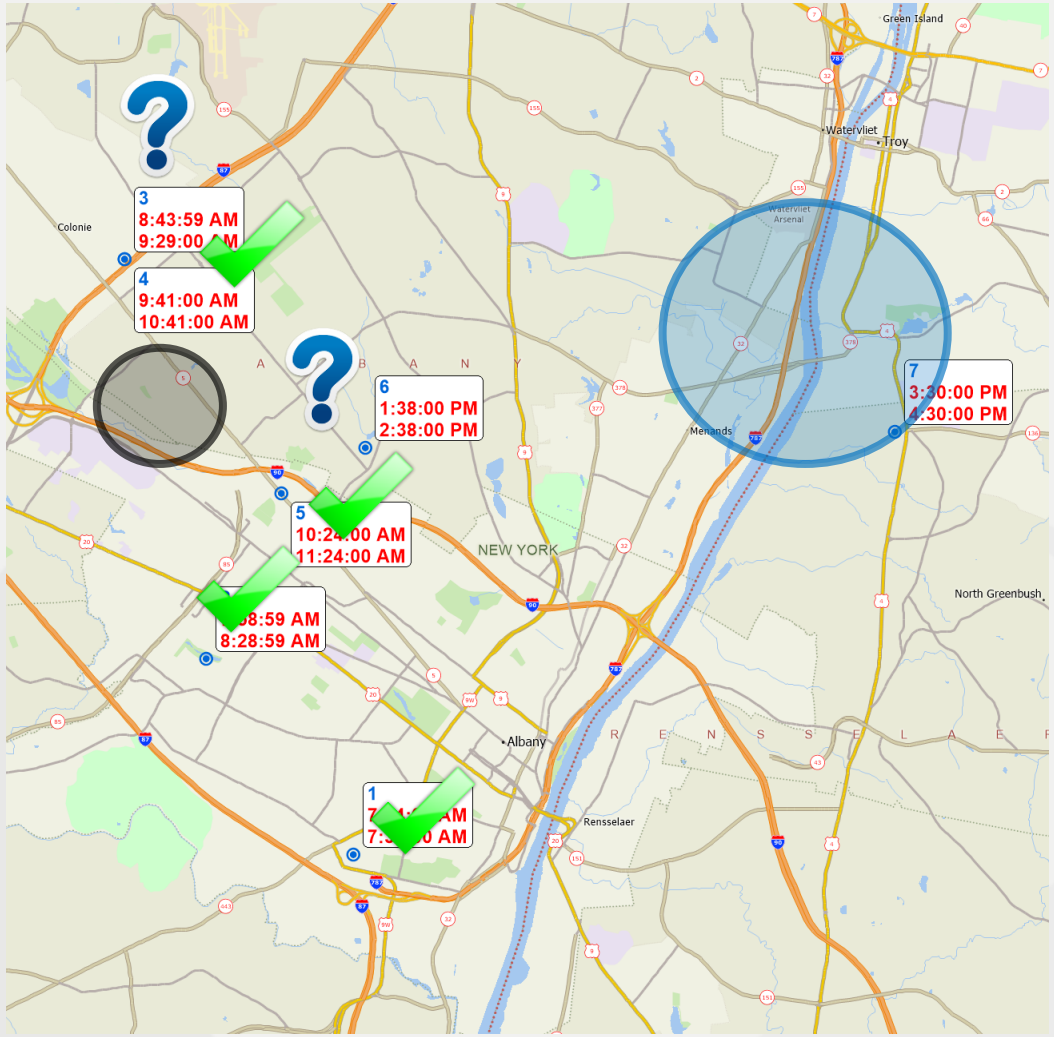

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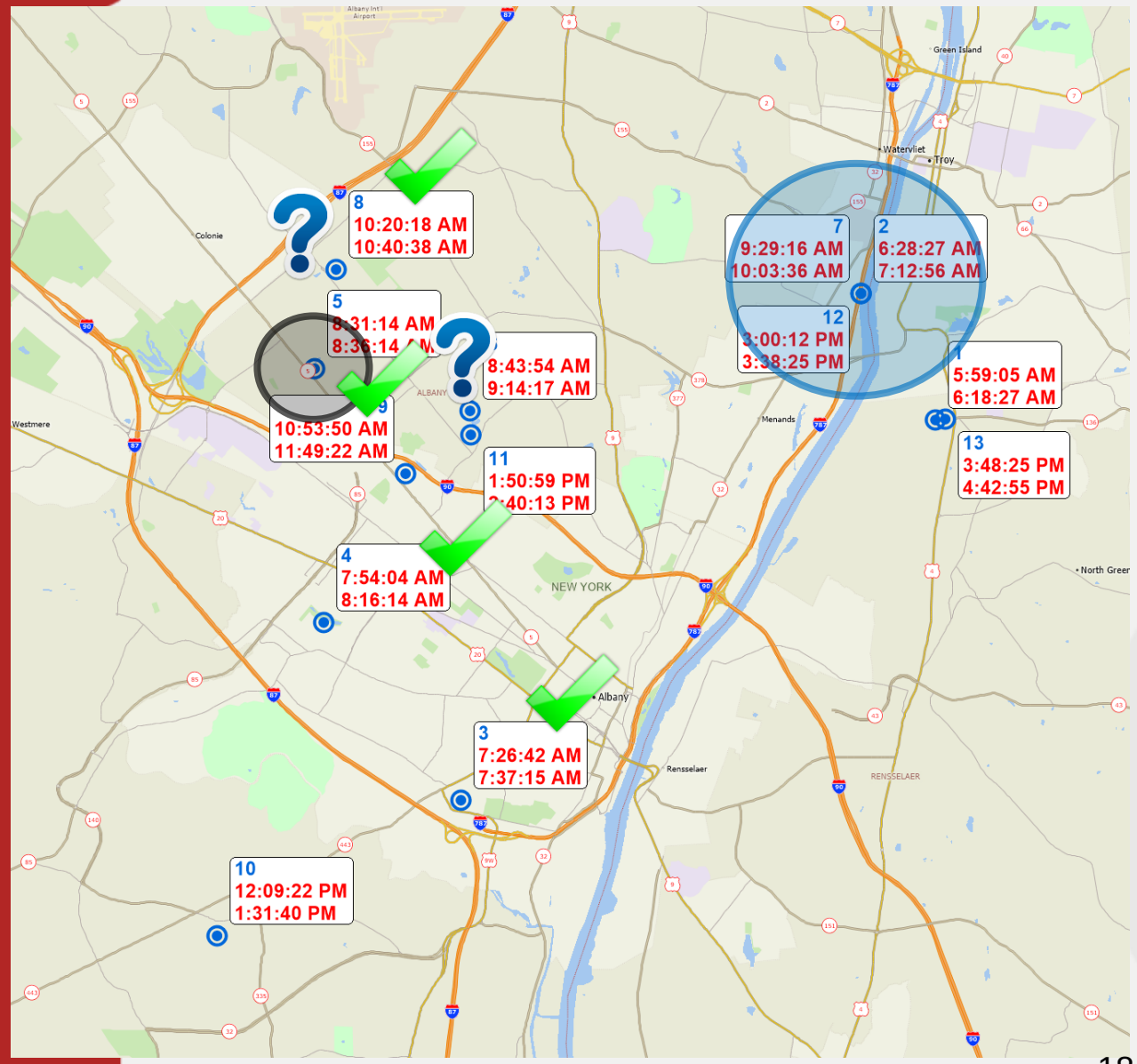

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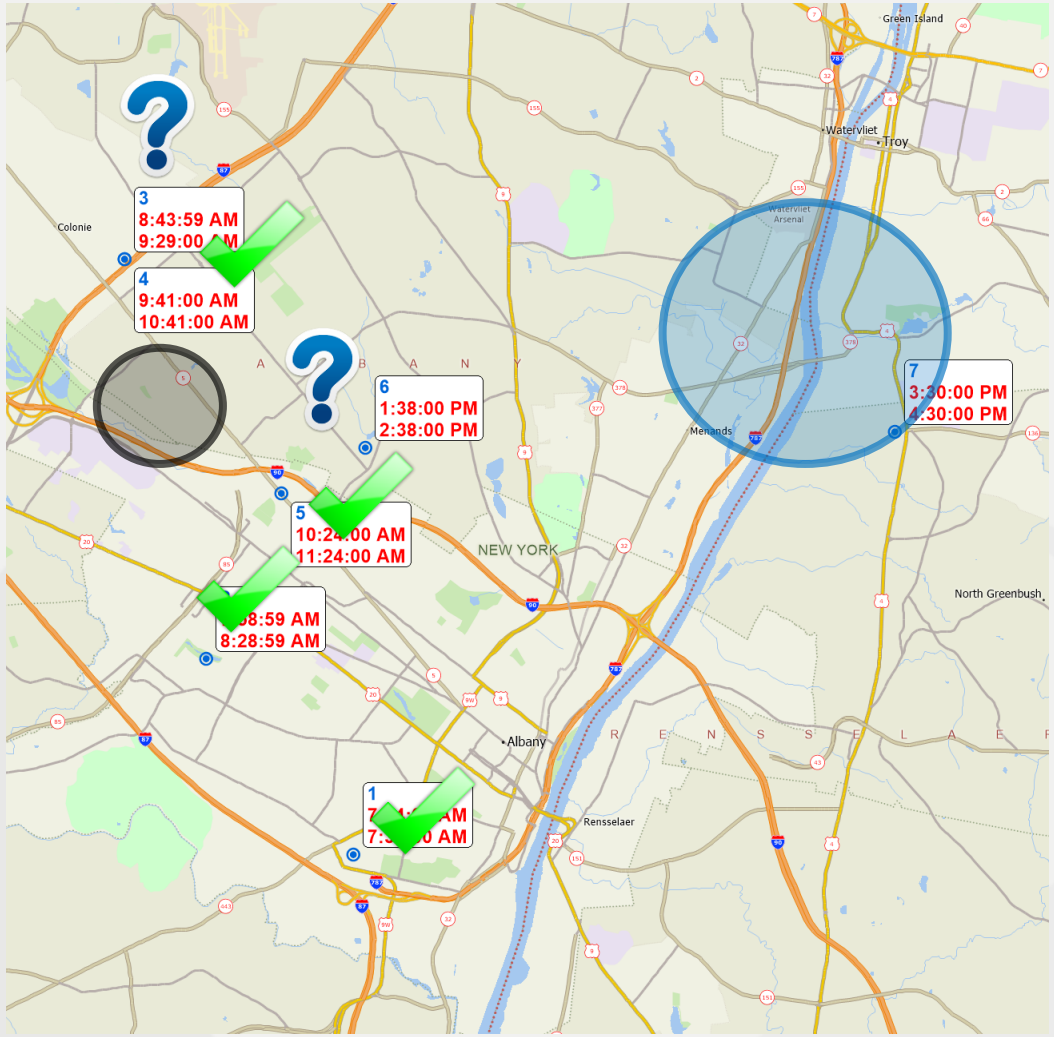

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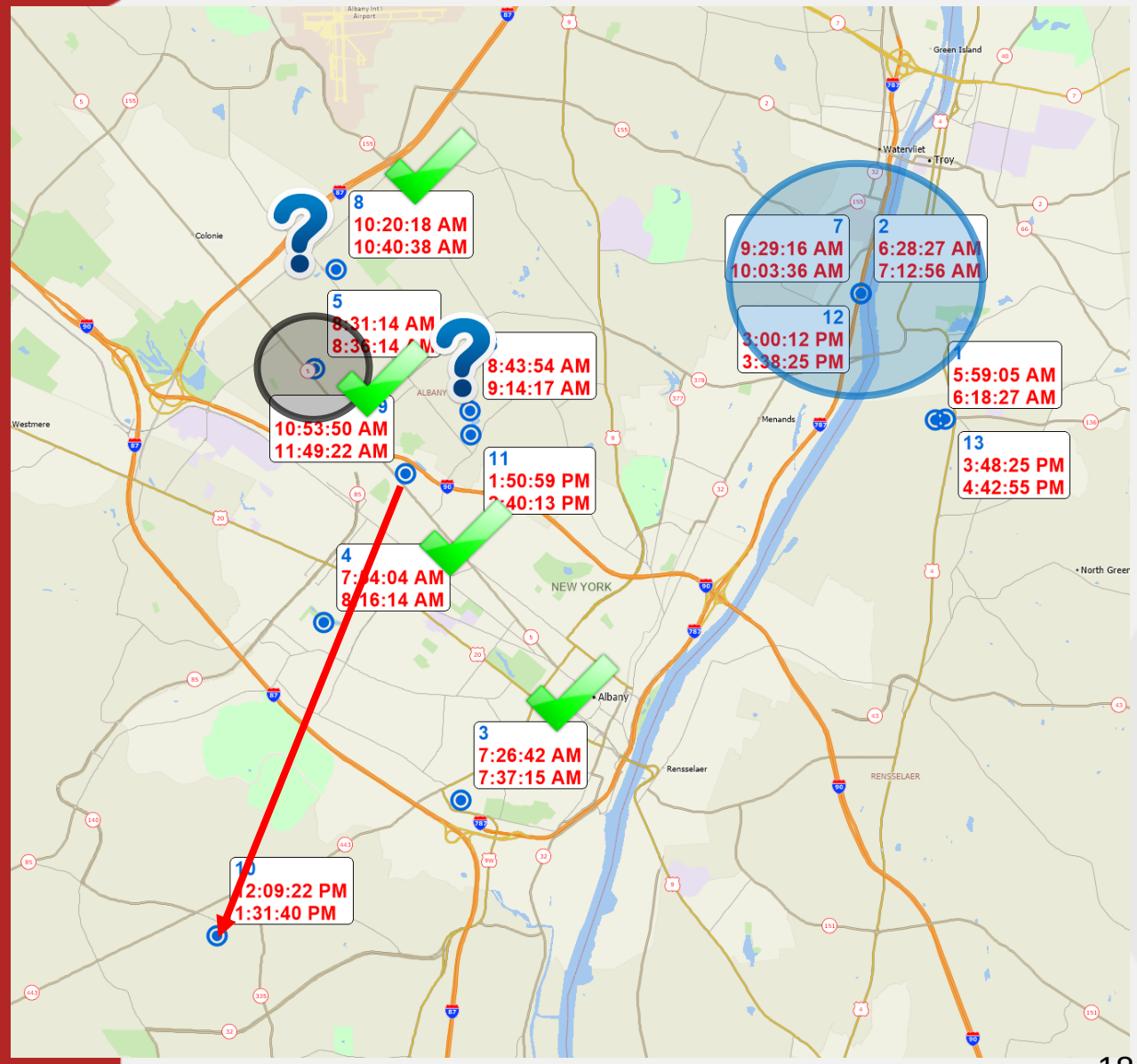

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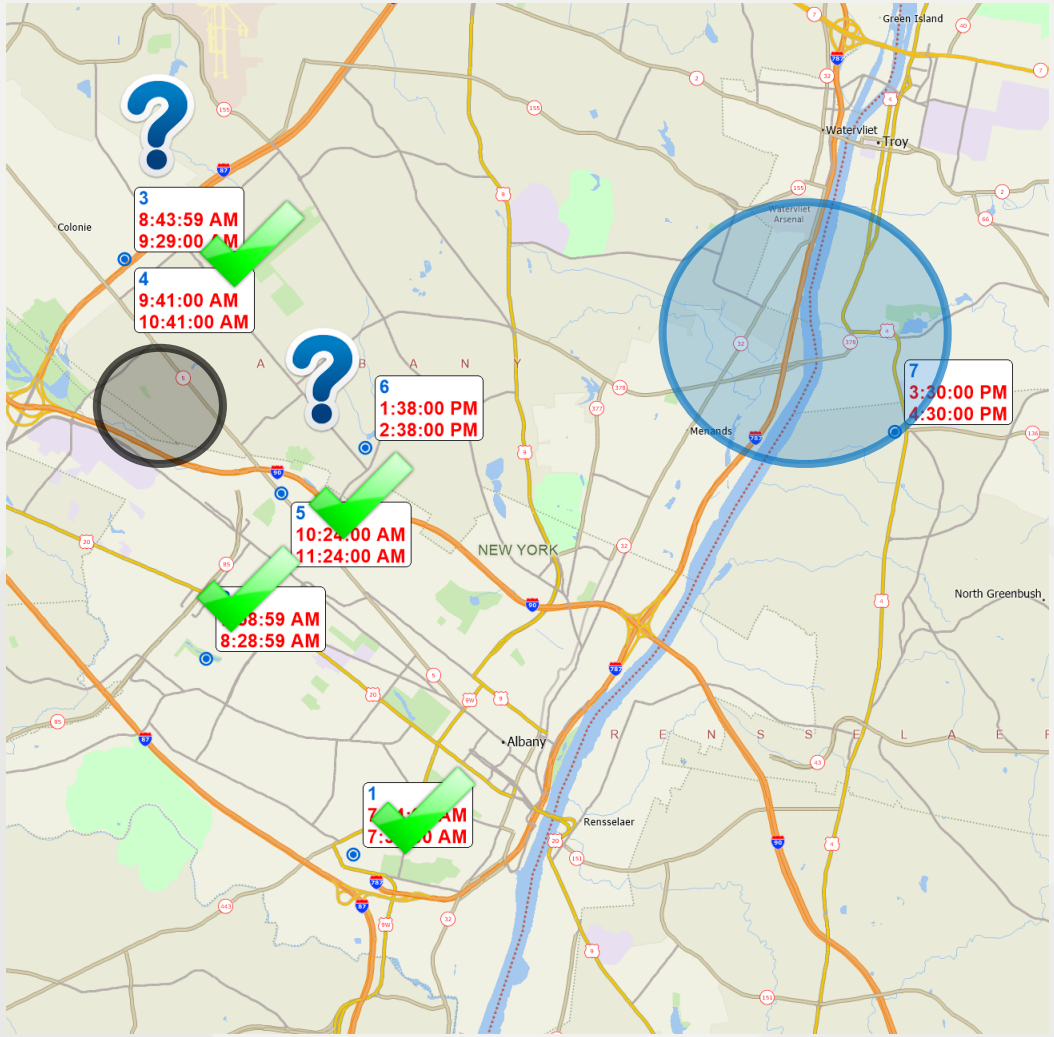

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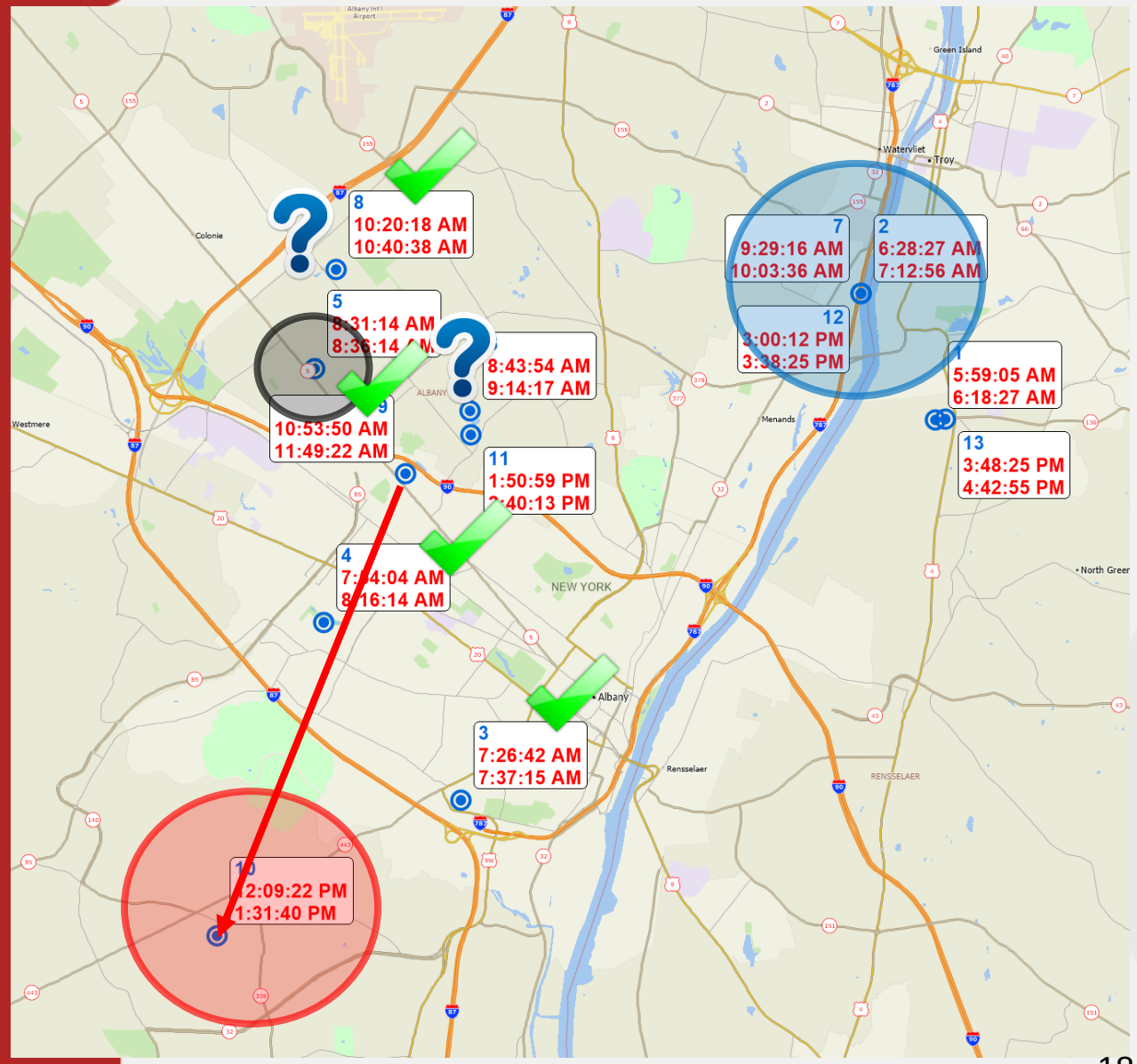

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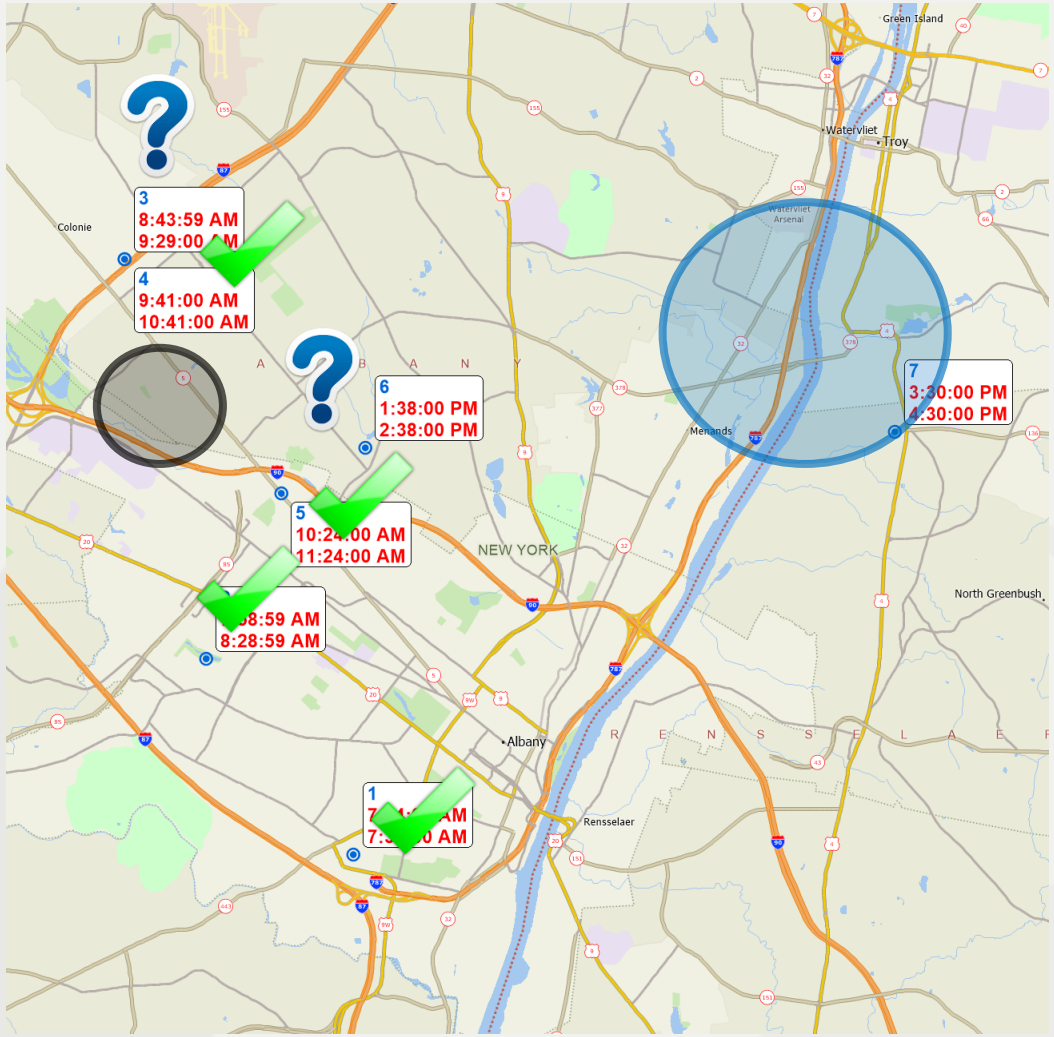

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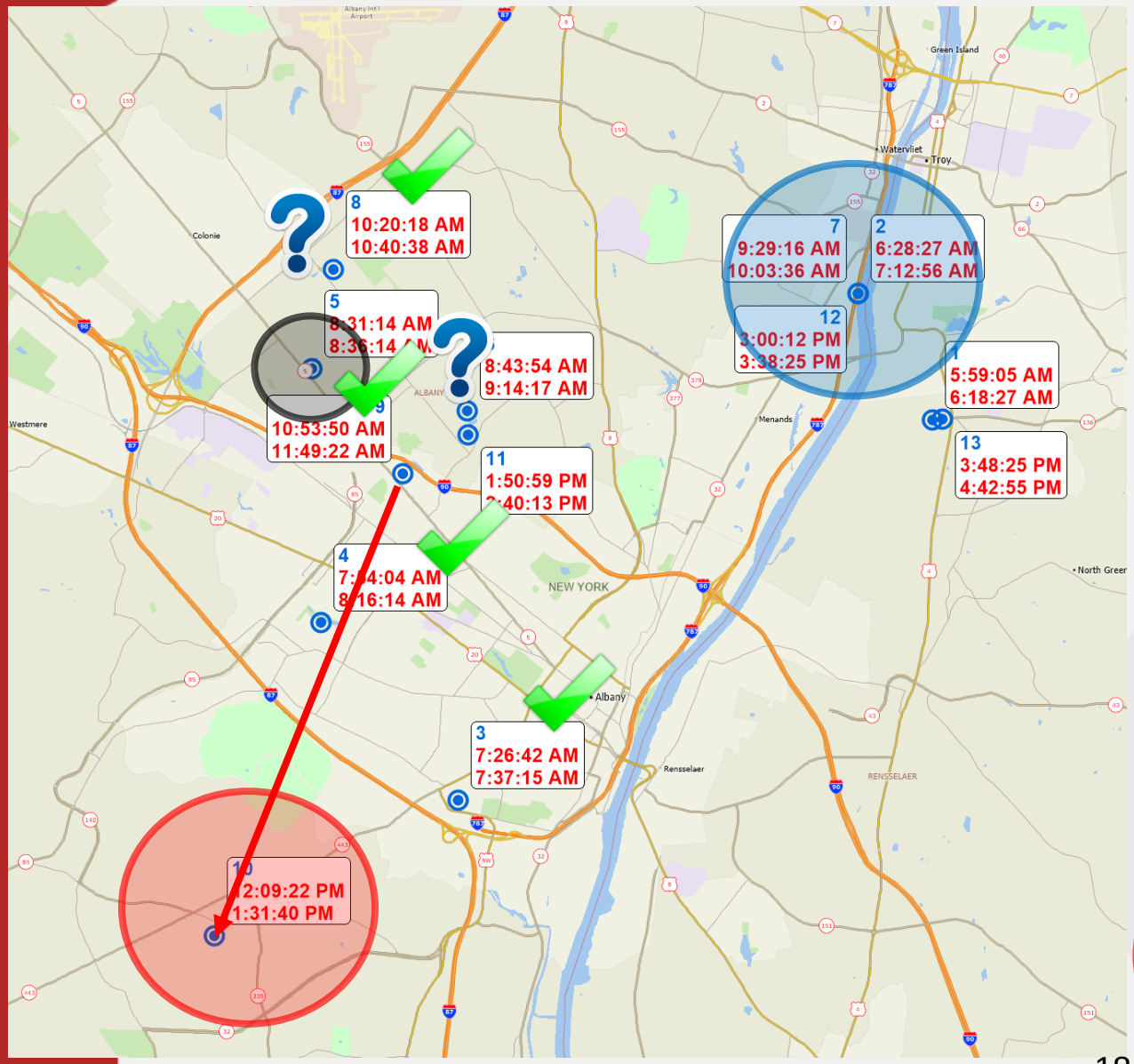

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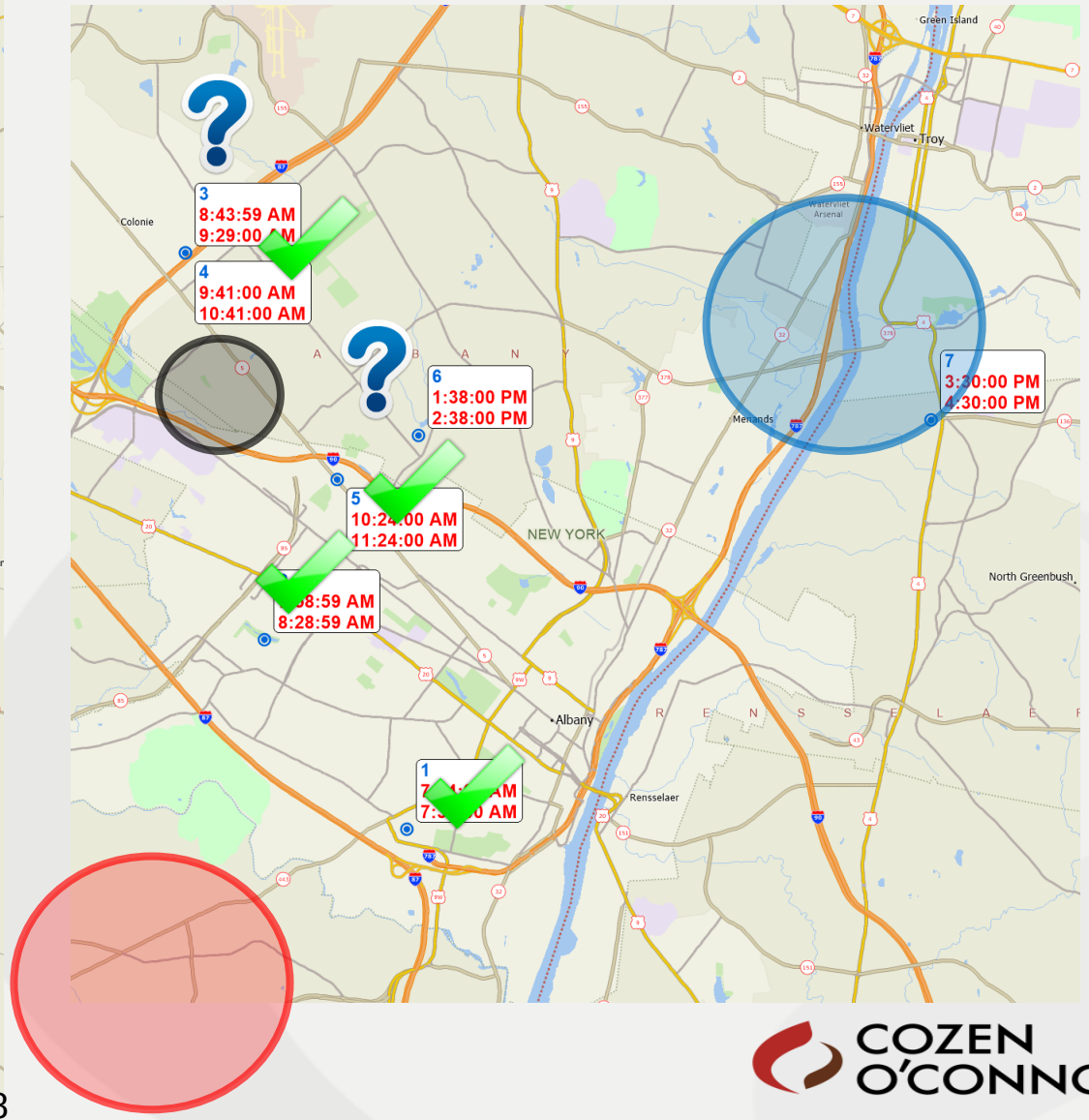

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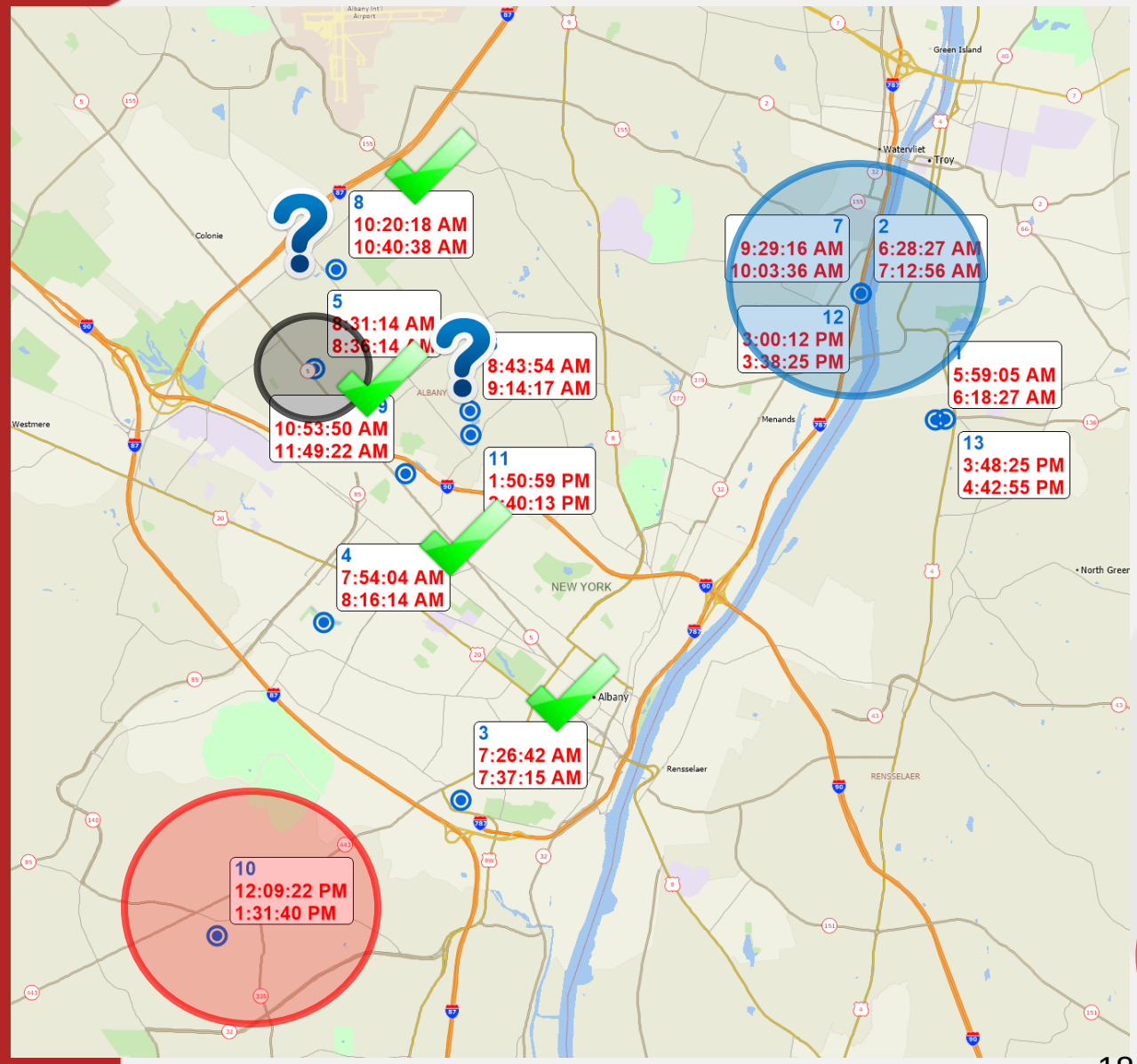

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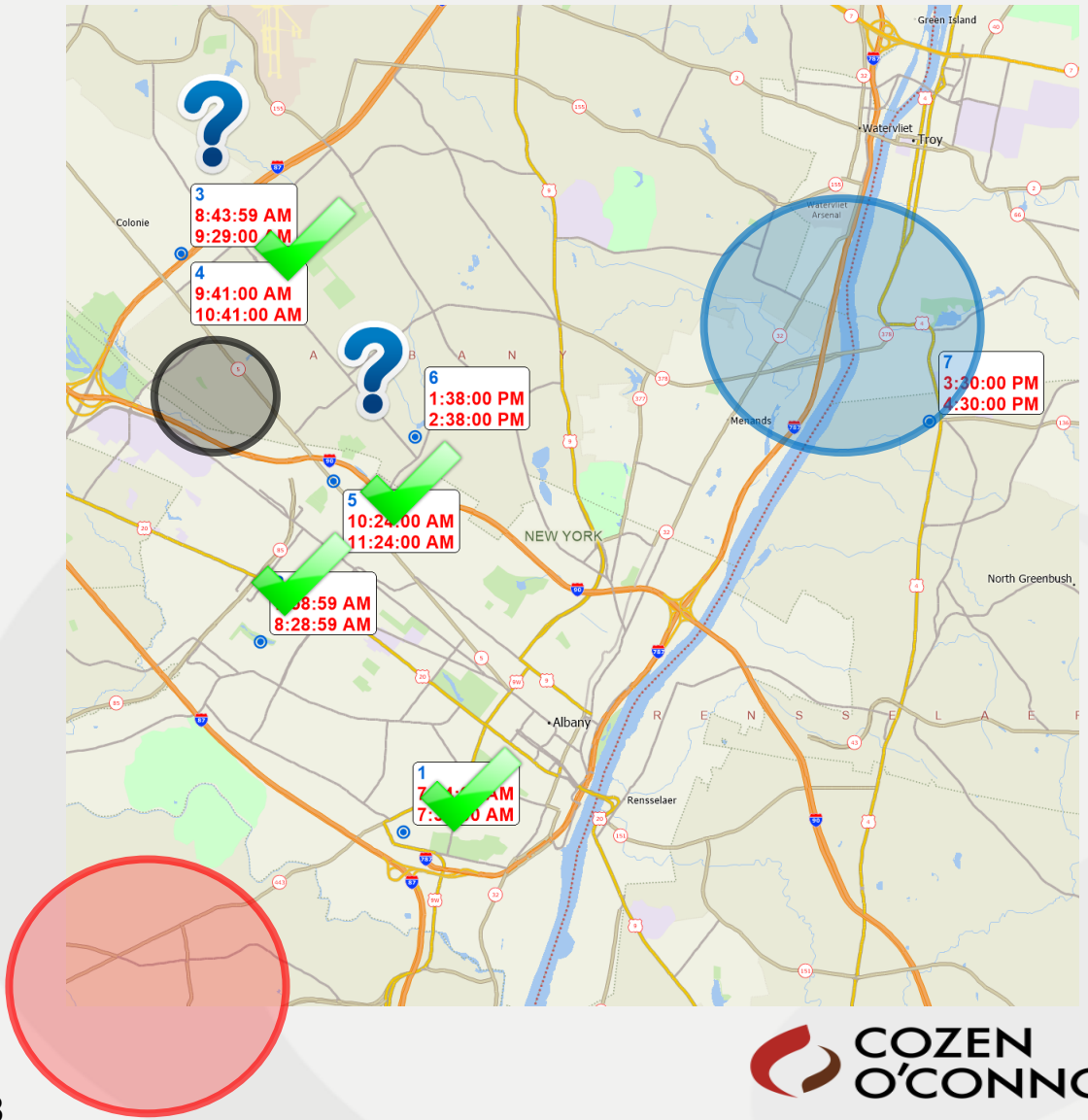

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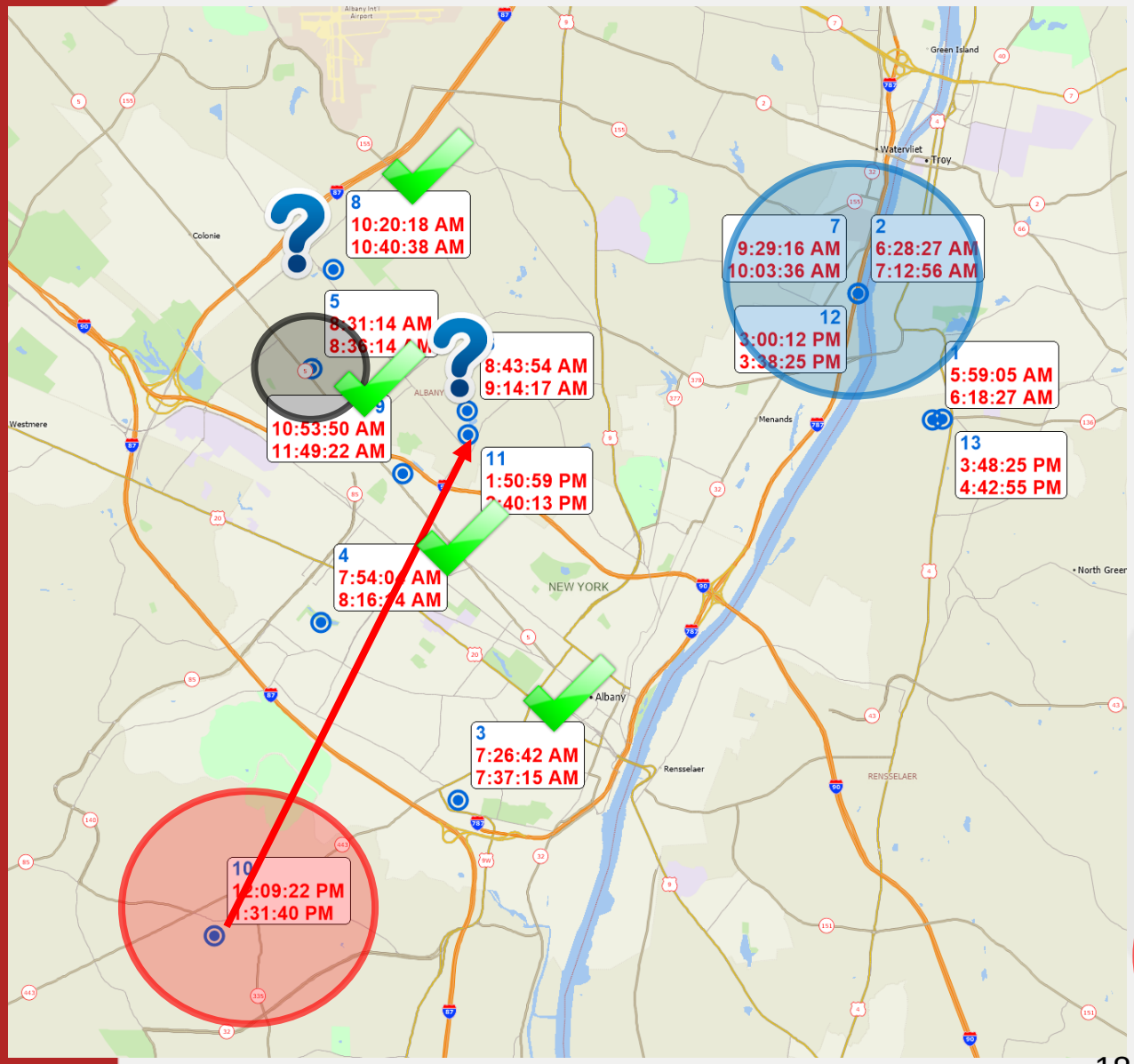

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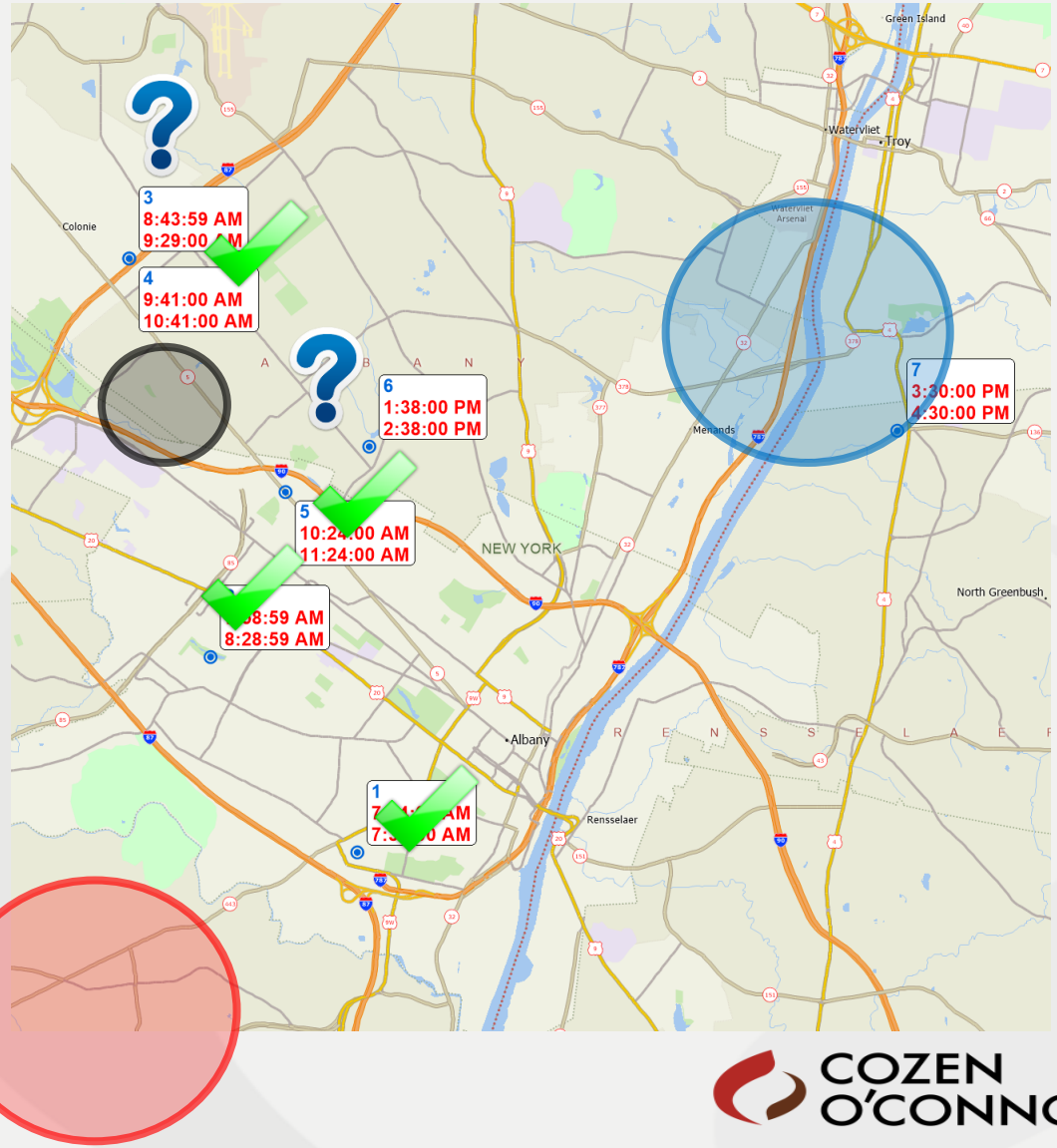

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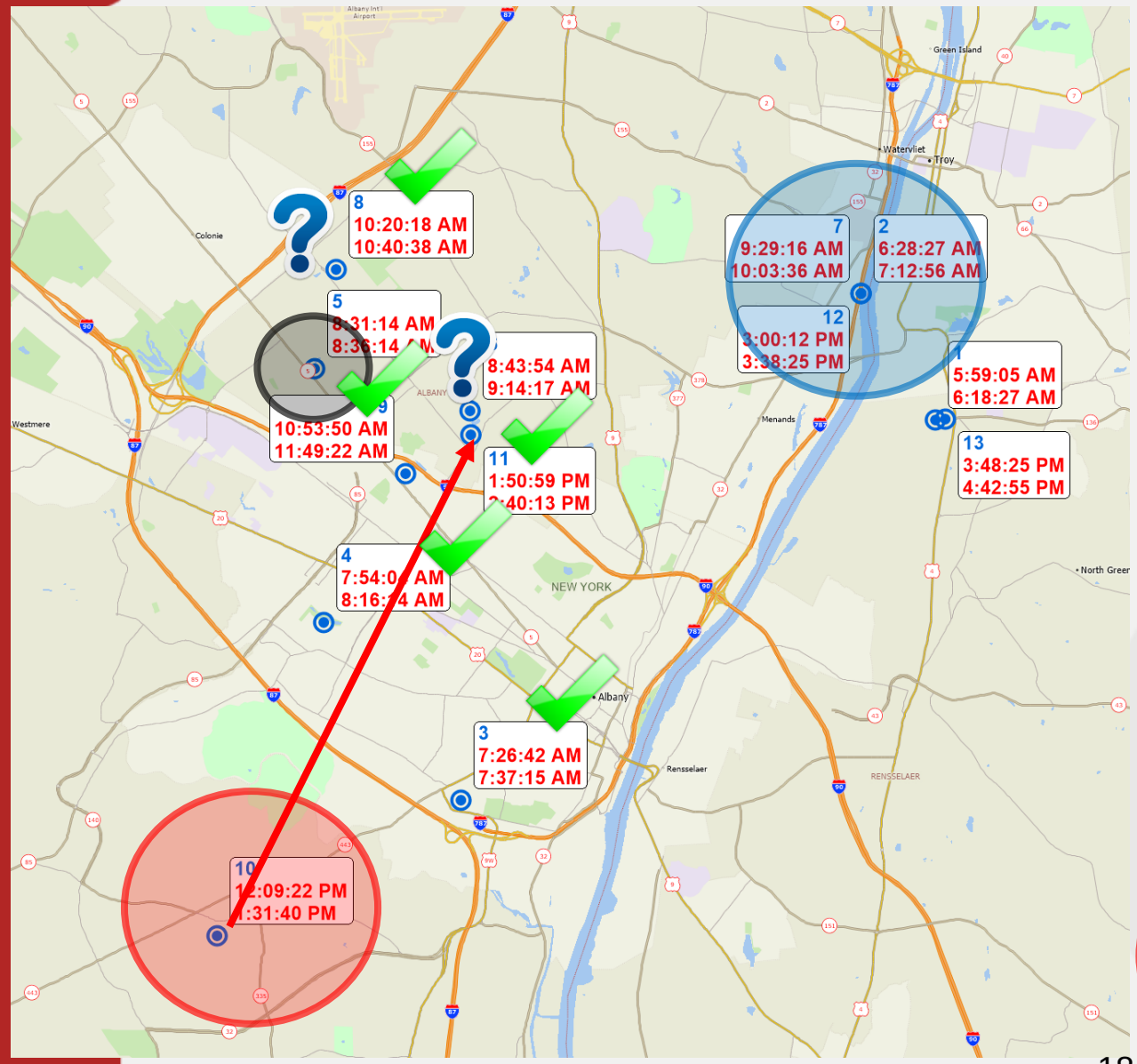

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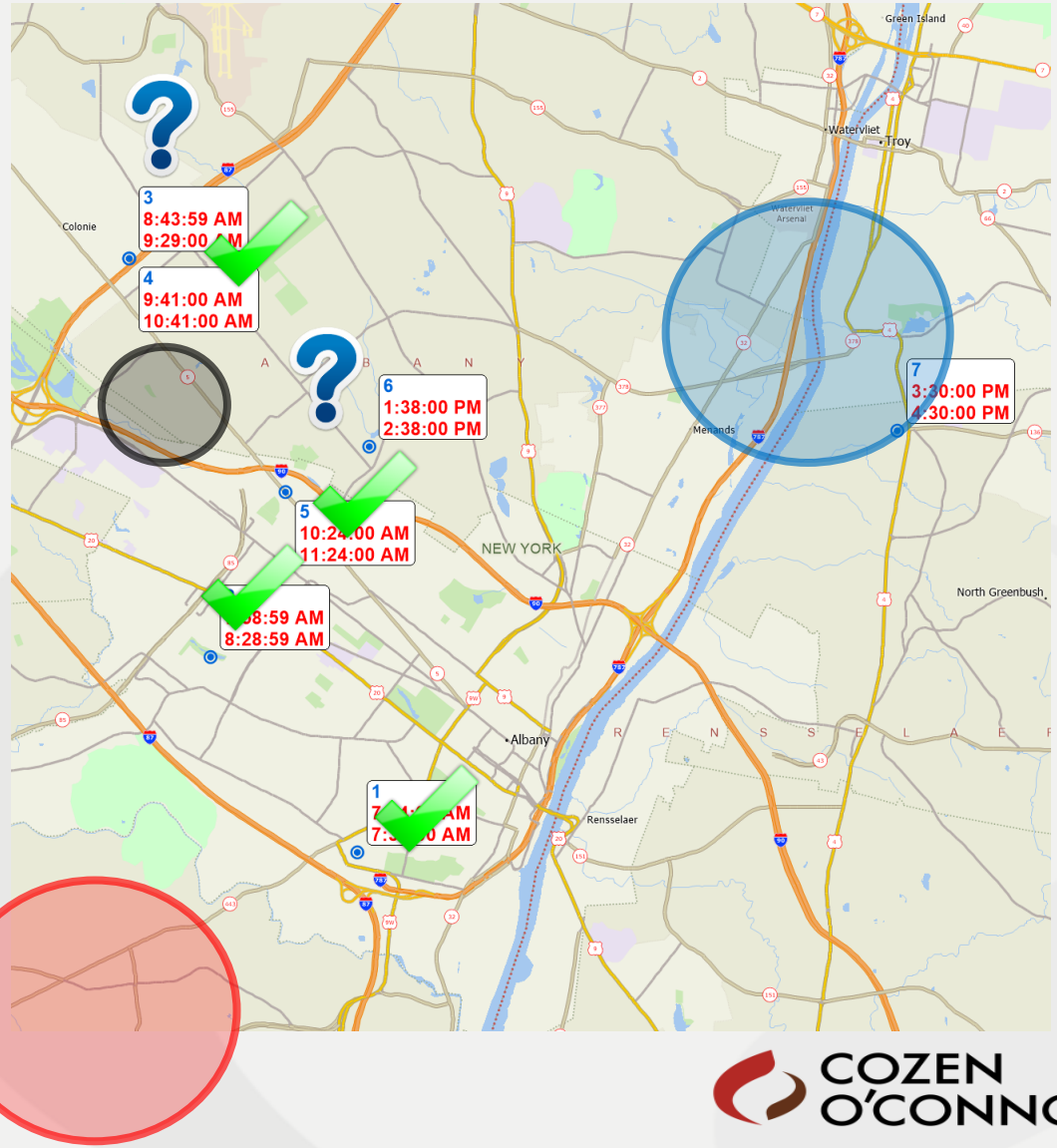

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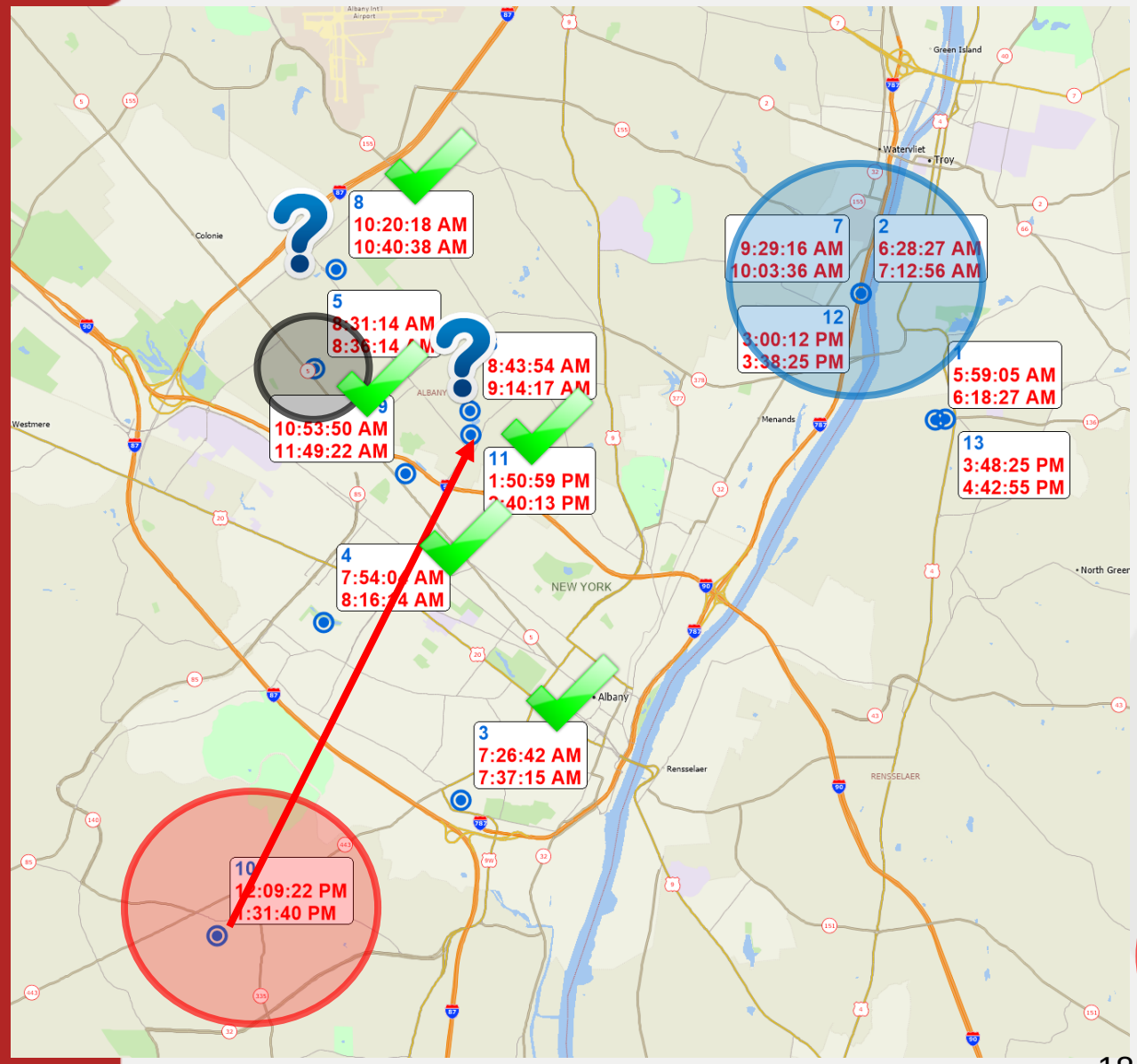

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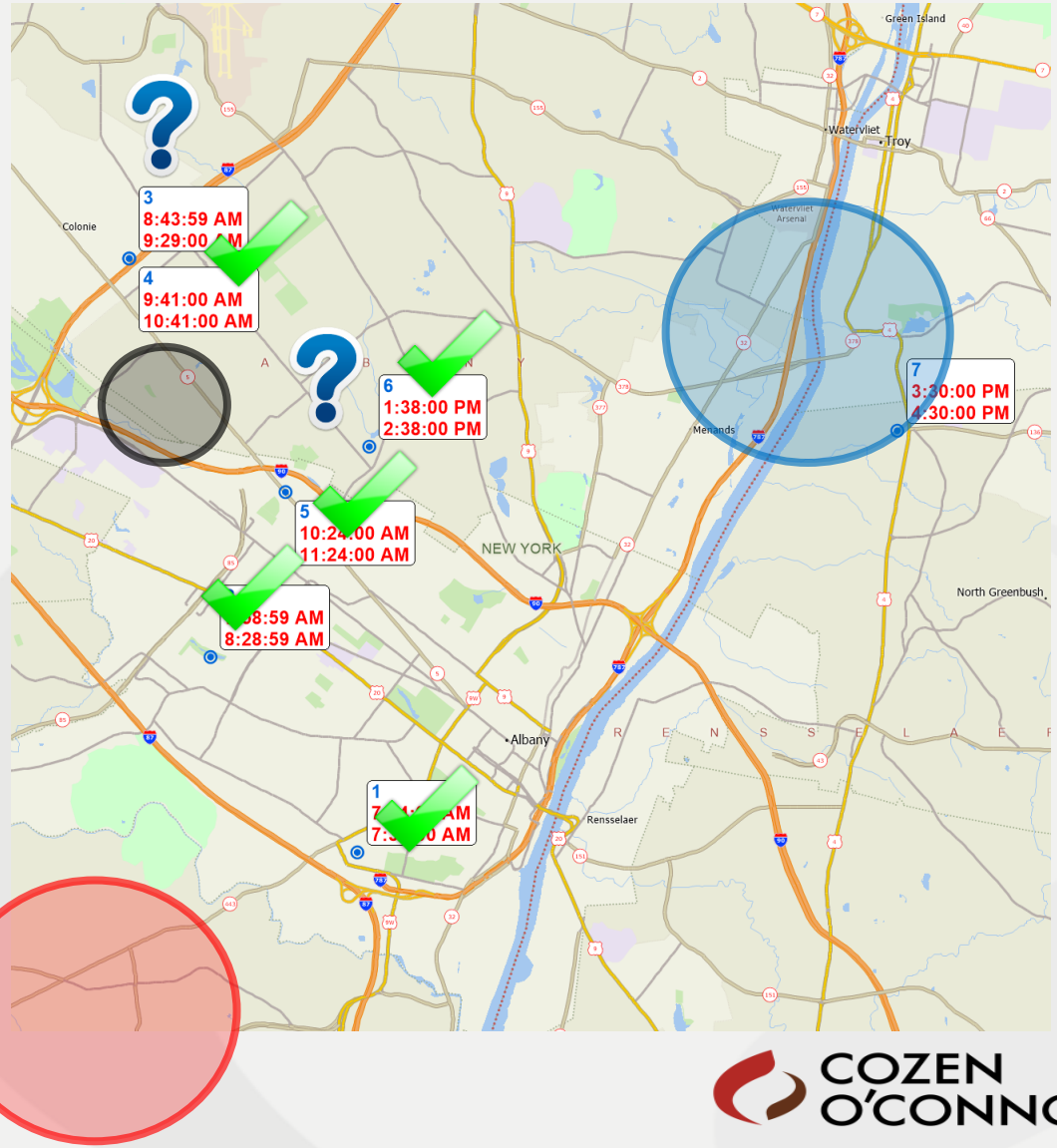

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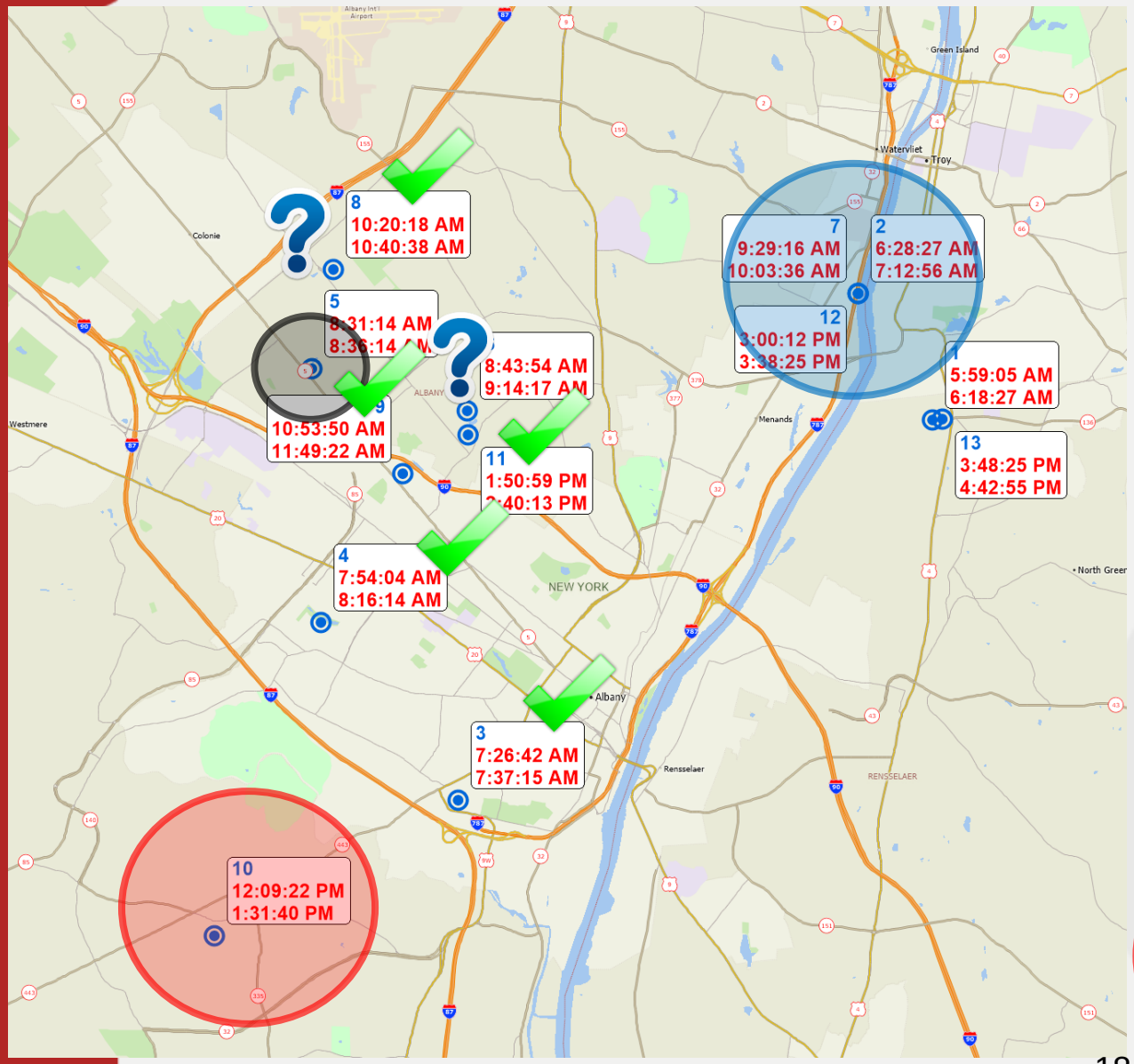

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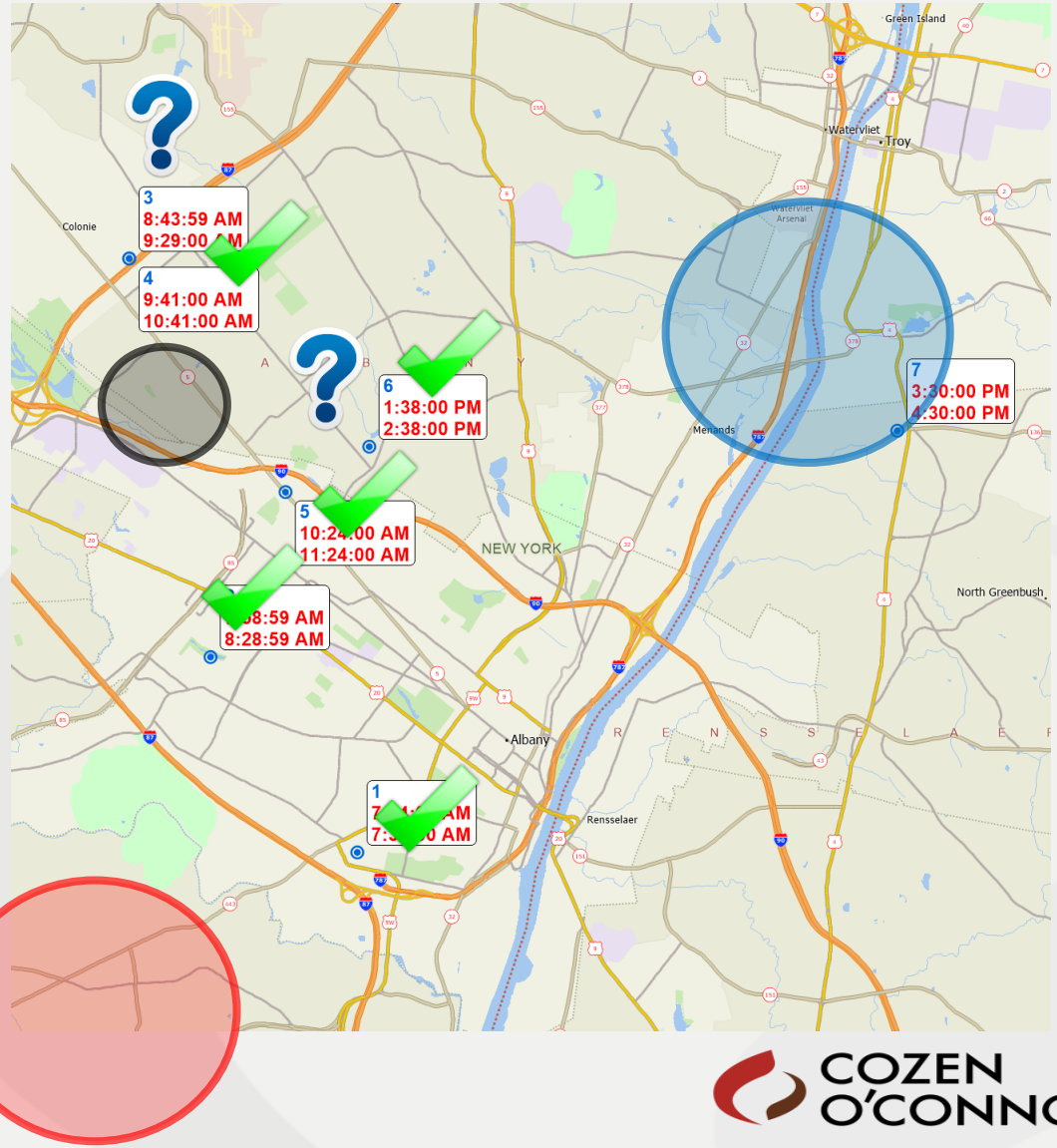

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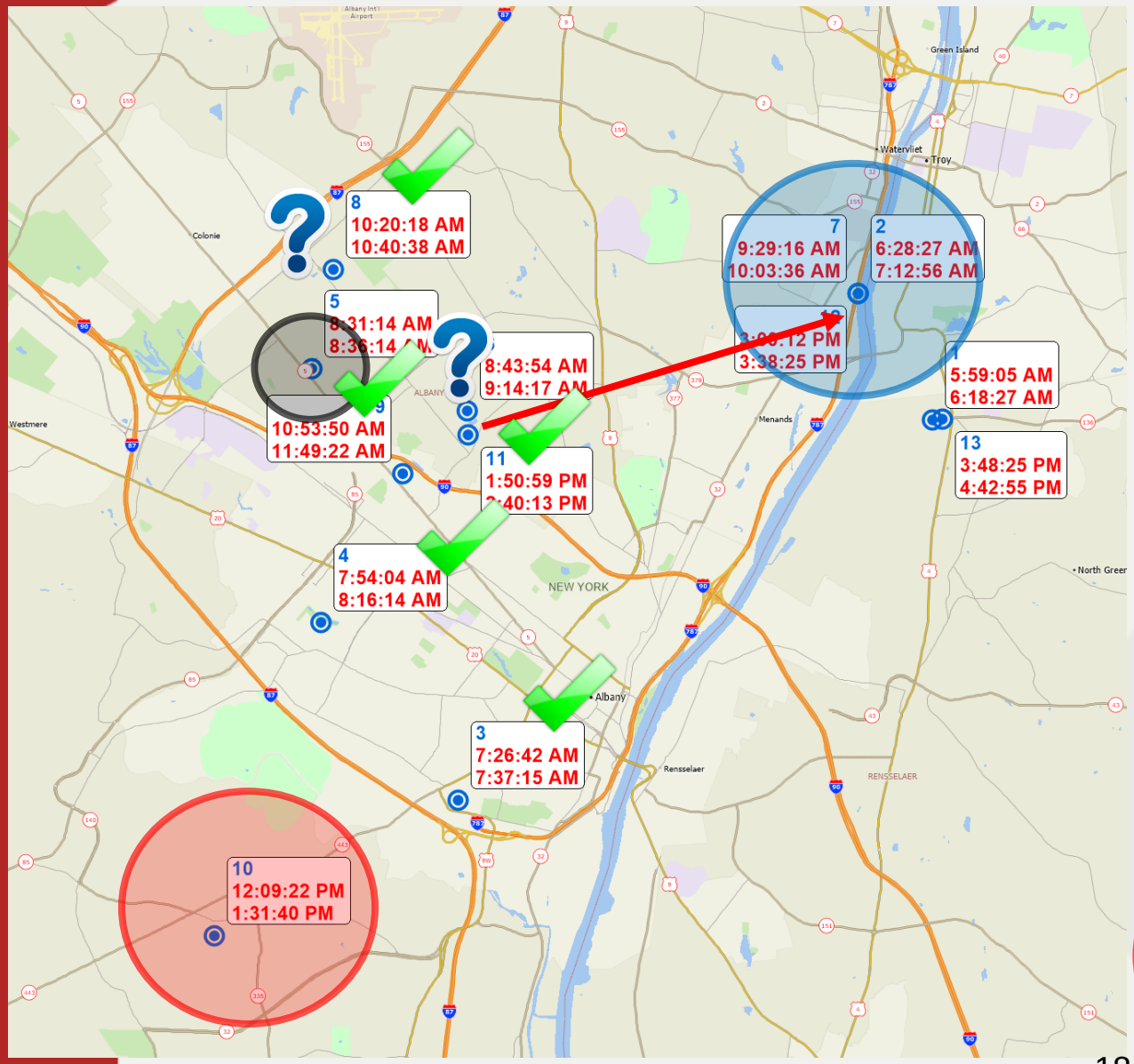

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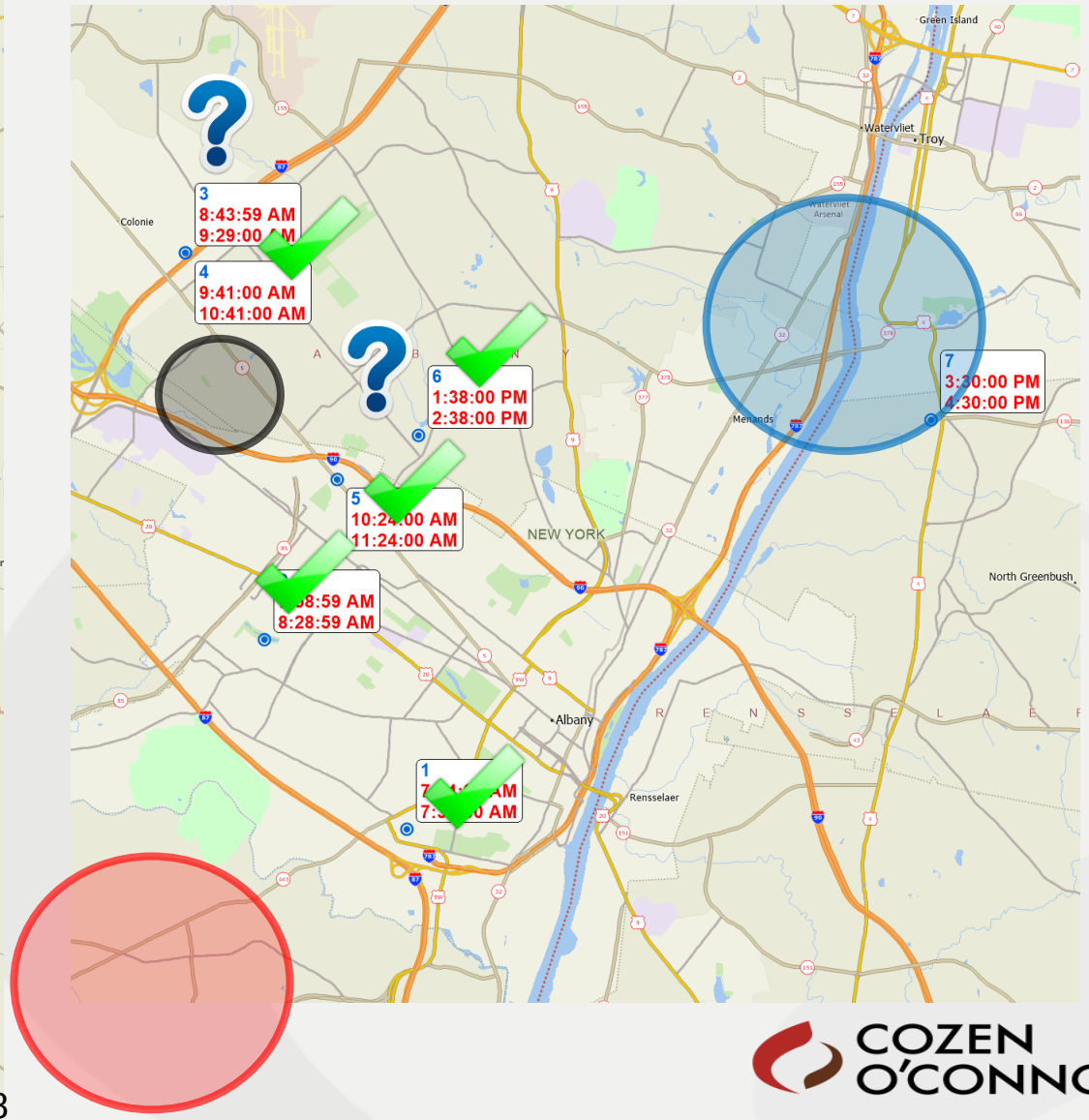

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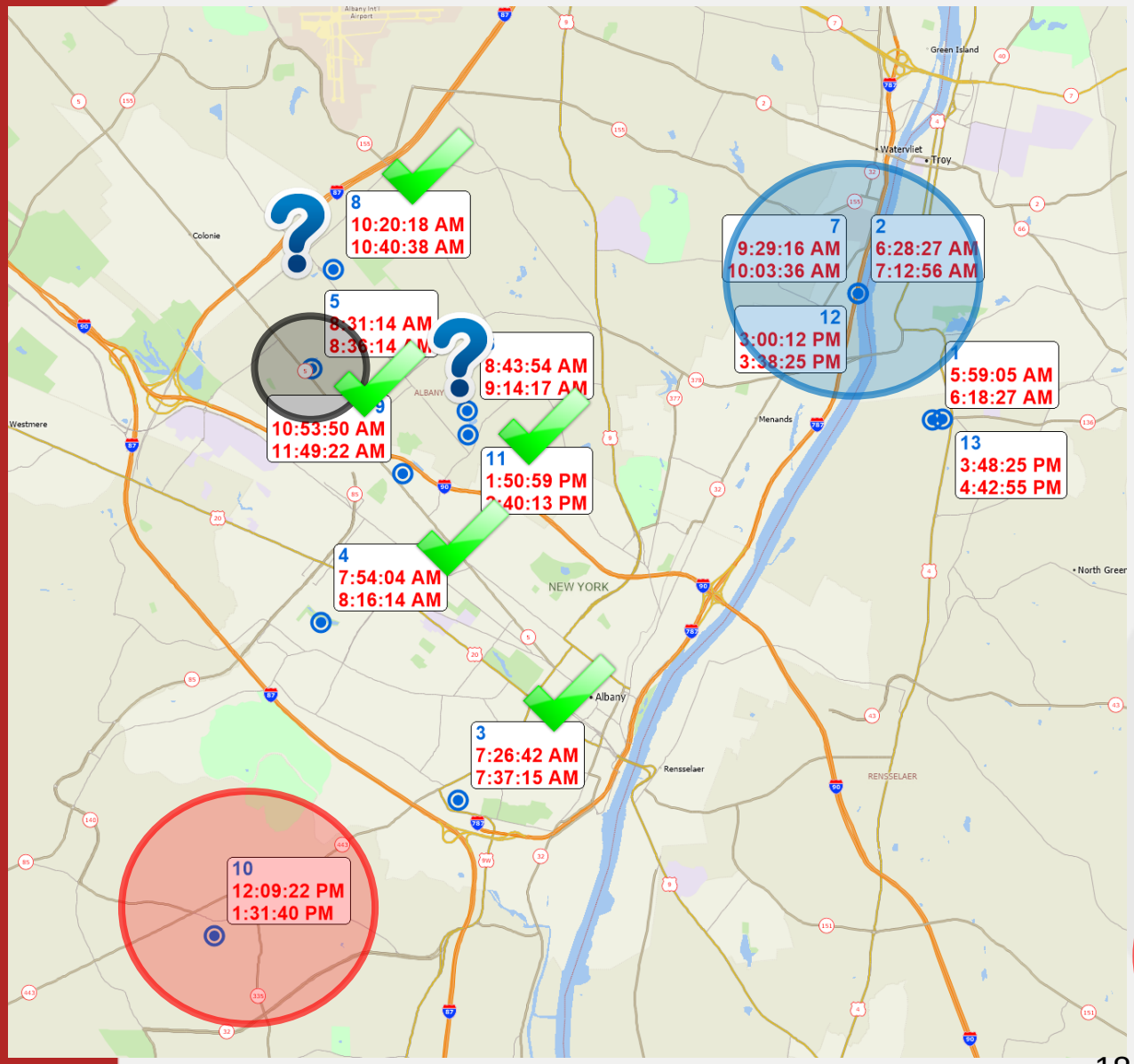

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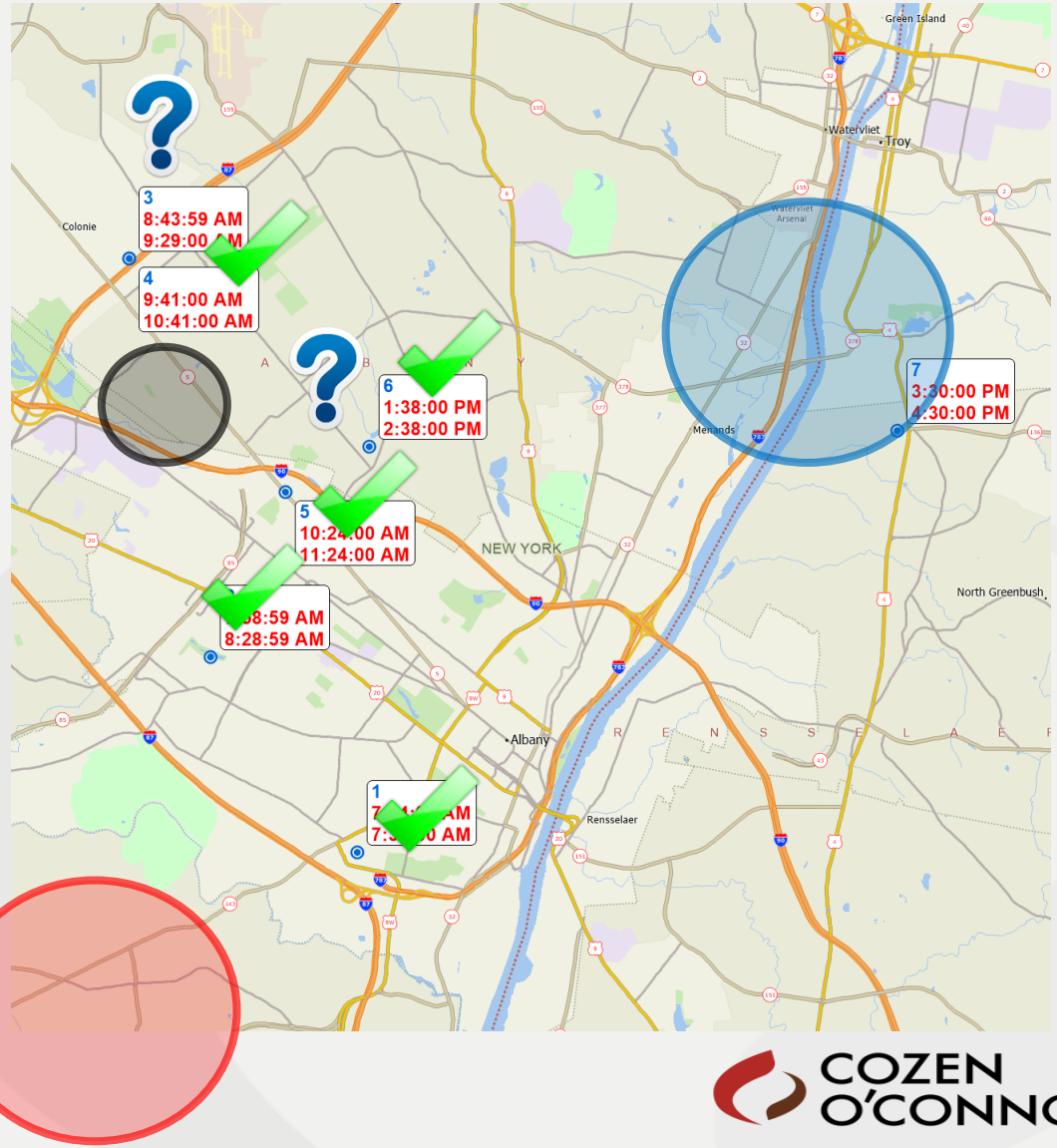

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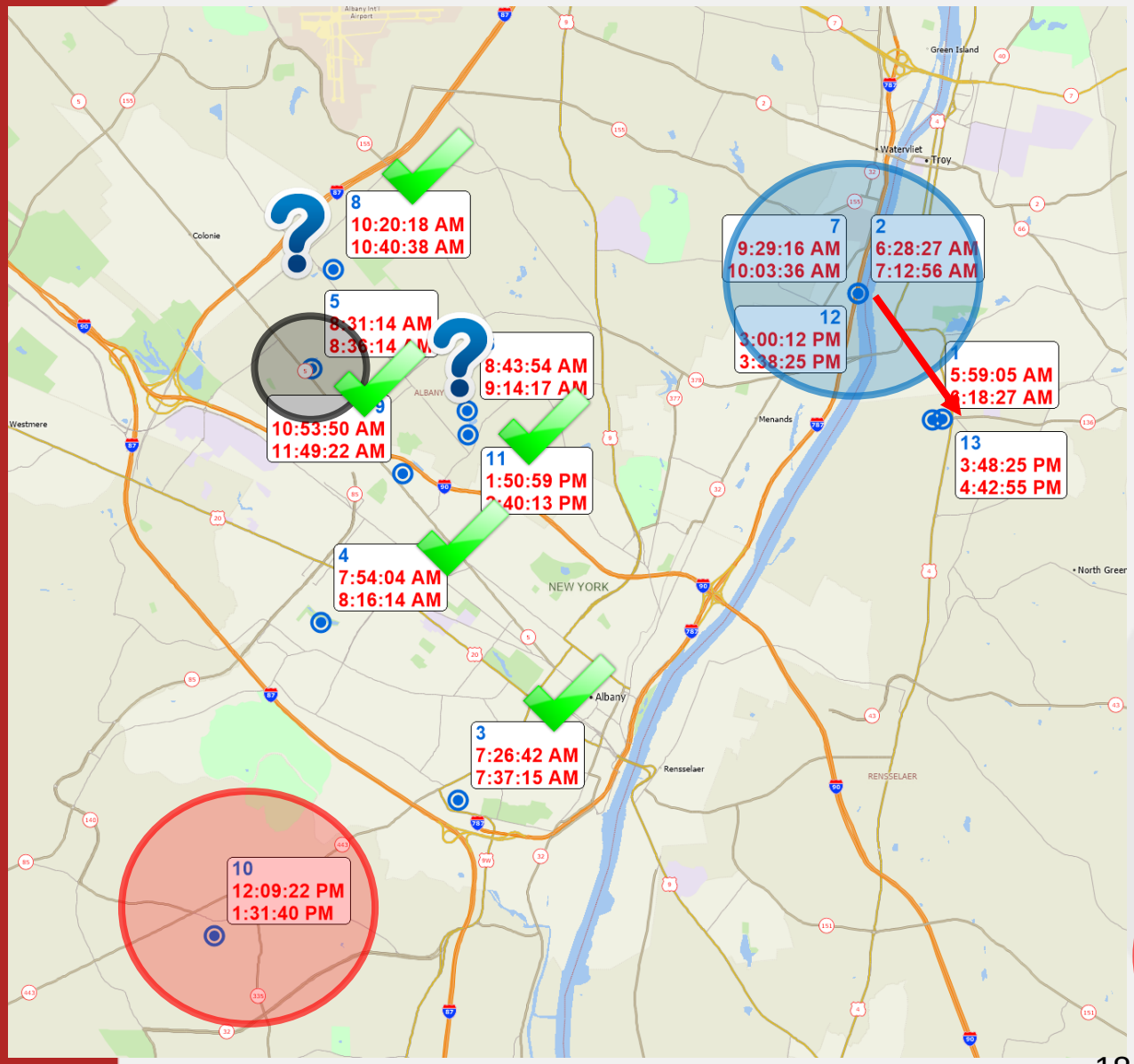

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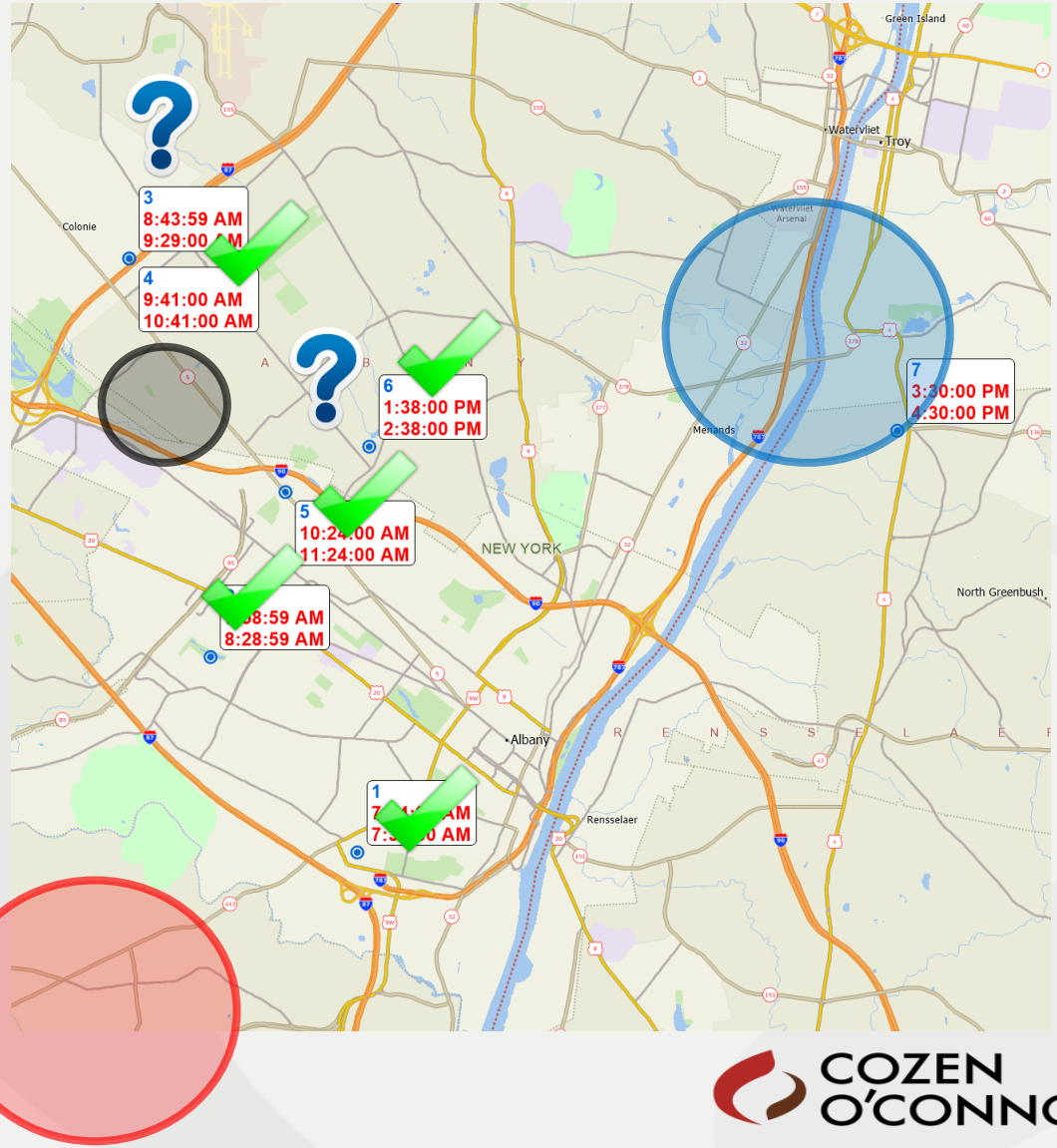

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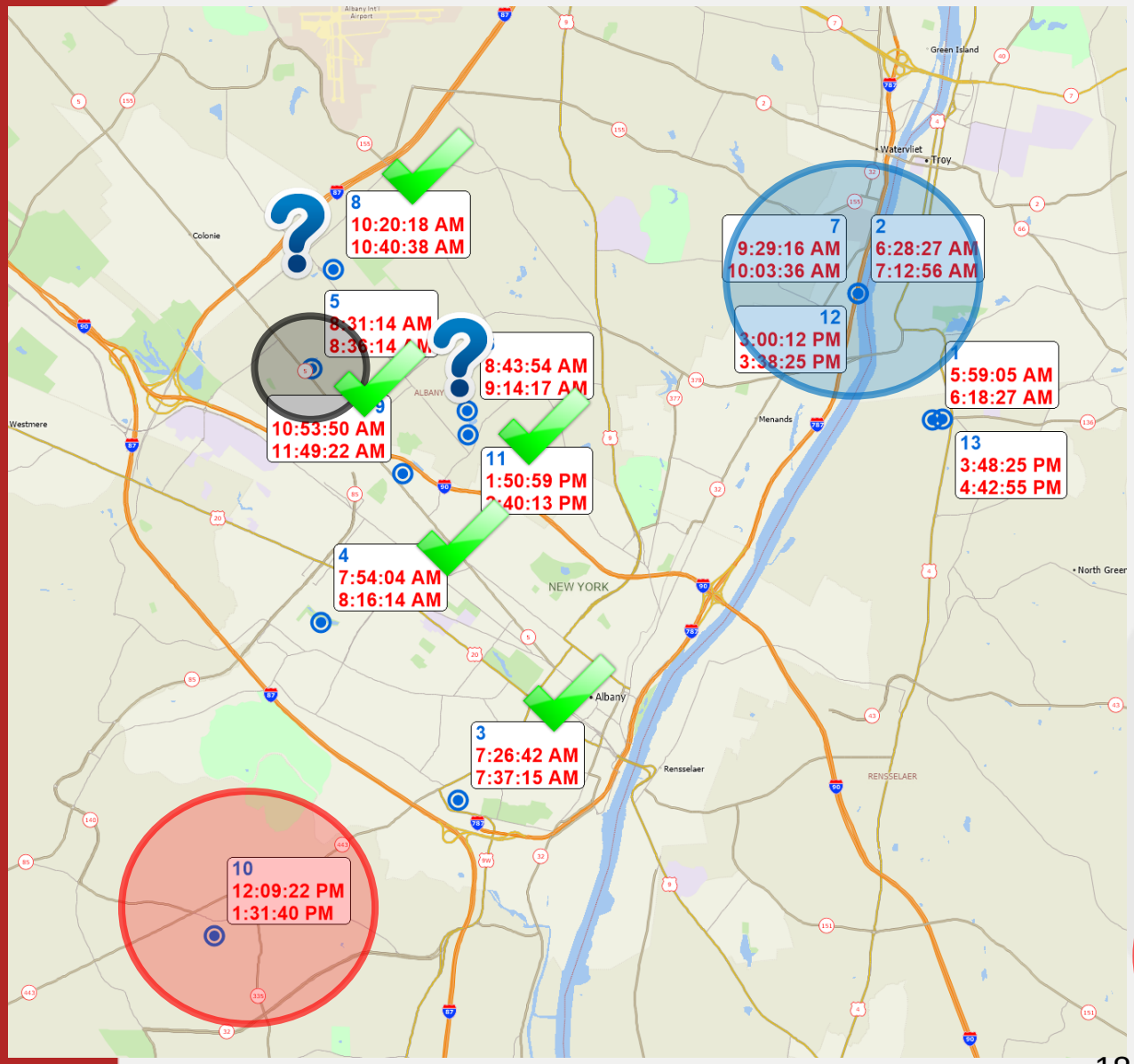

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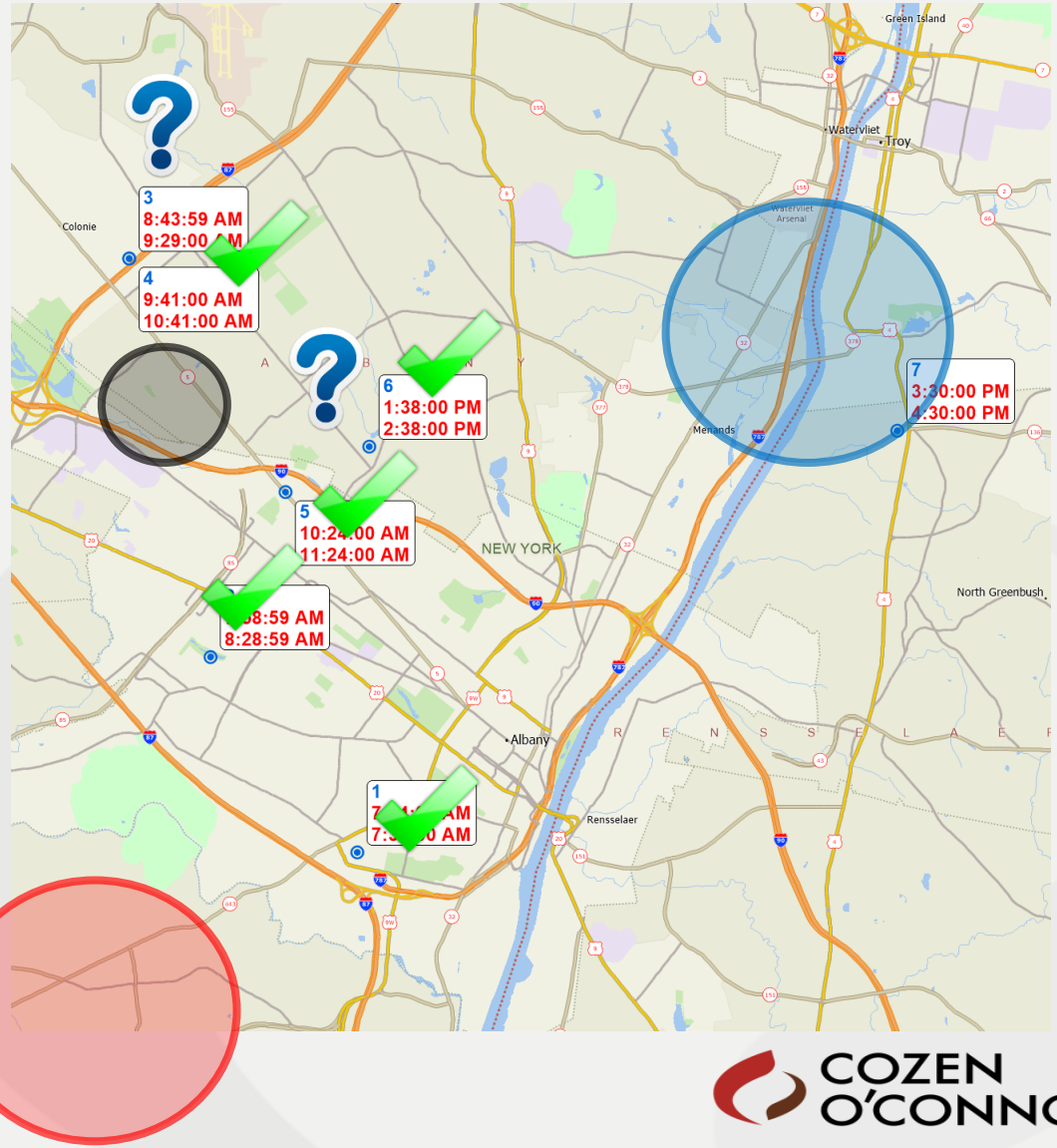

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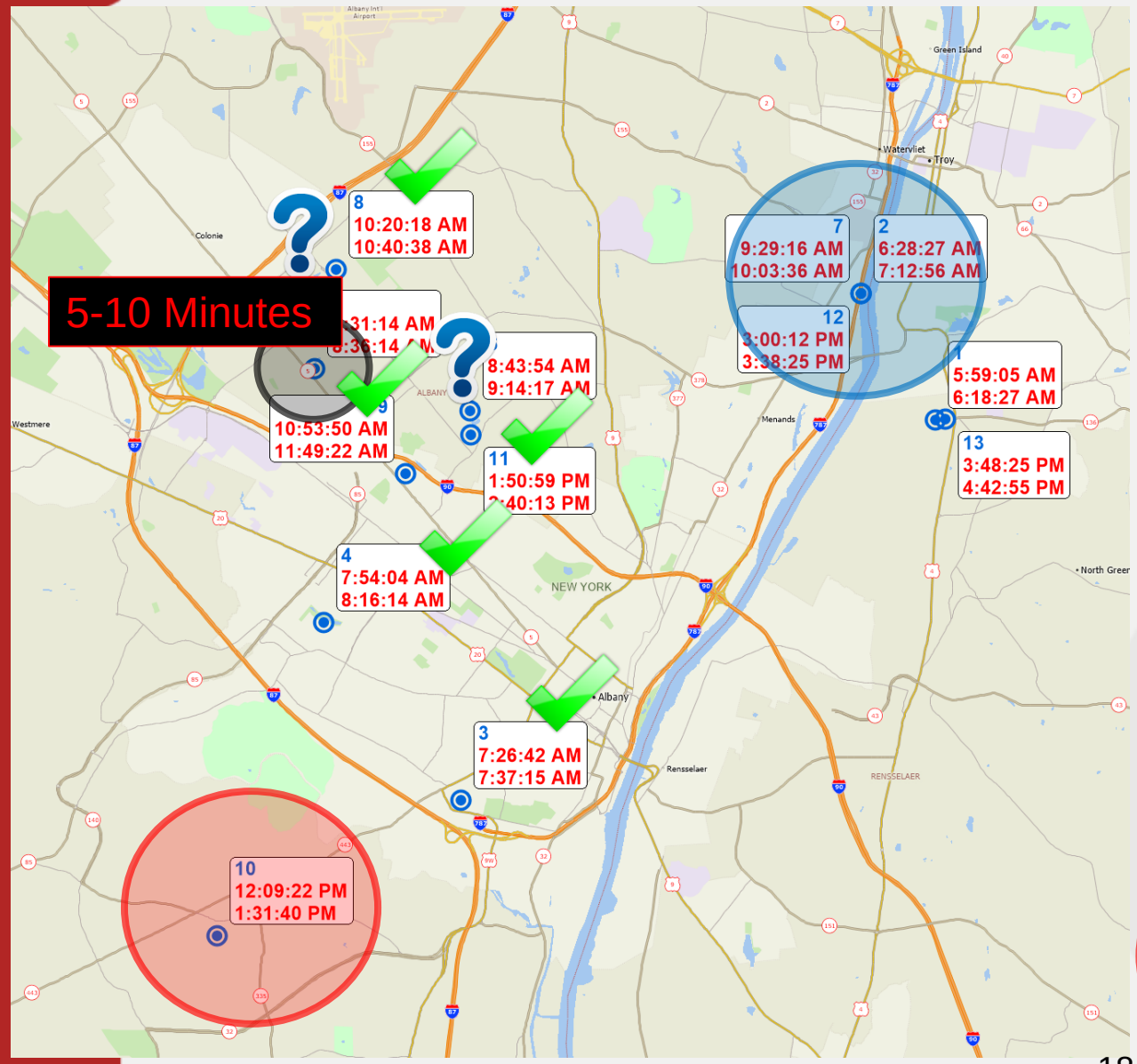

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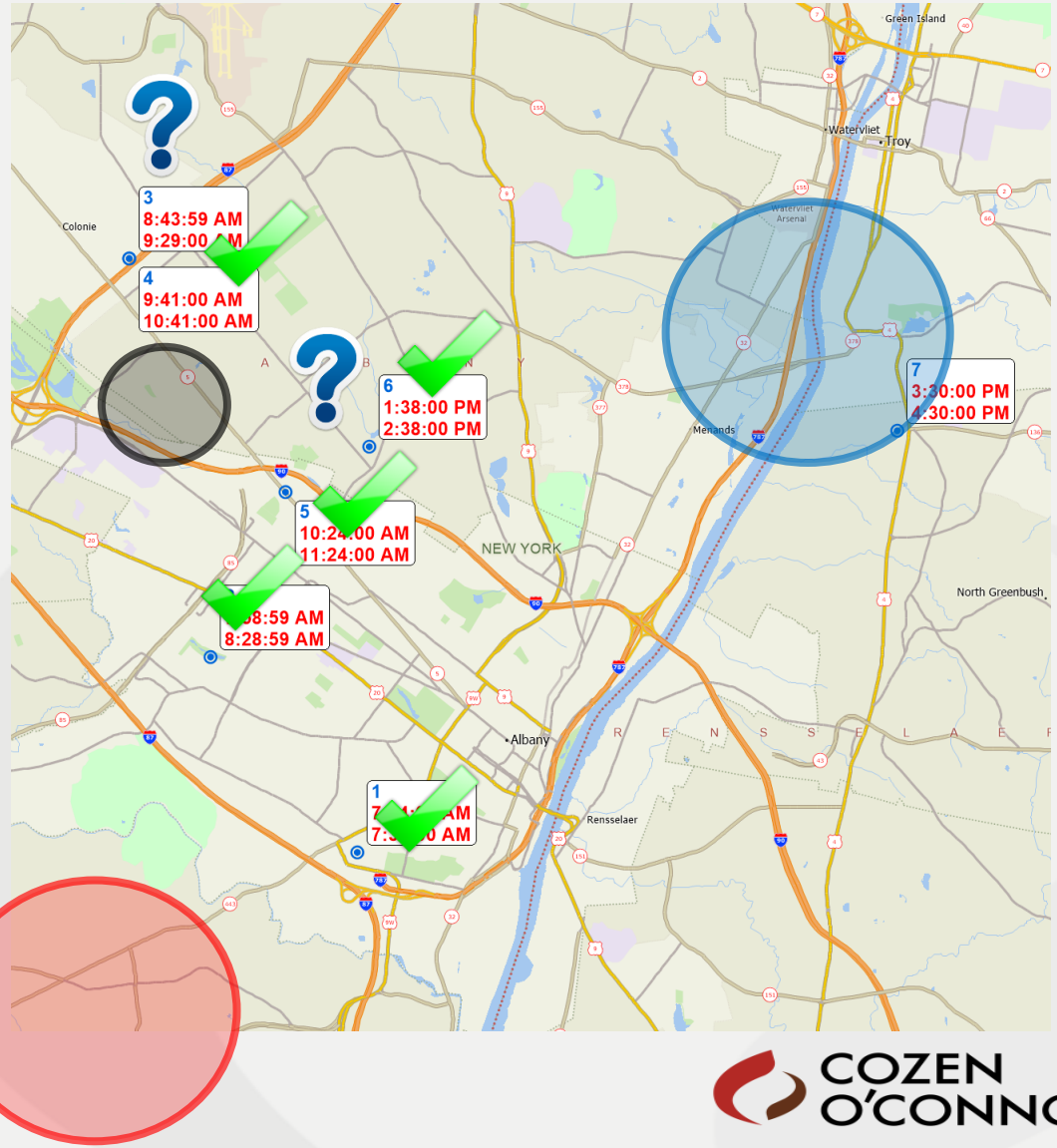

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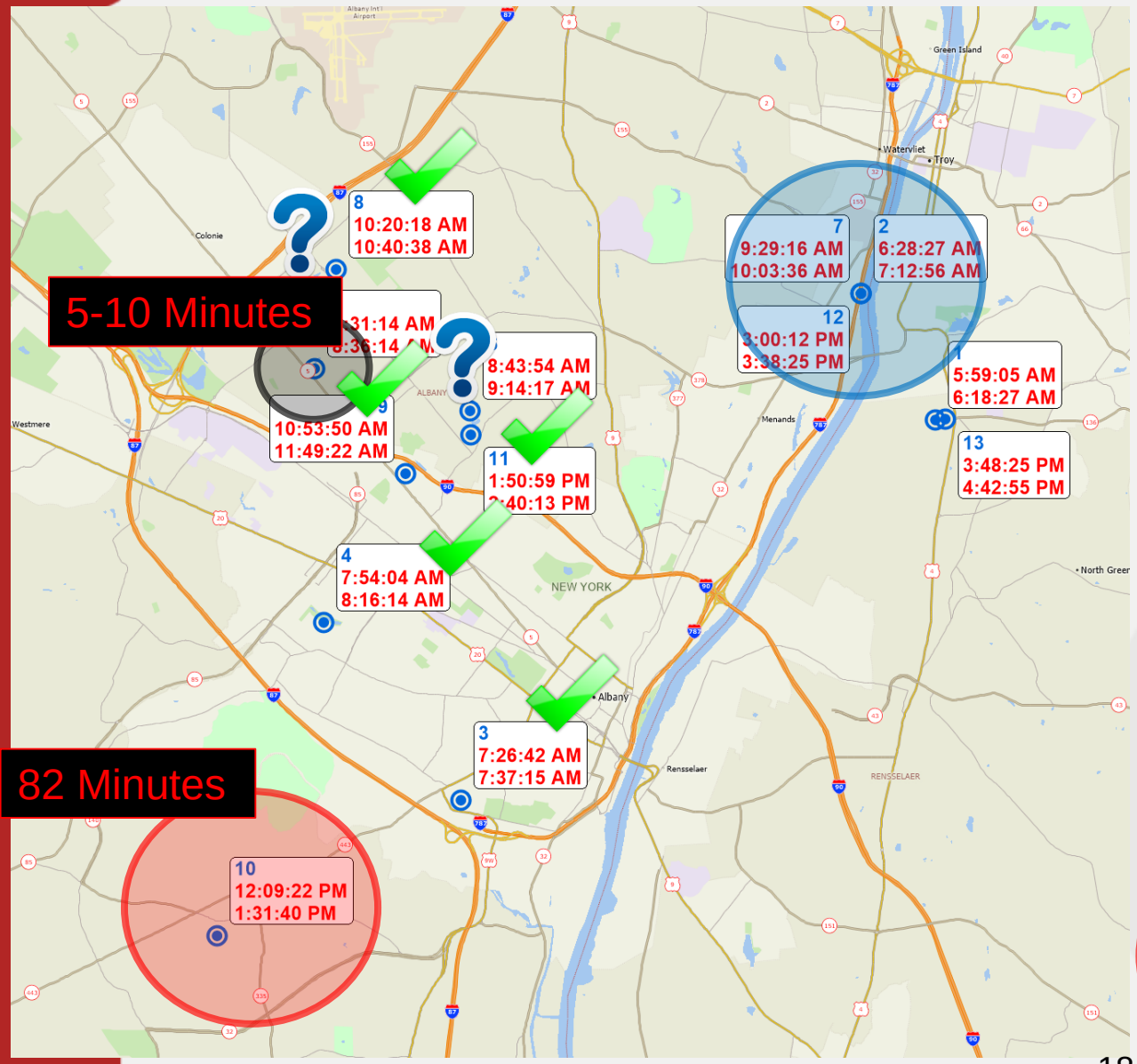

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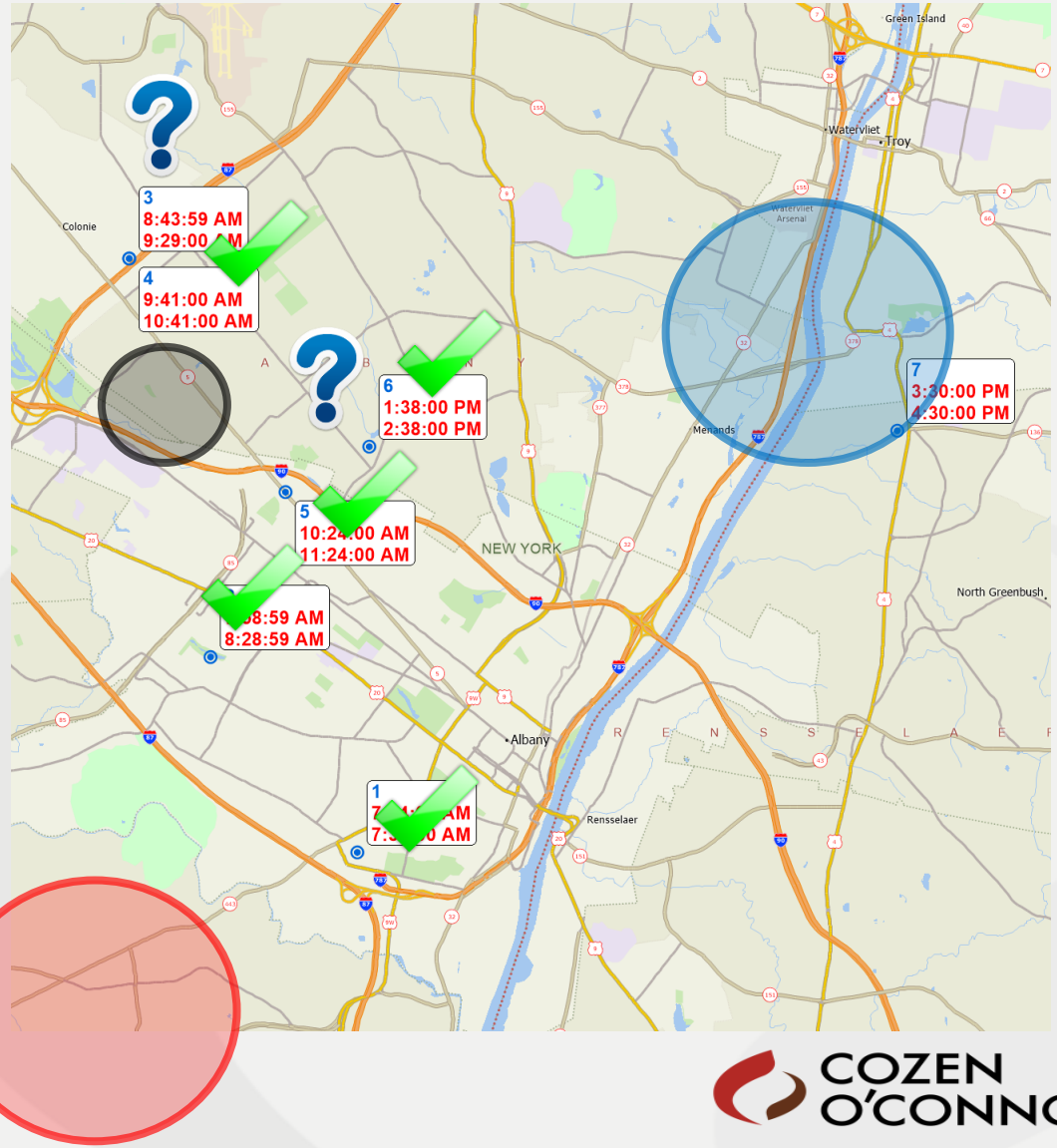

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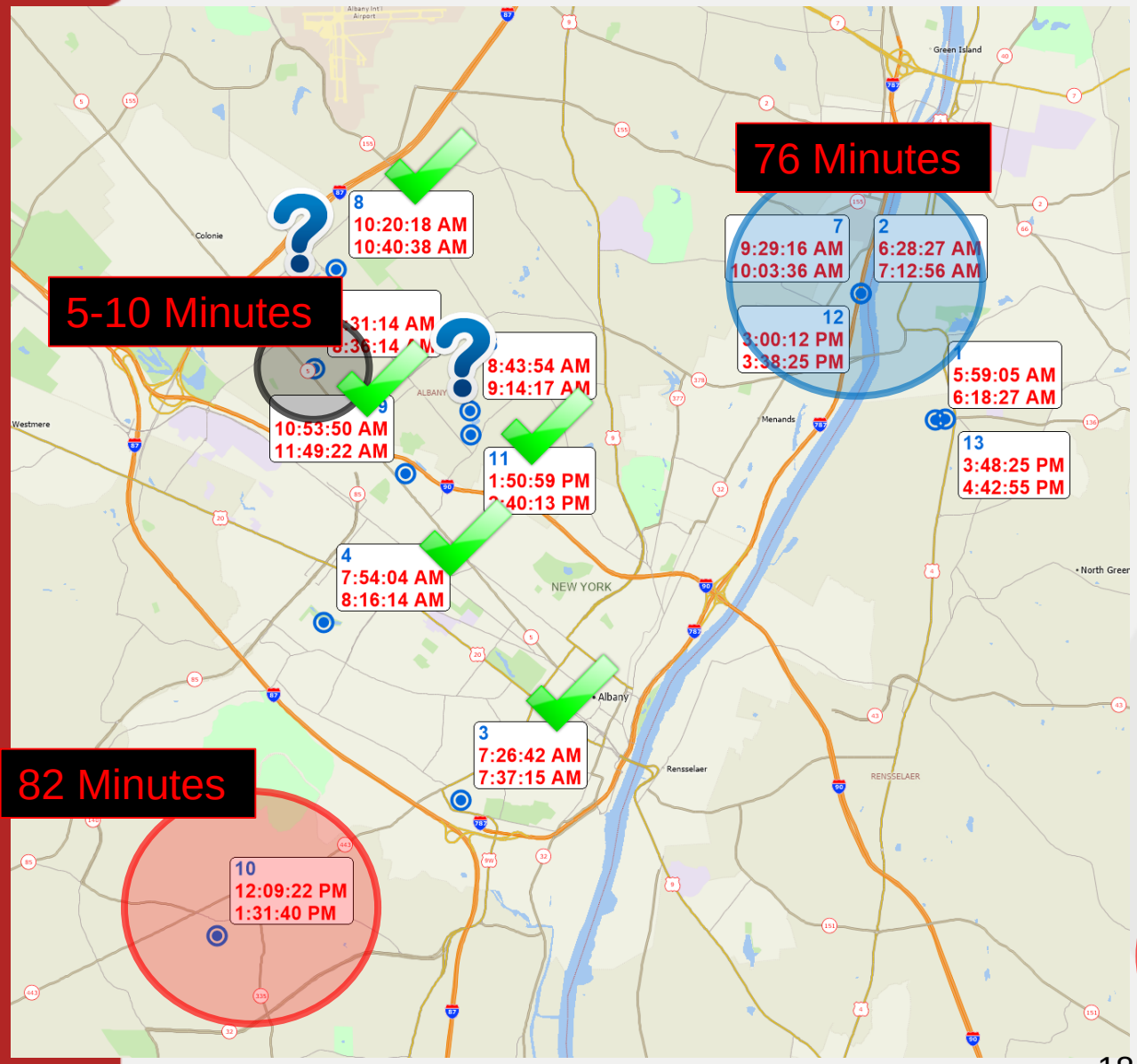

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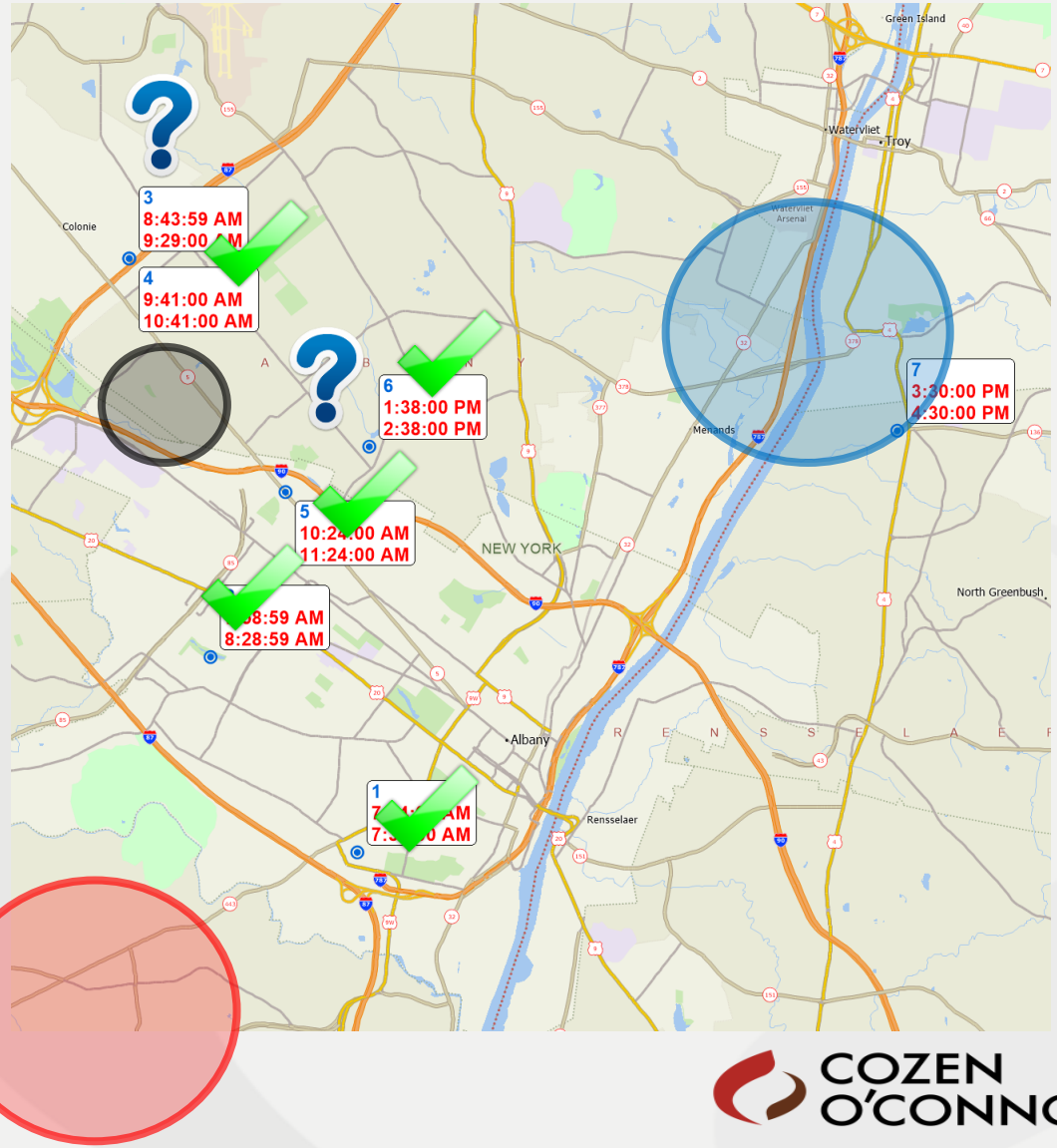

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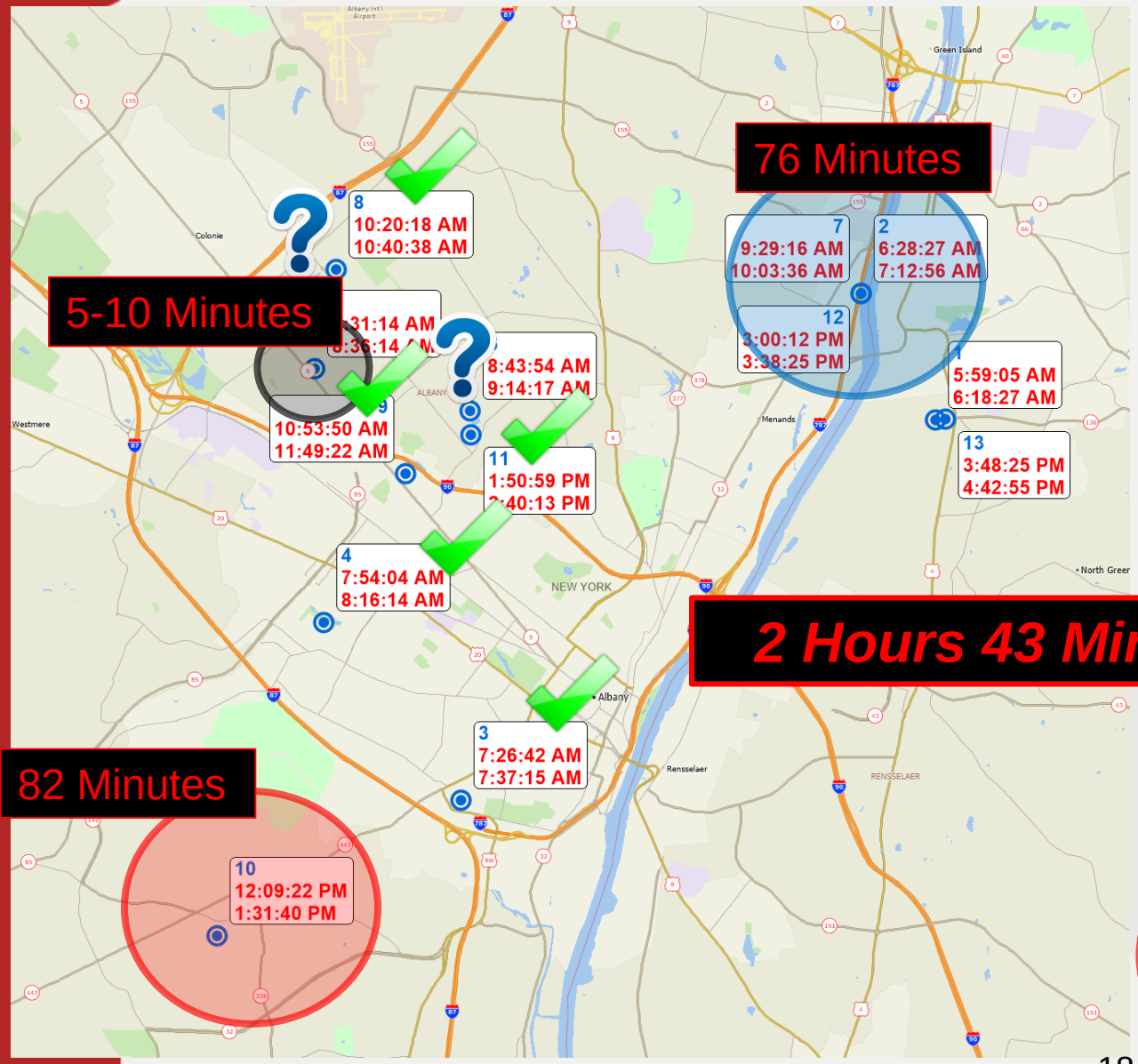

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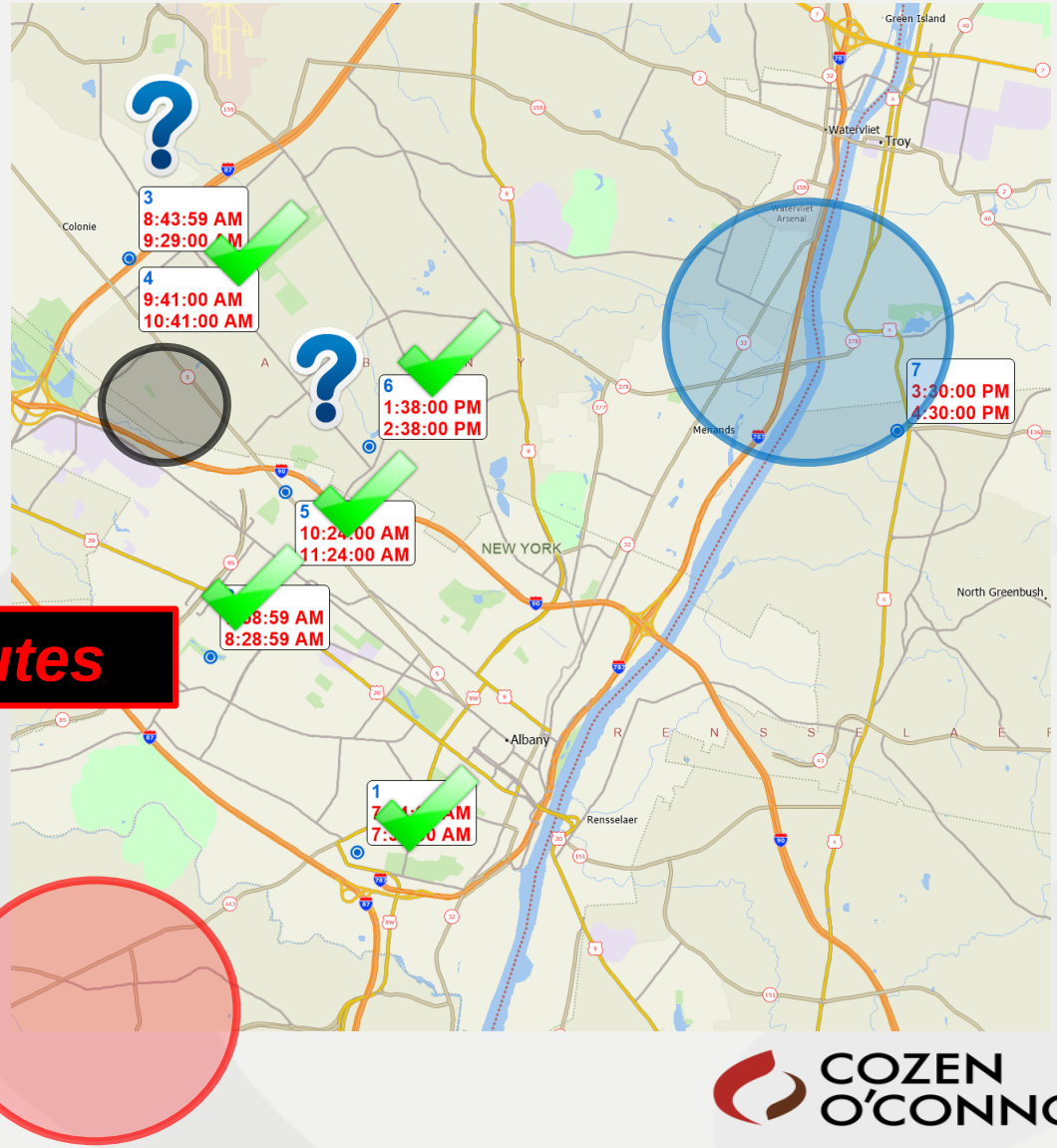

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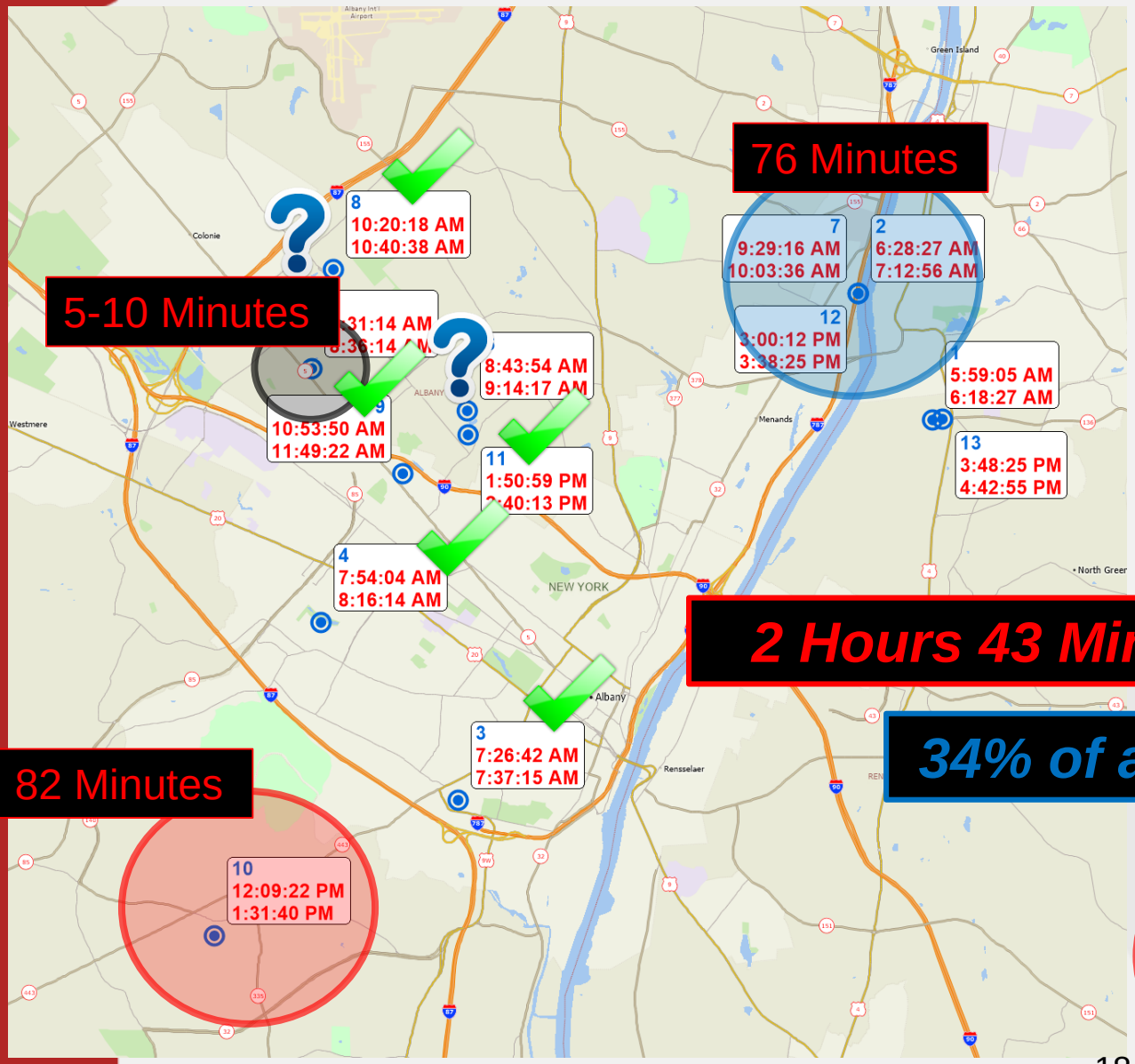

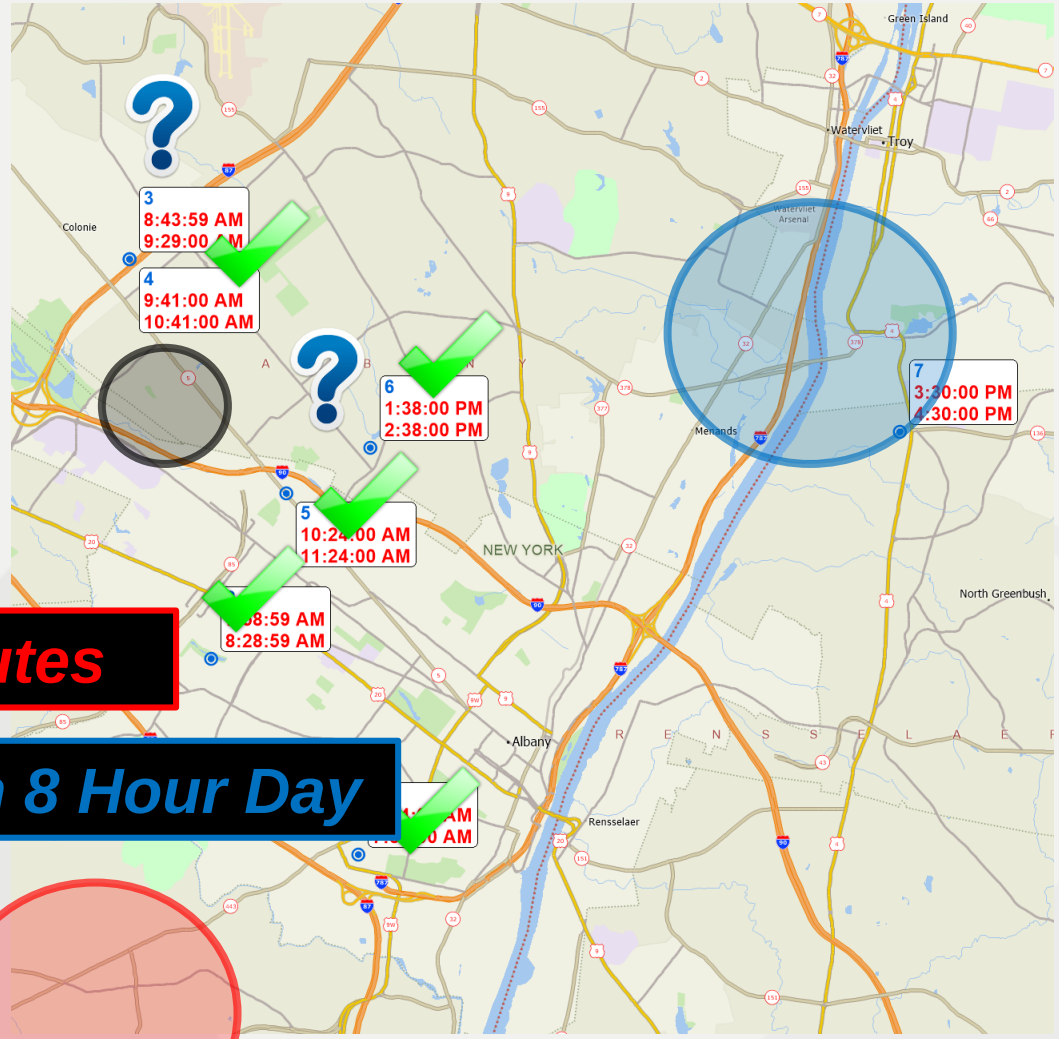

2 Hours 43 Minutes

34% of an 8 Hour Day

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Spoliation of Electronic Data
Federal Rule of Civil Procedure 37(e)

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

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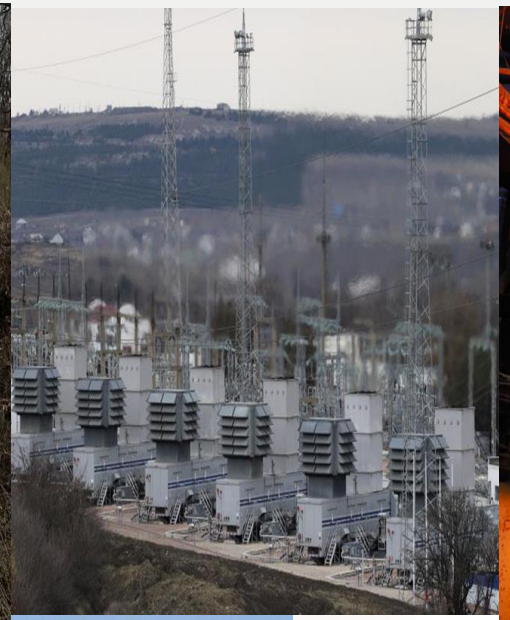
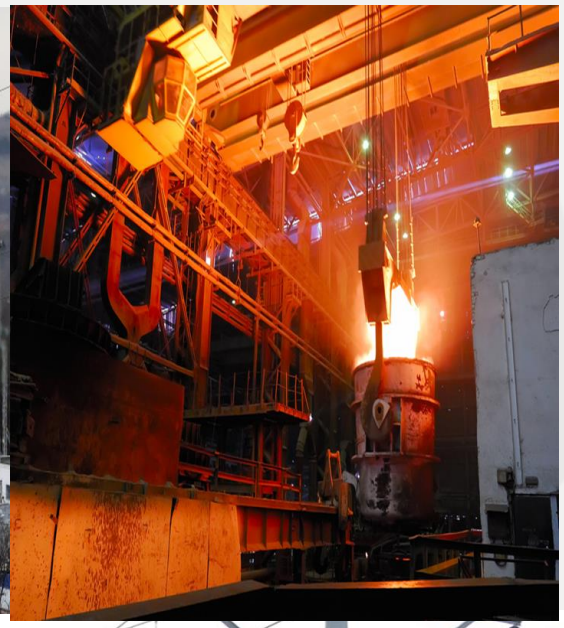
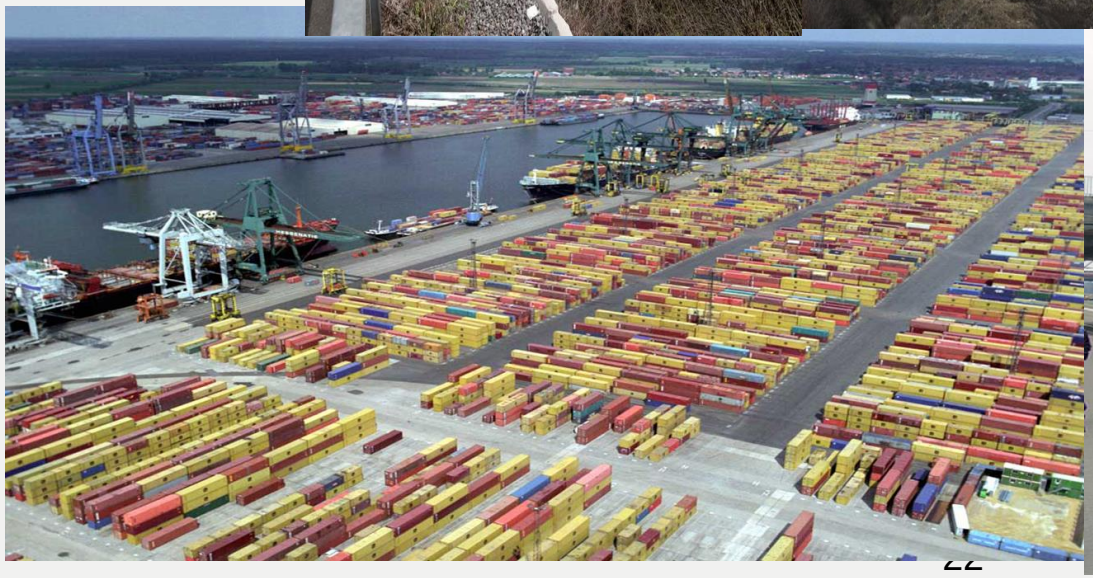
Cyber Subro
When Cyber Intrusions Cause Property Damage







Cyber Subro

A. Don’t know hacker’s identity
B. Identify parties that could have prevented hacking incident
    1) Website or Maintenance Security Vendors
    2) Network Security Designer
    3) Software\hardware manufacturers
    4) Data backup\Cloud Computing (lost data claims)
    5) Hacked Entity
    6) Others

COZEN O’CONNOR

Answers

Contact Information

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dwalton@cozen.com

Stuart Claire
sclaire@cozen.com

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